

VOTE CUYAHOGA COUNTY BOARD OF ELECTIONS

Board Meeting
8/16/2023

Attending:

Henry F Curtis, IV, Chairman
Inajo Davis Chappell, Board Member
Terence M. McCafferty, Board Member
Lisa M. Stickan, Board Member
Anthony Perlatti, Director
Tony Kaloger, Deputy Director

Mary Bejjani, Clerk to the Board
Skip White, Clerk to the Board

The Cuyahoga County Board of Elections Meeting began at 9:30 a.m. Hereinafter referred to as the CCBOE/Board.

Chairman Curtis noted that all Board Members were in attendance.

Agenda Item 1: Acknowledgement of the Secretary of State Directive 2023-15: Instructions Regarding the Review, Examination, and Verification of the Supplemental Part-Petitions Proposing an Initiated Statute (An Act to Control and Regulate Adult Use Cannabis)

Board Member Davis Chappell stated the Directive indicates the review was to be completed by August 15, 2023, along with the certification, and asked if it was completed. Director Perlatti stated yes. The CCBOE received one part petition with one signature; upon review, the signator lives in Elyria. Therefore, the petition was sent to Lorain County for processing. Director Perlatti stated that Cuyahoga County had zero signatures reported.

Chairman Curtis moved to acknowledge the Secretary of State Directive 2023-15: Instructions Regarding the Review, Examination, and Verification of the Supplemental Part-Petitions Proposing an Initiated Statute (An Act to Control and Regulate Adult Use Cannabis). Board Member Davis Chappell seconded. The motion passed unanimously.

Agenda Item 2: Challenge of Right to Vote filed by Mikhail Alterman against Briyana Folade Alexander

A transcript of the hearings can be obtained by contacting Mary Bejjani, CCBOE Clerk to the Board at 216-443-6430/mbejjani@cuyahogacounty.gov.

Chairman Curtis called upon Hasani Wheat, Registration Manager, to come forth. Chairman Curtis also asked if Mr. Mikhail Alterman was in attendance and noted Mr. Alterman was not present. Chairman

Narrative that is underlined in the CCBOE minutes relates to a motion that was acted on by the Board.

Curtis asked if Briyanna Folade Alexander, Quinten William Lyons, Carlos Reyes Portalatin, Gerald Zahler, or the Council were present. Chairmen Curtis noted none were present.

Hasani Wheat, Registration Manager, presented information outlined in the board materials regarding the Challenge of Right to Vote filed by Mikhail Alterman against Briyana Folade Alexander. The Challenge of the Right to Vote stated that Ms. Alexander is registered to vote from 23600 Merchantile Road, Suite 110, Beachwood, Ohio, 44122, a commercial property, and has been registered to vote from that address since June 14, 2023. Ms. Alexander also voted provisionally using the 23600 Merchantile Road, Suite 110, Beachwood, Ohio, address for the August 8, 2023, Special Election. Board Member Davis Chappell stated that commercial property is not a residence. Therefore, the Challenge should be upheld, and in Ms. Alexander's case, since she actually voted, this matter should be referred to the Secretary of State (SOS) Public Integrity Division, which is how the CCBOE is proceeding if there is some potential irregularity or conduct that is prohibited. Board Member Davis Chappell stated she had a different view about the other challenges in agenda items three to five, as those individuals did not vote. Board Member Davis Chappell recommended a letter go out to those individuals and remind them that they may have a business at one of these addresses, but that is not their residence, and they cannot vote from there. Board Member Stickan agreed. Chairman Curtis stated Ms. Alexander voted provisionally, which would impact agenda item six, the validity of provisional ballots and authorization to count provisional ballots from the August 8, 2023, Special Election. Chairman Curtis asked Director Perlatti to give the implications of agenda item six. Director Perlatti stated that Miss. Alexander is the only one of these individuals who did vote in the August 8, 2023, Special Election. When the CCBOE received the Voter Challenges, it was in proximity to the August Election. Therefore, all the individual's voter records were marked they must vote provisionally for the August Election, and Ms. Alexander did exercise the provisional vote. The CCBOE has isolated her provisional envelope, and will proceed depending on how the Board decides this matter, Mr. Wheat had prepared to present the report with either the provisional ballot being approved, or not. Preparations had been made to certify the provisional numbers either way, based on the determination of the Board.

Board Member Davis Chappell asked Assistant Prosecutor Musson what if someone would make an argument that they sleep at their commercial location, and is there a non-residential prohibition, therefore it cannot be used as a residence for purposes of voting? Mr. Musson stated he is not aware of any law that says that a commercial structure or something that appears to be a business operation would preclude anyone from living there other than local zoning laws. It could be legal for other purposes, but for voting purposes, it is the person's habitation, which is not defined based on the physical attributes of the building but whether or not they use it for living. Board Member Stickan stated that zoning laws prohibit it from being a legal residence. There are municipal ordinances with mixed properties where people can have both a business and residence and would be designated as such. If designated as commercial property, legally, that person cannot live there other than local ordinances. Mr. Musson stated he did not know the local ordinances in this particular situation, and he would fall back on the standard and the burden of proof that clear and convincing evidence if this is a commercial structure; it does not seem that it would be a habitation. He stated the Board needs to weigh the facts and make a determination. Board Member McCafferty said if that were the case for Ms. Alexander, she would be at the Board Meeting to provide information.

Chairman Curtis moved to uphold the challenge regarding the voter residency and cancel the voter registration of Briyana Folade Alexander. Chairman Curtis made a friendly amendment to refer this matter to the SOS Public Integrity Division, given her vote at 23600 Merchantile Road, Suite 110, Beachwood, Ohio, address. Board Member Davis Chappell stated that given the friendly amendment to the motion to uphold the challenge of her voter residence and cancel her registration. Board Member

Davis Chappell seconded. The motion passed unanimously.

Agenda Item 3: Challenge of Right to Vote filed by Mikhail Alterman against Quinten William Lyons

Mr. Wheat presented information from the board packet regarding the Challenge of Right to Vote filed by Mikhail Alterman against Quinten William Lyons. The challenger noted in the challenge that Mr. Lyons is registered at a hotel building, specifically the Residence Inn by Marriott, located at 3628 Park East Drive, Beachwood, Ohio. Mr. Lyons has been registered at the Park East Drive address since May 26, 2022, and Mr. Lyons had yet to vote from the 3628 Park East Drive address. Board Member Davis Chappell asked if someone has a temporary residence at a Residence Inn, and it is deemed commercial. Chairman Curtis stated that the Board does not have testimony from Mr. Lyons to give further insight.

Board Member Davis Chappell moved to uphold the Challenge of Right to Vote and voter residency of Quinten William Lyons and also moved to have his registration canceled. Board Member Davis Chappell stated he should be notified of the cancellation of the registration and the reasons why. Board Member Stickan seconded. The motion passed unanimously.

Agenda Item 4: Challenge of Right to Vote filed by Mikhail Alterman against Carlos Reyes Portalatin

Mr. Wheat presented information from the board packet regarding the Challenge of Right to Vote filed by Mikhail Alterman against Carlos Reyes Portalatin. The challenger noted in the Challenge that Mr. Reyes Portalatin is registered at a commercial building, specifically the Residence Inn by Marriott, located at 3628 Park East Drive, Beachwood, Ohio. Mr. Wheat stated Mr. Reyes Portalatin has been registered from the address since October 5, 2015, and has voted three times from the address. The last time was on November 3, 2020, for the Presidential Election. Board Member Davis Chappell requested a semantic change be made to the Board Materials to indicate the individuals challenged have been registered to vote from the addresses identified as commercial properties by the challenger, and there would be no eligibility to vote from a commercial address.

Board Member Davis Chappell moved to uphold the voter residency and the Challenge of the Right to Vote for Mr. Carlos Reyes Portalatin and that his registration at 3628 Park East Drive, Beachwood, Ohio, be canceled, and he is so notified. Chairman Curtis seconded. Board Member Stickan added a friendly amendment that Mr. Portalatin be referred to the SOS Public Integrity Division, as he had previously voted from the Park East Drive address three times. Chairman Curtis seconded. The motion passed unanimously.

Agenda Item 5: Challenge of Right to Vote filed by Mikhail Alterman against Gerald Zahler

Mr. Wheat presented information from the board packet regarding the Challenge of Right to Vote filed by Mikhail Alterman against Gerald Zahler. Mr. Zahler registered to vote at 3401 Enterprise Alley, Beachwood, Ohio, in October 2020 and has never voted from that address. CCBOE's GIS Technician determined that 3401 Enterprise Alley is a Class A commercial office space. Chairman Curtis noted the record should be amended to state Mr. Zahler was registered to vote in seven elections since November 3, 2020. Board Member Davis Chappell stated he would be ineligible because he is registered at a commercial address.

Board Member Davis Chappell moved to uphold the Challenge of Right to Vote and the residency of Mr. Zahler filed by Mr. Mikhail Alterman. The CCBOE will uphold the challenge and, cancel his

registration and send a notice of the same. Since Mr. Zahler has never voted at the 3401 Enterprise Alley address, there would be no need to refer him to the SOS Public Integrity Division. Board Member Stickan seconded. The motion passed unanimously.

Agenda Item 6: Determination of the validity of provisional ballots and authorization to count provisional ballots from the August 8, 2023, Special Election

Before the determination of the validity of provisional ballots and authorization to count the provisional ballots from the August 8, 2023, Special Election, the Board discussed the specific envelope for Briyana Folade Alexander to determine the status of the provisional. Director Perlatti stated Ms. Folade Alexander's provisional ballot would be considered not registered.

Chairman Curtis moved to determine the provisional ballot cast by Ms. Folade Alexander in the August 8, 2023, Special Election as invalid for not being a registered voter. Board Member Davis Chappell seconded the motion. The motion passed unanimously.

Mr. Wheat presented the August 8, 2023, Special Election Provisional Report to the Board as provided in the board meeting materials. Board Member Davis Chappell requested that future reports include the number of voters that come to the CCBOE to cure provisional ballots.

Chairman Curtis moved to approve the determination of the validity of provisional ballots and authorization to count provisional ballots from the August 8, 2023, Special Election. Board Member Davis Chappell seconded. The motion passed unanimously.

Agenda Item 7: Final approval of the ballot order for the September 12, 2023, Primary Election

Chairman Curtis moved to approve the final ballot order for the September 12, 2023, Primary Election. Board Member Davis Chappell seconded. The motion passed unanimously.

Agenda Item 8: Preliminary approval of the ballot order for the November 7, 2023, General Election

Chairman Curtis moved approve the preliminary ballot order for the November 7, 2023, General Election. Board Member Davis Chappell seconded. The motion passed unanimously.

Agenda Item 9: Acknowledgment of resignation from, and appointment to elected office

Chairman Curtis moved to acknowledge the resignation from, and appointment to elected office, as set forth in the board materials. Board Member Davis Chappell seconded. The motion passed unanimously.

Agenda Item 10: Acknowledgment of candidates and issues withdrawn from the November 7, 2023, General Election

Chairman Curtis moved to acknowledge the candidates and issues withdrawn from the November 7, 2023, General Election, as set forth in the board materials. Board Member Davis Chappell seconded. The motion passed unanimously.

Agenda Item 11: Preliminary authorization for the allocation of voting booths for the November 7, 2023, General Election. Allocation quantities are based on one voting booth for every 175 registered voters per polling location. A total of 4,941 voting booths will be allocated + 706 ClearCast Go scanners + 291 ADA ClearAccess voting units and 1,074 Electronic Poll Books

Chairman Curtis moved to acknowledge the preliminary authorization for the allocation of voting booths for the November 7, 2023, General Election. Allocation quantities are based on one voting booth for every 175 registered voters per polling location. A total of 4,941 voting booths will be allocated + 706 ClearCast Go scanners + 291 ADA ClearAccess voting units and 1,074 Electronic Poll Books. Board Member Davis Chappell seconded. The motion passed unanimously.

Agenda Item 12: Approval of the personnel agenda

Chairman Curtis moved to approve the personnel agenda, as set forth in the board materials. Board Member Davis Chappell seconded. The motion passed unanimously.

NEW BUSINESS

Director Perlatti provided an update on the September 12, 2023 Primary Election. The close of registration was Monday, August 14, 2023, for the Primary Election, and August 15, 2023, was the opening of Early In-Person Voting, which will be taking place on the second floor of the Hughes Building. The poll workers staffing the Election will be a combination of the trainers and training assistants. Director Perlatti said the CCBOE is on schedule for preparations for the September 12, 2023, Primary Election.

Director Perlatti stated August 21, 2023, is the statutory deadline for the CCBOE to certify candidates for the November 7, 2023, General Election. There are three charter communities, South Euclid, Middleburg Heights, and Chagrin Falls Village, with a filing deadline of August 24, 2023. All other candidacies will be certified on Monday, August 21, 2023. Candidate and Petition Services are working with candidates with insufficient petitions to determine if the candidates want to withdraw to prepare for the August 21, 2023 meeting. Anyone who does not qualify nor withdraw a recommendation will be not to certify those individuals to the November 7, 2023 ballot.

Director Perlatti stated on Friday, August 11, 2023, after the filing deadline, it came to the CCBOE's attention that a protest would be filed against a candidate based on the incomplete nominating petition portion of the form. The protester provided the CCBOE with a 2019 Ohio Supreme Court ruling, which the CCBOE forwarded to Cuyahoga County Assistant Prosecutor Musson. Mr. Musson reviewed the case and determined the Supreme Court case is relevant. Based on the ruling, the CCBOE notified seven individuals by phone and email that, based on this ruling, the CCBOE would not be recommending those individuals as not having valid candidacies. Some of these individuals were not pleased with the information. However, it was a piece of case law the CCBOE was not aware of or utilized previously that is now in the CCBOE's possession. August 25, 2023, is the candidate protest deadline.

Board Member Davis Chappell asked if Mr. Jason Hubble was included as one of the seven individuals as she received an email from him regarding this issue? Director Perlatti said yes. Board Member Davis Chappell stated that based on the issues Mr. Hubble is raising, his petition was filed in July 2023 and was marked on the website as valid. Board Member Davis Chappell requested a legal opinion or understanding of what right voters have to rely on the CCBOE website. If voters or

candidates rely on our pre-check process and the CCBOE refers them to the website to check, the voters or candidates then see that there is a valid indicator that documents are in order and they are good to run. Board Member Davis Chappell said the CCBOE must follow the law, and the CCBOE is required to. She asked what right is there to rely on the CCBOE website, and maybe the CCBOE should add a disclaimer to the website, as it is disconcerting if someone sees “yes” or “valid” the documents are good to run for office because the documents are in order? Board Member Davis Chappell stated she is concerned about why the CCBOE does not know that the CCBOE is supposed to be doing something that is not being done. There is a 2019 case that says the CCBOE should be doing X and Y, and the CCBOE has not been doing it. There are many cases where the CCBOE can not follow everything, but the CCBOE does not want to harm the voters or there be prejudiced to the voters. Board Member Davis Chappell's asked for a legal opinion of what discretion, if any, the Board has to make an exception because the CCBOE never implemented this particular requirement on the petition. Board Member Davis Chappell said maybe the Board has no discretion because the law is the law, but she wants to say in good faith to the candidate and the voters that the CCBOE was bad on this, but the law is the law. She asked what right voters have to rely on the Board's representations to indicate that the petitions are valid and that the precheck has been completed satisfactorily. If the information cannot be relied on, the CCBOE needs to put a disclaimer on the website.

Board Member Stickan said if a candidate would call, the department would say the CCBOE has the candidate marked as valid. Nothing is official until the Board votes to approve the ballot, and candidates can always be challenged. Still, if this candidate had called the department, the CCBOE would have indicated the petitions looked good. That is beyond the website display as well. This is a 2019 case that is impactful; maybe the CCBOE should talk with the SOS about putting a Directive out seeking the SOS's advice on this. Board Member Stickan also added when someone files so early, and they go out and do their campaign, she would distinguish that from someone who filed the day of the deadline. Board Member Davis Chappell said she does not know what leeway the CCBOE has, but maybe this is an SOS question. Given that all seven people are in the same boat, does the Board have the discretion to say the CCBOE has not been requiring and has not been enforcing this for anybody up to now? Maybe there is a way the CCBOE can allow these individuals to move forward if the CCBOE has that discretion, and then on an ongoing forward basis, the CCBOE makes very clear this is the way the CCBOE will be treating these petitions per the requirement of the 2019 case. Board Member Davis Chappell stated there is a certain inherent unfairness in her view because the CCBOE has never enforced this particular requirement before. She stated she understood, as a lawyer, that she was not advocating doing something unlawful. Still, there may be some equitable argument in this situation that these individuals should be exempted from this particular Election. Then, on a going-forward basis, the CCBOE is very clear that this is the requirement; this has to be included, and then the CCBOE puts the disclaimers up. If people can not rely on the website information and the CCBOE already has that information, does it say that in the law somewhere? Assistant Prosecutor Mark Musson stated the law does not require what the CCBOE says on the website, but it is the candidate's obligation to know what is required to file the nominating petitions. Director Perlatti said in the past, the CCBOE has talked to the SOS office, and the SOS had suggested not to put any information on the website because nothing is official until the Board certifies the candidates. The CCBOE has put the information up for years because otherwise, the department gets hammered with many phone calls. This situation is where a candidate did file early, but this case did not come to the CCBOE's attention until last Friday, after the filing deadline. The CCBOE can change the website to indicate filed: yes, processed: yes, and not give a status. Board Member Davis Chappell stated there needs to be some disclaimer and continue to provide the information that has been the CCBOE's practice, and candidates find it helpful. But there should be a disclaimer as the CCBOE reserves the right, as the CCBOE should, that the candidate is not formally approved or valid until certification.

Chairman Curtis asked if there would be any merit to having a link? He stated it is not the CCBOE's responsibility if they read it or not, but the link is on there. Board Member Stickan said the problem is the petitions are filed early, and candidates are told the petitions are invalid, and they have time to cure it. The CCBOE is taking an affirmative step, stating this is valid because these filing deadlines are so late, especially in a municipal year. People rely on the website to say the petitions are good and then go out and order lawn signs and print campaign literature. The understanding is someone could challenge you until a certain day. Maybe there has to be communication that nothing is official until certified to the ballot.

Board Member McCafferty asked what the defects were? Assistant Prosecutor Musson said the nominating petition was blank. In the form that the SOS prescribes in non-partisan municipal elections over 2,000 people, there is a declaration of candidacy at the top and a nominating petition above the signatures at the bottom. The law requires that an individual seek that office through nominating petition so that it "shall be through nominating petition." So, it is a strict compliance with the nominating petition. The SOS prescribes the form for the nominating petition, which includes the declaration of candidacy and the nominating petition. The Supreme Court said substantial compliance with the form requires an individual to complete that nominating petition to strictly comply with what initiates an individual's effort to seek office, and substantial compliance requires the name and the office an individual is seeking. It is convoluted between strict compliance with the nominating petition and substantial compliance with the form.

Board Member Stickan asked if the Board would get the case before the August 21, 2023 Board Meeting? Mr. Musson said yes. Board Member Davis Chappell asked if Mr. Musson would have an opinion on the other questions. Mr. Musson said yes, and the law is clear; there is no reliance on what the Board says on the website. Mr. Musson said from the Ohio Election Officials Manual and is not a direct quote, states in the case of *State ex rel. McMillan v. Ashtabula Cty. Bd. of Elections*, 65 Ohio St.3d 186, 1992 -Ohio -85 (candidate's reliance on the misinformation of the board employee does not stop the Board from removing a candidate's name from the ballot). Mr. Musson stated there was another case from '91 *State ex rel Shaw, v. Lynch* (estoppel does not apply against election officials in the exercise of governmental functions). Mr. Musson also cited *State ex rel. Senn v. Cuyahoga Cty. Bd. of Elections* (1977), 51 Ohio St.2d 173 (candidate could not file necessary part petition after having filed other petition papers). That is, the cure is the recirculating petitions, that an individual can not pull their petitions back after the petitions are filed. Board Member Davis Chappell asked if there is no cure period? Mr. Musson said once the petition is filed, it is filed. A candidate must then withdraw and recirculate petitions. Mr. Musson also cited *State ex rel. Svete v. Bd. of Elections* (1965), 4 Ohio St.2d 16 (advice by Board of elections deputy clerk that nominating petition appeared to be in order does not stop the Board of elections from declaring such petitions to be invalid). Mr. Musson stated since the case law is saying what is required to fulfill the requirements of appearing on the ballot is not satisfied, he did not know what discretion the Board would have to deviate from the law.

Director Perlatti stated Brent Lawler, Candidate and Petition Services Manager, had received guidance from previous legal counsel to the Board on this. At that time, it was not the strict compliance that this case had shown, and that is what the CCBOE was following. Board Member McCafferty stated it is difficult not to err on the candidates' side in this case. Board Member Davis Chappell said the CCBOE has taken the position in the past, not when it is contrary to law, that the goal is always to keep people on the ballot. However, if there is strict compliance under the law, the Board may not have any other choice. The Board will see the legal opinion with all the case law identified. Board Member Stickan also asked what is the Board's discretion. Mr. Musson stated the OEM says the nominating petition is a

question of substantial compliance for the Board to determine in consultation with the Prosecutor's office.

Director Perlatti stated the majority of the August 21, 2023, Board Meeting will also include the updated CCBOE Ballot Remake and Adjudication Policy based on ClearBallot. The August 29, 2023, Board Meeting will consist of candidate protests.

Board Member Davis Chappell commented and thanked the CEO of ClearBallot for being at the CCBOE for the August 8, 2023 Special Election. She stated there were a few snafus, which is expected with the roll-out of new equipment. Board Member Davis Chappell asked if there would be a summary, including resolutions of the issues. Director Perlatti stated the report will be forthcoming.

PUBLIC COMMENT

Mr. Tony Walker provided public comment on candidate petitions

Ms. Cynthia Beard provided public comment on petition validity and write-in candidates

EXECUTIVE SESSION

There was no executive session

Chairman Curtis moved to recess the meeting at 10:38 a.m. Board Member Davis Chappell seconded. The motion passed unanimously.

Certification: I have reviewed the above minutes and certify that they are an accurate summary of the actions taken by the Cuyahoga County Board of Elections at its meeting held on August 16, 2023.

Henry F Curtis, IV, Chairman

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Inajo Davis Chappell, Board Member

Terence M. McCafferty, Board Member

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Lisa M. Stickan, Board Member

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Anthony Perlatti, Director

Anthony N. Kaloger
Deputy Director

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