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APPEARANCES:

FRANKLIN COUNTY PROSECUTOR'S OFFICE
By Timothy A. Lecklider, Esq.
Assistant Prosecuting Attorney
373 South High Street, 13th Floor
Columbus, Ohio 43215
(614) 525-3520,

On behalf of the Board.

Also present:

Mike Brickner, All Voting Is Local
Mark R. Brown, Esq., Counsel for
Libertarian Party
Suzanne Brown, Executive Assistant to the
Board, Director, and Deputy Director
Jeffrey Mackey, Petitions & Campaign Finance

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Monday Afternoon Session
June 3, 2019
3:03 p.m.

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4 DEPUTY DIRECTOR PAYNE: It looks
5 like we have a quorum, but I will take roll just to
6 make sure.

7 Kim Marinello.

8 MEMBER MARINELLO: Here.

9 DEPUTY DIRECTOR PAYNE: Mike Sexton.

10 MEMBER SEXTON: Here.

11 DEPUTY DIRECTOR PAYNE: Doug
12 Preisse.

13 (No response.)

14 DEPUTY DIRECTOR PAYNE: And Brad
15 Sinnott.

16 CHAIRMAN SINNOTT: Here.

17 DEPUTY DIRECTOR PAYNE: We do have
18 three of four. In Doug's absence, we want to ask
19 Brad Sinnott to serve as our acting chair.

20 The first item on our agenda is the
21 voter registration challenge. And I will call on a
22 Alicia Healy to give us a brief presentation.

23 MS. HEALY: Good afternoon. You all
24 should have in your packet a copy of a challenge of
25 right to vote and correction of registration list.

1 We have Therese A. Willis. She's a qualified
2 elector of Franklin County at the address of
3 5269 Strawberry Farms, Gahanna. She is challenging
4 Ashley Covert who she states does not live at the
5 address that she resides at presently.

6 In your packet you have a copy of
7 the registration for Therese Willis. You also have
8 a copy of the voting history, and you will notice
9 that she has been voting from that address since
10 2012. Also, we have a registration for Ashley
11 Covert who does not live at that address. We sent
12 an acknowledgment notice to that address in 2016
13 and it was returned undeliverable. We also have a
14 copy of her voting history. She has not voted at
15 that location.

16 So based on the information that we
17 have gathered -- You will also see that you have a
18 copy of the Ohio Election Official Manual, Section
19 1, dash, 14, titled Challenge of the Right to Vote
20 on page 374 in your packet. And under that is
21 titled Challenge Process Hearing and Decision in
22 paragraph two on page 377.

23 So we recommend based on that that
24 Ashley Covert's voter record be removed from the
25 list.

1 DEPUTY DIRECTOR PAYNE: Thank you,
2 Alicia.

3 CHAIRMAN SINNOTT: So Alicia, when
4 Ms. Willis contacts us she says that she has been
5 residing at 5269 Strawberry Farms Boulevard in
6 Gahanna since 2011 and she knows nothing about an
7 Ashley Covert living there?

8 MS. HEALY: Correct. It appears
9 that an Ashley moved out at Therese moved in the
10 same year. So I'm not sure how that happened, but
11 she said she does not reside at that address.

12 CHAIRMAN SINNOTT: And what was the
13 reaction to our notification to Ms. Covert that her
14 registration was being challenged?

15 MS. HEALY: We did not receive
16 anything back from the letters that we sent out.

17 CHAIRMAN SINNOTT: Is Ms. Covert
18 registered under another address now in Franklin
19 County?

20 MS. HEALY: She is not.

21 CHAIRMAN SINNOTT: Well, under those
22 circumstances, I move that the board approve the
23 challenge of the right to vote filed by Therese
24 Willis of 5269 Strawberry Farms Boulevard, Gahanna,
25 Ohio, against Ashley Covert of that same address

1 and order that Ms. Covert's registration be removed
2 from the Franklin County voter file.

3 MEMBER SEXTON: Second.

4 DEPUTY DIRECTOR PAYNE: All those in
5 favor of the motion signify by saying aye.

6 (Vote taken.)

7 DEPUTY DIRECTOR PAYNE: All opposed,
8 same sign.

9 (No response.)

10 DEPUTY DIRECTOR PAYNE: The motion
11 carries.

12 The next item to the agenda is a
13 protest of candidacy of Robert Bender. And I
14 believe this is a continuation of our last board
15 meeting. And I will defer to the chairman at this
16 point as to how we want to proceed.

17 CHAIRMAN SINNOTT: It is. It's a
18 continuance of the hearing that we started last
19 week.

20 Is Mr. Brown here? There you are,
21 Mr. Brown. Okay. I just wanted to make sure you
22 were in the room.

23 We continued the hearing at the
24 point where we wanted an opportunity to examine a
25 couple of legal propositions that Mr. Brown had

1 advanced in a letter that he provided to the board
2 on May 28. And I am told that Mr. Mackey from our
3 staff is in position to make a report on the two
4 subjects that were being addressed; in particular,
5 whether this protestor had the authority and legal
6 capacity or perhaps the standing to file a protest
7 and whether the board has the authority to proceed
8 in hearing the protest today as opposed to the
9 board's action being untimely.

10 So, Jeff, if you would, would you
11 take us from the top and share with us the view of
12 the board's staff? And at the conclusion of that,
13 I'll ask the assistant county prosecutor, Tim
14 Lecklider, if he has any observations he wants to
15 make in addition to what Mr. Mackey's reporting.

16 So, Jeff, please.

17 MR. MACKEY: In the matter of the
18 standing of the protestor, our guidance comes from
19 3513.05 and the Election Official Manual which
20 basically quotes 3513.05, which says, Protests
21 against candidacy of any person may be filed by any
22 qualified elector who is a member of the same
23 political party as the candidate and who is
24 eligible to vote at the primary election for the
25 candidate whose declaration of candidacy the

1 elector objects to. 3513.05 also defines political
2 party membership as elector is considered to be a
3 member of a political party if the elector voted in
4 that party's primary election within the preceding
5 two calendar years or if the elector did not vote
6 in any other party's primary election within the
7 preceding two calendar years.

8 And under those guidelines, Mr. Duus
9 does qualify to file that protest we feel.

10 On the matter of the timeliness --

11 CHAIRMAN SINNOTT: Before you move
12 on, --

13 MR. MACKEY: Sure.

14 CHAIRMAN SINNOTT: -- just to say
15 that in very straightforward language, it sounded
16 to me as though your conclusion was because
17 Mr. Duus had not voted in any other party's primary
18 in the current calendar year and the last two
19 calendar years that he would have the authority to
20 protest the candidacy in question.

21 MR. MACKEY: This is our
22 understanding, yes. He last participated in a
23 partisan primary election in 2012.

24 CHAIRMAN SINNOTT: Okay. Go on to
25 the timeliness.

1 MR. MACKEY: There were presented a
2 couple of arguments. The argument that 3501.39(B)
3 of the Revised Code imposes a time limit on the
4 board's ability to invalidate petitions.
5 3501.39(B) does impose a time limit, but it's
6 specifically related to -- and I'll use Latin
7 here -- sua sponte, so the board's own motion,
8 which this is not. This is a case of a protest.
9 So we don't believe that 60 days prior to the
10 primary election time limit established in
11 3501.39(B) applies in this case.

12 This court case cited here, State ex
13 rel. Yeager versus Richland County, the first two,
14 Whitman vs. Hamilton County and also that case
15 which references an Attorney General opinion from
16 2000. And just in reading all of that, I believe
17 that the circumstances on our case are dissimilar
18 enough that I'm not sure those provide real
19 guidance on what the definition of the timeliness
20 is.

21 DIRECTOR LEONARD: And you're
22 reporting about Whitman and Yeager?

23 MR. MACKEY: Right.

24 DIRECTOR LEONARD: And their fact
25 patterns are substantially different enough that

1 they really aren't applicable to the case that we
2 have before us.

3 CHAIRMAN SINNOTT: Jeff, if I
4 understand you, then, you're saying that if the
5 challenge to the candidacy had been initiated by
6 the board it would be governed by a different
7 portion of the Revised Code and consequently there
8 would be time limits that do not apply here?

9 MR. MACKEY: Correct. That's our
10 evaluation of the statute.

11 CHAIRMAN SINNOTT: What, then, are
12 the statutory standards for timeliness for the
13 board to act in response to this form of protest?

14 MR. MACKEY: The statutes, in my
15 reading, do not provide a definition of either
16 promptly or set a limit on when the hearing must be
17 held, which is why we're looking at the case law.

18 DIRECTOR LEONARD: When you're
19 dealing with 3501.39(A)(1), which is a written
20 protest that is made contesting or challenging the
21 petition in accordance with any other section of
22 the code providing for a protest procedure, then
23 you're bound by the provisions of that statute that
24 provides for the protest procedure. Then you have
25 subsection two, which is a written protest against

1 the petitioner candidacy naming specific objections
2 that is filed that the petition violates any
3 requirement established by law, kind of a catchall.
4 That one is the one that really kind of has a --
5 there's really -- there is no time frame in which
6 to hear the protest. And then the third one is the
7 candidacy or petition violates requirements of this
8 chapter or any other requirement established by
9 law. That's the subsection that pertains to when
10 the board itself makes a determination that there
11 is no protest filed, it's the board on its own
12 accord making a determination. And in that one,
13 again, there is a time frame in which -- under that
14 subsection in which the determination has a time
15 frame in which it has to be made. That's --

16 MR. MACKEY: Yeah. I think there
17 was some actual changes to the law. I'm not sure
18 how old your version of the chapter is there.

19 DIRECTOR LEONARD: Right.

20 MR. MACKEY: I think there's another
21 section I think I had in there, and I had a three
22 or maybe a three, a four, or created a new three,
23 but --

24 CHAIRMAN SINNOTT: So it sounds as
25 though your conclusion and your recommendation to

1 us is that because this is a voter-initiated
2 protest the time limitation urged by the
3 candidate's counsel is not applicable and instead
4 the board's need is to act promptly in fixing a
5 time for the hearing and forthwith mailing notice?

6 MR. MACKEY: Right. Which I did not
7 find definitions for anywhere, but --

8 CHAIRMAN SINNOTT: Tim, is there
9 anything you want to add at this point?

10 MR. LECKLIDER: On the timeliness
11 issues and/or the affiliation issue?

12 CHAIRMAN SINNOTT: Yeah. I think
13 we're about to proceed with making a decision about
14 whether we can proceed. So if there's something
15 you want to point out to us, now would be a good
16 time.

17 MR. LECKLIDER: I think Mr. Mackey
18 makes a fair summary of both the facts and the law.
19 I've also been in contact with the Secretary of
20 State's office, some of their attorneys, and they
21 agree that this is a gray area with respect to the
22 time within which the board may or shall conduct a
23 hearing.

24 CHAIRMAN SINNOTT: Well, we're well
25 in advance of the election in which this question

1 matters, and unless --

2 MEMBER SEXTON: We had no primary
3 here. So it is correct to say the sixtieth day
4 would be the general election, so --

5 MR. LECKLIDER: If I may, I mean,
6 it's really immaterial to this case because that
7 time limit only applies in the event that you are
8 taking action of your own volition or sua sponte,
9 which is not the case here. You're responding to a
10 protest.

11 CHAIRMAN SINNOTT: Well, in light of
12 the fact that this becomes important only to an
13 election in November --

14 I'm sorry. Mr. Brown, were you
15 trying to get my attention?

16 MR. BROWN: I'd like to respond to
17 some of this commentary.

18 CHAIRMAN SINNOTT: Let me finish my
19 thought and then I'll get a sense from my
20 colleagues here on the board as to whether they're
21 seeing the matter in the same way. It may be --
22 we've already heard from you once, but it may be
23 that we would be inclined to --

24 MR. BROWN: I'd like to respond to
25 some of the legal opinions that were offered.

1 CHAIRMAN SINNOTT: If I may finish.

2 It may be our wish to hear from you
3 again for a short period of time. So let's see
4 what happens next, and then if that's the wish of
5 the board you'll be heard from again.

6 MR. BROWN: I'd like to be heard
7 before the board makes any decision.

8 CHAIRMAN SINNOTT: Your wish is
9 clear. Thank you.

10 In light of the fact that this
11 matters for the November election, that's when the
12 vote is going to be taken, and we're hearing that
13 there is no statutory instruction that would
14 prevent us from proceeding and hearing the protest,
15 I'm inclined to address the merits of the protest.

16 Do you see it the same way?

17 MEMBER SEXTON: Yes, I do.

18 MEMBER MARINELLO: (Nodded
19 affirmatively.)

20 CHAIRMAN SINNOTT: Would you
21 also be interested in hearing for two minutes from
22 Mr. Brown?

23 MEMBER SEXTON: Since he's here.

24 CHAIRMAN SINNOTT: Please.

25 MR. BROWN: If my understanding is

1 correct, you've been advised that Yeager does not
2 apply to this case because there was a protest
3 lodged in this case. If you look at the Whitman
4 case which Yeager relied upon, in the Ohio Supreme
5 Court in Whitman -- Whitman was handed down in
6 2002 -- it expressly -- addressed that point and
7 expressly said, the board thus lacks authority to
8 consider the merits of Whitman's challenge either
9 sua sponte or on the protest after the primary
10 election. That makes it clear. It doesn't matter
11 whether it's a protest or your action sua sponte.
12 After the primary election you have no authority to
13 address it. In terms --

14 DIRECTOR LEONARD: In that case,
15 though, the protest was filed substantially after
16 the primary election. It was filed in August of
17 that year, and that was --

18 MR. BROWN: That was a separate
19 ground.

20 DIRECTOR LEONARD: I'm sorry?

21 MR. BROWN: That was a separate
22 ground for a separate challenge. In regard to the
23 timing challenge, the Ohio Supreme Court language
24 is clear. In the Yeager case, the court is simply
25 saying, Hey, you couldn't do it on a protest, we're

1 not going to let you do it sua sponte either. It
2 was assumed they could not do it on a protest. So
3 any other interpretation is a vast stretch of the
4 imagination.

5 There's another problem with timing.
6 3501 says that your hearing must be promptly
7 noticed and held. The protest in this case was
8 filed on February 22nd, 2019, if I am not mistaken.
9 My client was not notified until May -- the end of
10 May. February, March, April, May, there's three
11 months. If you look at the Yeager case, the exact
12 same thing happened in the Yeager case. In the
13 Yeager case the Ohio Supreme Court said as a fourth
14 reason for preventing the Richland County Board
15 from trying to take the exact same action you're
16 trying to take here, when the board of elections
17 receives a protest it is required to promptly fix
18 the time for the hearing for hearing the protest
19 and notify the candidate of the protest and the
20 time set for the hearing. Between April 2nd, 2013,
21 in that case and the board's vote on July 9th,
22 which is three months, the board did not schedule a
23 hearing. Three months, exactly like this case.
24 You can't wait three months to decide whether a
25 person's candidacy is legitimate.

1 In response to Mr. Sexton's comment
2 about, well, there was no primary held here, that
3 was expressly addressed in Yeager. In Yeager the
4 Ohio Supreme Court said that doesn't matter;
5 instead, what matters is he filed a nominating
6 petition. He wasn't challenged in the Yeager case
7 either, yet the Ohio Supreme Court said you're not
8 timely. There is absolutely no justification for
9 this hearing at this late date.

10 CHAIRMAN SINNOTT: Mr. Brown, are
11 you aware of any communication between the board
12 and the candidate or the protestor attempting to
13 coordinate a hearing date so that it was convenient
14 for counsel and parties?

15 MR. BROWN: My client is here and
16 he's more than willing to testify.

17 CHAIRMAN SINNOTT: No. I'm asking
18 you if you're aware.

19 MR. BROWN: I am not aware.

20 CHAIRMAN SINNOTT: Okay.

21 MR. BROWN: And, in fact, Your
22 Honor, I'm still waiting to see the protestor who
23 has not shown for this hearing either. I have a
24 right to question him. And if he is not here, he
25 has waived his protest and then you're left acting

1 sua sponte. And if you act sua sponte, Yeager
2 applies.

3 CHAIRMAN SINNOTT: Okay.

4 MR. BROWN: Thank you.

5 CHAIRMAN SINNOTT: Thank you,
6 Mr. Brown.

7 All right. I'm inclined to consider
8 the protest. So I believe now what we are doing is
9 we are examining whether certain challenged
10 signatures on the petition, the candidacy petition,
11 are the signatures that match the signatures in the
12 records of the Board of Elections.

13 There was some discussion of the
14 subject when last we met on it. And I recollect
15 from that -- and Jeff, please correct me if I'm
16 wrong -- my recollection is that one of the issues
17 has to do with someone's apparently writing in her
18 middle name and proffering that as a part of her
19 signature on the petition when the signature on
20 file with the Board of Elections is the -- is the
21 first name of that person.

22 MR. MACKEY: That is correct. It's
23 the second signature in your documentation.

24 CHAIRMAN SINNOTT: Do we have any
25 past practice to guide us on that subject?

1 MR. MACKEY: I don't recall any
2 challenged signatures to that effect, but we
3 frequently allow such signatures in our processing
4 of petitions of that nature. In those instances we
5 focus mainly on the last name and how it matched
6 up.

7 CHAIRMAN SINNOTT: So you're saying
8 in the routine course of reviewing petition
9 signatures, if you come across, for example, an
10 Allen John Smith according to the signature on
11 record at the board but John Smith appears on the
12 petition that you count that signature?

13 MR. MACKEY: Yes, unless there is
14 overriding evidence that they are different people
15 for some reason.

16 MEMBER SEXTON: If we're looking
17 at -- So we're starting with the first, just so we
18 know what we're looking at. There's five
19 signatures?

20 MR. MACKEY: There are actually six.

21 MEMBER SEXTON: Six in question?

22 MR. MACKEY: Yes. Two per page.

23 MEMBER SEXTON: So if we're looking
24 at the one in question that the Chairman has talked
25 about, just so we know what we're looking at, is

1 part 907, line six?

2 MR. MACKEY: Correct.

3 CHAIRMAN SINNOTT: That I think is
4 the middle name instead of the first name.

5 MEMBER MARINELLO: Which they said
6 is okay.

7 CHAIRMAN SINNOTT: Sounds like it
8 is.

9 MEMBER SEXTON: Do we want to look
10 at any of these others?

11 CHAIRMAN SINNOTT: I think we do,
12 Mike. Do you want to lead us in a discussion of
13 them one by one? I don't think we have any other
14 choice if we're looking for a signature match.

15 MEMBER SEXTON: I mean, if we start
16 with the first page, 907, line five, comparing it
17 to the signature below that, it doesn't appear to
18 be the same signature to me or --

19 CHAIRMAN SINNOTT: It doesn't look
20 close to me either.

21 MEMBER SEXTON: Appears to be marks
22 on a line; but it doesn't, at least in my opinion,
23 appear to --

24 MEMBER MARINELLO: I don't see
25 anything that would --

1 MEMBER SEXTON: See anything that
2 would back up that one.

3 On the second one, I think we've
4 established through Mr. Mackey that one has a
5 precedent.

6 Kim, you want to speak up on line --
7 part 907, line 8?

8 MEMBER MARINELLO: Yeah. I see
9 similarities going the same direction, a couple of
10 loops the same. I would be inclined to say that
11 that signature is okay for *Rosario.

12 CHAIRMAN SINNOTT: I can see some
13 similarity there, too, yes.

14 What do you think about line nine?

15 MEMBER MARINELLO: I don't see
16 anything. I mean, it's this -- I don't see
17 anything on that one.

18 CHAIRMAN SINNOTT: You're not seeing
19 any similarity?

20 MEMBER MARINELLO: Huh-uh.

21 CHAIRMAN SINNOTT: I'm not either.

22 MEMBER SEXTON: I'm not either.

23 CHAIRMAN SINNOTT: Going over to
24 part 908, line two.

25 MEMBER MARINELLO: I don't see

1 anything there.

2 CHAIRMAN SINNOTT: That one is not
3 close, is it?

4 MEMBER MARINELLO: No.

5 MEMBER SEXTON: How does this --
6 Jeff, I know sometimes your signature is by just
7 making a line. Does that need to -- Obviously,
8 that needs to match a signature that we have on
9 file?

10 MR. MACKEY: I believe the direction
11 we have from the Secretary of State, which is on
12 the front there, says that it should match the one
13 on file. So --

14 MEMBER SEXTON: Well, I'm not seeing
15 anything on that one at all.

16 CHAIRMAN SINNOTT: I agree with
17 that.

18 MEMBER MARINELLO: 908, line six,
19 doesn't even look like the same name.

20 MR. MACKEY: On line six, I did
21 include the two separate signatures that we have in
22 our system. One is the one that was on the
23 registration card, which is the first one there,
24 that doesn't really match. The second one there is
25 the one that when I was going through on the second

1 review of the petition I found that as a signature
2 that is in the pollbook for the 2016 general
3 election, which I did think was a reasonable
4 facsimile of the signature on the petition. So I
5 don't know if she has two signatures she's working
6 with or something changed at some point.

7 CHAIRMAN SINNOTT: But our reference
8 should be the signature on file at the board?

9 MR. MACKEY: And this is part of the
10 file. So I pulled it from the file of our Board of
11 Elections database.

12 MEMBER SEXTON: I don't know.

13 MR. MACKEY: What I circled in red
14 there is what she signed in the pollbook when she
15 voted that day. In the pollbook she signed it like
16 it was printed, first name was last, last name
17 first.

18 MEMBER SEXTON: How does that work
19 on -- She's circled here. How does that work in
20 terms of guidelines for the last name?

21 MR. MACKEY: I'm sorry. What's
22 that?

23 MEMBER SEXTON: I mean, if you look
24 at line 6, 908, line six, and then you look at the
25 signature below it, the signature at the bottom

1 right of the page, then obviously, you know, it
2 seems like it starts with -- it omits the first
3 name and goes with -- it doesn't appear to be the
4 last name either.

5 MR. MACKEY: Yeah. I mean, her last
6 name is Delacruz that she printed first there in
7 the pollbook followed by her first name, Olandino,
8 which is how we have it listed in the pollbook. So
9 it's alphabetical by last name. On the petition
10 she signed it with her first name first like you
11 normally would.

12 CHAIRMAN SINNOTT: Doesn't look as
13 though there's any match at all between her
14 registration signature and the way she signed the
15 petition, but there is something of a match between
16 the way she signed when voting in 2016 and the way
17 she signed the petition. I don't think I've ever
18 seen one like that.

19 MEMBER MARINELLO: I know. I agree.

20 CHAIRMAN SINNOTT: And Jeff, I think
21 you were making the point a moment ago that the
22 2016 pollbook signature is a signature on file with
23 the Board of Elections although not the signature
24 that was used to register to vote?

25 MR. MACKEY: Correct.

1 MEMBER MARINELLO: So the signature
2 on file, the big, that's older or a change or --

3 MR. MACKEY: It is older. I'm not
4 sure when -- off the top of my head when that
5 registration came in prior to her voting in 2016.

6 MEMBER MARINELLO: So we could kind
7 of disregard that one because this was newer.
8 Maybe she had a hand problem that day.

9 MEMBER SEXTON: What is this, the
10 one in the middle?

11 MR. MACKEY: The one in the middle
12 is printed in the pollbook. It's to show what the
13 signature on file is, which is one we captured off
14 the registration form for the poll worker to
15 compare.

16 CHAIRMAN SINNOTT: So the big one in
17 the middle is how she registered to vote, the
18 smaller one with the red circle is how she appeared
19 in the pollbook for 2016, and the one at the top is
20 how she signed the petition?

21 MR. MACKEY: Right.

22 MEMBER MARINELLO: Well, I'm going
23 to disregard the first registration signature and
24 go by these two, and I would be inclined to make
25 that a match.

1 CHAIRMAN SINNOTT: Okay. I can see
2 that.

3 MEMBER MARINELLO: So would we have
4 three of the --

5 MEMBER SEXTON: Three in question?

6 MEMBER MARINELLO: Three we're
7 saying no to?

8 CHAIRMAN SINNOTT: As I understood
9 the discussion, there were three signature we would
10 approve and count and three that we would choose
11 not to count because there's a lack of match.

12 MEMBER MARINELLO: Yeah.

13 CHAIRMAN SINNOTT: Well, let me do a
14 motion, then, that records the conclusion of the
15 board on that point, and then let's see what else
16 we need to do in order to make our action today
17 clear.

18 So of the six signatures at issue in
19 the protest, I move that we count as valid
20 signatures those appearing at part 907, line five;
21 907, line nine; --

22 MR. MACKEY: My notes reflect a
23 slightly different --

24 MEMBER MARINELLO: Yeah, me too.

25 CHAIRMAN SINNOTT: What I'm doing is

1 I'm reciting the opposite. You're absolutely
2 right. Okay.

3 My motion is that we count as valid
4 signatures part 907, line six; part 907, line
5 eight; and part 908, line six. At the same time,
6 we find invalid and will not count the signatures
7 appearing at 907, line five; 907, line nine; and
8 908, line two. That is my motion.

9 MEMBER MARINELLO: I'll second that.

10 DEPUTY DIRECTOR PAYNE: All those in
11 favor of the motion signify by saying aye.

12 (Vote taken.)

13 DEPUTY DIRECTOR PAYNE: All opposed,
14 same sign.

15 (No response.)

16 DEPUTY DIRECTOR PAYNE: The motion
17 carries.

18 CHAIRMAN SINNOTT: Now, relative to
19 the protest of candidacy, where does that leave us?

20 MR. MACKEY: The petition as
21 submitted had 13 valid signatures. There were 13
22 required for this petition. If you have now
23 invalidated three, that would leave the petition
24 three signatures short of having the required
25 number of signatures to be a valid petition.

1 CHAIRMAN SINNOTT: Okay. Then, in
2 light of the fact that the candidacy petition in
3 question in the protest has only ten valid
4 signatures, I move to grant the protest.

5 DEPUTY DIRECTOR PAYNE: Is there a
6 second?

7 MEMBER MARINELLO: Second.

8 DEPUTY DIRECTOR PAYNE: All those in
9 favor of the motion signify by saying aye.

10 (Vote taken.)

11 DEPUTY DIRECTOR PAYNE: All opposed,
12 same sign.

13 (No response.)

14 DEPUTY DIRECTOR PAYNE: The motion
15 carries.

16 MR. BROWN: The board -- No. I
17 object. I have a witness who has been more than
18 willing to testify. The protestor has not shown
19 up. How am I supposed to find out if he's a member
20 of the Libertarian Party? He's not even here. I
21 can't question him. This is not due process.

22 CHAIRMAN SINNOTT: Mr. Brown, please
23 be seated and let the board continue.

24 MR. BROWN: Note my objection on the
25 record.

1 CHAIRMAN SINNOTT: Of course it is.
2 Anything else that needs to be done
3 to memorialize the action that the board is taking?

4 DIRECTOR LEONARD: No.

5 CHAIRMAN SINNOTT: We have voted to
6 accept certain signatures and reject others in
7 response to the protest. We have granted the
8 protest. I think the import of that is plain.

9 DIRECTOR LEONARD: That the
10 candidate involved is no longer certified to the
11 ballot. So that would be applied by the granting
12 of the protest.

13 CHAIRMAN SINNOTT: That's the effect
14 of granting the protest, yes.

15 Is there any other action you
16 recommend that the board take to memorialize --

17 DIRECTOR LEONARD: I don't believe
18 there is.

19 CHAIRMAN SINNOTT: Okay. Very good.

20 DEPUTY DIRECTOR PAYNE: Are we ready
21 to move on to the next item on the agenda?

22 CHAIRMAN SINNOTT: Yes.

23 DEPUTY DIRECTOR PAYNE: The next
24 item on the agenda is the two percent cost of
25 living raise for the month of June, which would be

1 the two pay periods June 7th and June 21st. As you
2 are probably aware, with the county commissioners
3 we're on a month-to-month constraint on budgeting.
4 So if you're so inclined, we'd look for a motion to
5 grant a two percent raise to our full-time staff
6 for the June 7th and June 21st pay periods.

7 CHAIRMAN SINNOTT: I move that the
8 board approve the two percent cost of living pay
9 increase to all full-time board staff for the two
10 pay periods June 7th and June 21st. This increase
11 stands as a one-time approval for increases
12 specific to the upcoming pay periods in the entire
13 month of June as we are presently constrained by
14 month-to-month budgeting.

15 MEMBER SEXTON: Second.

16 DEPUTY DIRECTOR PAYNE: All those in
17 favor of the motion signify by saying aye.

18 (Vote taken.)

19 DEPUTY DIRECTOR PAYNE: All opposed,
20 same sign.

21 (No response.)

22 DEPUTY DIRECTOR PAYNE: The motion
23 carries.

24 Is there anything else?

25 CHAIRMAN SINNOTT: No. Motion to

1 adjourn?

2 MEMBER MARINELLO: Salute.

3 CHAIRMAN SINNOTT: I would second.

4 DEPUTY DIRECTOR PAYNE: All those in
5 favor of the motion --

6 DIRECTOR LEONARD: I think we
7 have --

8 CHAIRMAN SINNOTT: Somebody is
9 waving his hands, so --

10 DIRECTOR LEONARD: You folks might
11 want to give him the opportunity to speak.

12 CHAIRMAN SINNOTT: To be heard
13 today?

14 MEMBER SEXTON: I don't know.

15 CHAIRMAN SINNOTT: Well, sir, you
16 raised your hand.

17 MR. BRICKNER: My name is Mike
18 Brickner from All Voting Is Local. We recently
19 released a report about provisional ballots in
20 Franklin County. I presented it at last Thursday's
21 county commissioner meeting, and Director Leonard
22 invited me to be here to speak to the issue as
23 well.

24 DIRECTOR LEONARD: As he was
25 presenting it, I said you're free to attend the

1 board's meeting. So, again, it's incumbent on
2 whether the board wants to entertain --

3 CHAIRMAN SINNOTT: There have been
4 some media accounts of this, too.

5 Do you have a copy of your study
6 report to give to the board today?

7 MR. BRICKNER: I have one copy. I
8 can make other copies if you'd like; but I do have
9 a copy, yes.

10 CHAIRMAN SINNOTT: Well, we have had
11 the benefit of seeing the recent media coverage of
12 your report. Mr. Brickner, would you like to take
13 a minute or so and outline your conclusions? And
14 then if you'll see to it that there's a copy for
15 each board member presented, we'll read that at a
16 later date.

17 MR. BRICKNER: Sure. I will be
18 happy to produce it to you.

19 May I approach?

20 CHAIRMAN SINNOTT: Sure. And if you
21 will be brief in your remarks, that would be
22 appreciated. We'll read your report in detail.

23 MR. BRICKNER: I will not read over
24 the entire report, but I do appreciate you giving
25 me time to address the Board of Elections.

1 My organization is called All Voting
2 Is Local. We are a new campaign that was launched
3 in 2018. We are a collaborative campaign. We are
4 sponsored by the Leadership Conference on Civil and
5 Human Rights, the American Constitution Society,
6 the American Civil Liberties Union, the Lawyers
7 Committee for Civil Rights Under Law, and the
8 Campaign Legal Center. And our charge is to work
9 on the local level to address issues with election
10 systems.

11 After the 2018 election, we started
12 looking at statewide data and statewide trends
13 around voting from that election. And one of the
14 issues that we looked at statewide was the issue of
15 provisional ballots, that provisional ballots are
16 supposed to be a case of last resort for voters who
17 of course can't get something fixed while they are
18 at the poll location so they can cast a ballot and
19 then the board of elections can verify whether or
20 not that is a valid ballot.

21 Upon looking at statewide data, very
22 quickly it became clear that Franklin County was an
23 outlier from any other county. Even when we look
24 at Cuyahoga County -- which Cuyahoga and Franklin
25 are very close in terms of their percentage of the

1 electorate, they both make up almost 11 percent --
2 Franklin County was casting far more provisional
3 ballots and far more were being rejected.

4 When we started to look at trends
5 throughout the entire county, we saw that it looked
6 very different depending on where you lived. So in
7 2018 the overall county rate of provisional ballots
8 was 1.84 percent, but if you looked in communities
9 with a majority of black residents they were two
10 and a half times more likely to cast provisional
11 ballots. In low income areas that are high in
12 poverty, they were nearly four times likelier to
13 cast a provisional ballot. And for young voters
14 between the ages of 18 to 25, they were five times
15 more likely to cast a provisional ballot.

16 And so seeing those types of numbers
17 is of course very concerning because we don't want
18 to set up a, you know, two-tiered election system
19 where some people are not casting provisional
20 ballots and not having to worry about that, but
21 then you have other areas where there are very
22 large numbers. And even looking at specific
23 polling locations, like the Ohio Union on Ohio
24 State University's campus, one in ten voters who
25 walked in to vote in November 2018 cast a

1 provisional ballot and then 65 percent of those
2 ballots were then eventually rejected.

3 Looking at some of the reasons why
4 the provisionals are rejected, we can start to get
5 a glimpse of maybe where there might be some areas
6 for improvement. The number one reason is the
7 voter is not registered. And that's true in any
8 county you go to across the state of Ohio. But
9 here in Franklin County there is a disproportionate
10 percentage of people who are having their
11 provisional ballots rejected because they're not
12 registered. So that to me seems to indicate some
13 need for more public education around voter
14 registration, updating your voter registration, the
15 deadlines for voter registration.

16 Secondly, the other areas where we
17 see a lot of rejections are for people who cast
18 their ballot at the wrong polling location. We see
19 where Franklin County actually accounts for
20 one-third of all the ballots statewide that are
21 thrown out for that reason. So, again, that seems
22 to indicate a need for more public education around
23 polling place moves, where people are supposed to
24 go to vote, as well as additional training on the
25 procedures for poll workers to direct voters to

1 their correct voting location.

2 The other big area that we saw was
3 also insufficient ID. So, again, Franklin County
4 makes up about a third of all of the provisional
5 ballots in the state rejected because the voter did
6 not bring their correct ID. That, again, seems to
7 me to be an area where more voter education is
8 needed to inform voters about what ID they need to
9 bring and make sure that they're prepared to vote
10 on election day.

11 One area that I think -- and was
12 really illuminated by the last conversation that
13 you just had around I think processes and poll
14 worker training is signature mismatch. So looking
15 at signatures for provisional ballots, Franklin
16 County made up two-thirds of all of the provisional
17 ballots rejected for signature mismatch in the
18 entire state of Ohio in 2018. And so, again, we
19 just saw I think with this conversation that it can
20 be a very technical process. But the fact that
21 Franklin County makes up such a large number and no
22 other counties are really turning in large numbers
23 of these signature mismatches for provisional
24 ballots I think is an area of concern and that may
25 need attention from the Board of Elections.

1 With this need for voter education,
2 what we're asking for is for the Board of Elections
3 to work with the Franklin County Commissioners. We
4 believe that there is funding available for
5 education, to do education on registration
6 deadlines, on polling location changes and where a
7 voter is supposed to report, and also on the proper
8 ID to bring.

9 And so, you know, the fact that we
10 are seeing these types of disparities is calling
11 really on Franklin County to take action to address
12 these issues. We don't want to see where these
13 communities that have been historically
14 disenfranchised are continuing to experience those
15 problems at the polls. And I think with some
16 increased voter education as well as reformed poll
17 worker training and increased poll worker training
18 we can see Franklin County start to go in the same
19 direction that the rest of the state is, which is
20 casting fewer provisional ballots and rejecting
21 fewer provisional ballots.

22 CHAIRMAN SINNOTT: Thank you for
23 that presentation, Mr. Bender [sic].

24 And this is probably revealed by
25 your report in front of you. What was the total

1 vote cast in Franklin County in 2018?

2 MR. BRICKNER: So the total vote
3 cast I know was -- the percentage is 10.93 percent.
4 I believe it's four hundred and some thousand, but
5 I don't know the full number off the top of my
6 head.

7 CHAIRMAN SINNOTT: Again, that's not
8 a part of your report?

9 MR. BRICKNER: We looked at the
10 total turnout. Yes, we did. It's -- Again, it's
11 in here. I just don't know the number off the top
12 of my head.

13 CHAIRMAN SINNOTT: And I believe
14 that the total number of provisional ballots that
15 this board rejected that is found invalid in the
16 2018 election was 2,742. Is that right?

17 MR. BRICKNER: Uh-huh.

18 CHAIRMAN SINNOTT: Of those 2,742
19 provisional ballots that we decided that we could
20 not count under law, are you aware of any of those
21 that were mistakes on the part of the board that we
22 should have counted?

23 MR. BRICKNER: So in terms of the
24 number of rejected ballots, I believe the issue is
25 not something that is on the back end of the

1 process, but the issue is really on the front end.
2 This is why we're talking about poll worker
3 training and voter education. That if a voter
4 showed up to the wrong polling place and that's
5 where they cast their ballot, Ohio law says that
6 that should not count. And if the board rejected
7 those ballots, then they were following Ohio law.
8 But why does Franklin County have such a large
9 number of those ballots compared to other counties,
10 and even counties like Cuyahoga that are similar in
11 number? And that that points to more education
12 that is needed ahead of time but also poll worker
13 training in terms of directing voters to the proper
14 polling location.

15 CHAIRMAN SINNOTT: No. Mr. Bender
16 [sic], I was asked on the weekend about instances
17 where your group had alleged that we had
18 improperly -- that is, unlawfully -- refused to
19 count proper professional ballots.

20 My question is, are you aware of any
21 such instance in 2018 where that was done?

22 MR. BRICKNER: I have not looked
23 over each individual provisional ballot. I would
24 have concern over some of the signature mismatch
25 ones; that, again, seeing such a large number, that

1 two-thirds of the rejected provisional ballots from
2 the state came from Franklin County because of
3 signature mismatch. That is of concern that
4 there's such a large number and that that seems to
5 be a very troubling problem that is unique to
6 Franklin County.

7 CHAIRMAN SINNOTT: Let me get at it
8 this way.

9 Is there any part of your report in
10 which you allege that the board acted improperly --
11 that is, unlawfully -- in rejecting a provisional
12 ballot?

13 MR. BRICKNER: No, not specifically.

14 CHAIRMAN SINNOTT: Thank you very
15 much for your time today.

16 Any other questions?

17 DIRECTOR LEONARD: I would like
18 to since it's addressing the way that this Board of
19 Elections operates, particularly as it relates to
20 training. Our training has won awards on a
21 national level, it has won at the state level.

22 CHAIRMAN SINNOTT: You're talking
23 about poll worker training?

24 DIRECTOR LEONARD: Our poll worker
25 training.

1 And we divide the job
2 responsibilities up in order to make sure that it's
3 a learnable segment, that not every position has to
4 know everything that's done. We have a position
5 roster judge. Each roster judge receives three to
6 three and a half hours of training. There are
7 other counties that do it only when they're
8 statutorily required. We have training every
9 election and we encourage all of our poll workers,
10 and they do -- many participate every election, get
11 trained.

12 We have a -- Our program in training
13 has -- We actually create mock IDs with different
14 scenarios for the voters to get trained on
15 including provisional ballots. You know, they
16 swipe it and it pulls up a provisional ballot
17 scenario. Our training materials are award-winning
18 training materials. There are many counties who
19 envy the type of materials that we provide. And
20 again, it breaks it down with detailed sections.

21 We have Practice Makes Perfect,
22 which we do through the course of the last weekend
23 before the election so that our poll workers have
24 that last-minute opportunity to kind of refresh
25 their training on the subjects that they're going

1 to be responsible for.

2 We have a template that goes over
3 top of the provisional ballot envelope that the
4 Franklin County Board of Elections created. Other
5 counties throughout the state are using that
6 template and that template outlines every single
7 space that that voter needs to fill out to make
8 sure that that voter doesn't leave off a piece of
9 information that is critical to completing that
10 provisional ballot information.

11 We have a help desk that our poll
12 workers can contact on election day and they do if
13 they have questions about provisional balloting.
14 And many of our poll workers -- I'd venture to say
15 nearly all of them bring this with them to the
16 polling location so that they have that to refer
17 to.

18 We notify voters of polling location
19 changes in the election in which the polling
20 location is changed. That may create a challenge
21 for voters who don't vote in the May primary and
22 they don't vote until a year and a half later at
23 the general election, but we notify them in the
24 election that the location changed. And our poll
25 pads are capable and our poll workers use them,

1 that those poll pads are able to print out the
2 voting location that the voter needs to go to if
3 they're at the wrong location.

4 The report itself noted that many of
5 the rejected provisional ballots were rejected
6 because the person wasn't registered. Training is
7 not going to address if a person is not registered
8 before the election. Signature mismatches, we have
9 bipartisan teams that review every provisional
10 ballot envelope looking to make sure that the
11 signature matches. They look at the registration
12 address, they look at every signature that we have
13 on file, whether it's a pollbook signature, whether
14 it's a correspondence the voter sent. Anywhere
15 that we have a signature of that voter we're
16 comparing it to try and find a match. And they're
17 looking at -- if they can find a letter that's
18 formed the same way, they're going to count it.
19 They're trying to find, as you saw during -- you
20 know, when we review petitions, is that we're
21 looking for ways in which to count that provisional
22 ballot, not to disqualify it. And again, poll
23 worker training is not going to overcome when a
24 signature doesn't match.

25 The report attempts to argue that

1 Franklin County has an inordinate number of
2 provisional ballots and attempts to kind of blame
3 poll worker training; but nowhere in this report
4 does it account for the fact that Franklin County
5 is one of the fastest growing counties, certainly
6 the fastest growing of the major metropolitan
7 counties in the state of Ohio. And you're
8 comparing us to counties where they're static,
9 they're not growing. They're not having as many
10 people move to Cuyahoga County as they are to
11 Franklin County.

12 And you've got The Ohio State
13 University, you've got Capital University, Columbus
14 State, Franklin, Otterbein, Dominican, and I'm
15 probably forgetting another. All of these are
16 drawing young people to central Ohio. When you
17 have a growing community, you're going to have
18 people here. And unfortunately, we do have -- the
19 cost of housing is straining people and forcing
20 people to move more readily because of the cost of
21 housing in central Ohio. And that creates that
22 instance where people are moving more readily and
23 creating the opportunity for more provisionals.

24 So, again, to cast this somehow as
25 this high rate of provisional voters is somehow a

1 lack of training or somehow a nefarious effort to
2 disenfranchise voters on behalf of this
3 organization, it's just a conclusion that I really
4 take offense to. And that's why I felt that I
5 needed to speak on behalf of the Board of
6 Elections, on behalf of the employees here, on
7 behalf of the work that we do to make sure that our
8 poll workers are prepared to do their job.

9 And are mistakes going to be made?
10 Yes. There's no question about it. But what we do
11 is we do everything we possibly can to make sure
12 that they are prepared to carry out their
13 responsibility, because they really are the face of
14 the Board of Elections. They don't get to see us.
15 They don't get to see the 44 people here who work
16 every day. They see our poll workers and we
17 recognize that they are the ones who carry out
18 those responsibilities. And I just felt the need
19 to speak to that because they work tremendously
20 hard to make sure we get the job done.

21 CHAIRMAN SINNOTT: Mr. Bender [sic]
22 we'll look forward to seeing your report. And
23 thank you for that articulate presentation today.

24 Mr. Leonard, thank you for that
25 articulate presentation.

1 MEMBER MARINELLO: I agree with more
2 voter education. They can't have enough of it.

3 CHAIRMAN SINNOTT: Kim, I think you
4 were interested in moving to adjourn.

5 MEMBER MARINELLO: Yes. I move to
6 adjourn.

7 CHAIRMAN SINNOTT: I second that.

8 DEPUTY DIRECTOR PAYNE: All in favor
9 of the motion signify by saying aye.

10 (Vote taken.)

11 DEPUTY DIRECTOR PAYNE: All opposed,
12 same sign.

13 (No response.)

14 DEPUTY DIRECTOR PAYNE: Motion
15 carries.

16 - - -

17 Thereupon, the proceedings were
18 adjourned at approximately 3:57 p.m.

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C E R T I F I C A T E

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THE STATE OF OHIO:

SS:

COUNTY OF FRANKLIN:

I, Carla D. Castle, a Professional Reporter and Notary Public in and for the State of Ohio, do hereby certify that the foregoing is a true, correct, and complete written transcript of the proceedings in this matter;

That the foregoing was taken by me stenographically and transcribed by me with computer-aided transcription;

That the foregoing occurred at the aforementioned time and place;

That I am not an attorney for or relative of any of the parties and have no interest whatsoever in the event of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 14th day of June, 2019.

/s/Carla D. Castle
Notary Public, State of Ohio

My Commission Expires: September 29, 2021.

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