

VOTE CUYAHOGA COUNTY BOARD OF ELECTIONS

**Board Meeting
8/21/2023**

Attending:

Henry F Curtis, IV, Chairman
Inajo Davis Chappell, 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 Board Members Davis Chappell and Stickan were in attendance. Board Member McCafferty was excused from today's meeting.

Agenda Item 1: Acknowledgment of candidate and issue withdrawals from the November 7, 2023, General Election

Chairman Curtis moved to acknowledge the candidate and issue withdrawals 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 2: Certification of Candidates for the November 7, 2023, General Election

Brent Lawler, Candidate and Petition Services Manager, presented the list of candidates to be certified for the November 7, 2023, General Election. He stated there were six petitions in question; one of the petitions had withdrawn, and all of the petitions were short signatures. Mr. Lawler said one of the local options for Juicy Seafood is present to provide signature affidavits. Their petition is four signatures short. Chairman Curtis stated the Board would divide the review into two sections. First, the Board would address the issue of candidates not completing the nominating petition clauses on the petitions, making the part petitions invalid. Therefore, the petitions do not have the qualifying minimum number of valid signatures and should not be certified for the November 7, 2023, General Election.

Chairman Curtis called forward Mr. Jason Hubbell to address the Board regarding his petition issue for Brooklyn City School District Board Member. Mr. Hubbell stated he turned in petitions on July 6, 2023, to be verified and allow his name to appear on the ballot. By July 11, 2023, on the Candidate List on the CCBOE website, next to his name and date of petition submission, the word "yes" appeared and remained until he was contacted on August 15, 2023, about the issue that would keep his name off the ballot. Mr. Hubbell stated that Mr. Lawler sent an email with the reasoning behind the decision and

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

an attachment of the petition showing what was missed. Mr. Hubbell said he took full responsibility for missing the nominating portion of the petition on one of the three forms. As a first-time candidate, he wanted to be sure to give plenty of time for validation. Had he known that part of the petition was wrong, he would have made sure it was right immediately. Once he saw the "yes" appeared next to his name on the website, he took that as his petition being good to go. Mr. Hubbell began campaigning, held a fundraiser, and created a website. Mr. Hubbell asked for the opportunity to allow the petition signers and supporters the chance for their voices to be heard. The CCBOE contacted him on August 15, 2023, and with the submission deadline being a few days prior, he was not given a chance to correct his mistake. Mr. Hubbell asked for the opportunity to do so and thanked the Board for reading his email and hearing his comments. Board Member Davis Chappell thanked Mr. Hubbell for coming to speak, stated serving on a school board is a needed and noble to serve, and applauded him for his efforts.

Chairman Curtis stated the Board had received legal guidance and had taken that under consideration. He said it is unfortunate, based on what Mr. Hubble represented, that the Board is not able, within the parameters of the law, to add Mr. Hubble to the ballot. Board Member Stickan said it should be put on record because the Board did struggle and then asked two questions to be framed. Assistant Prosecutor Musson stated unfortunately, the mistake or erroneous advice from staff to the candidates and the candidate's reliance on that is not a justification for allowing erroneous or a deficient petition to place a candidate on the ballot, the Supreme Court and the Eighth District was clear on that that two wrongs do not make a right. When there is a mistake, it needs to be corrected and take the appropriate action. Mr. Musson said unfortunately, the decision from 2019 was not in the staff's consciousness at the time they were reviewing the petitions, and the initial review was in error. Board Member Davis Chappell asked if the *Weller v. Tuscarawas Co. Bd. of Elections, 158 Ohio St. 3d 266 (2019)* decision and the principles derived from that, which puts the Board in a position today does not appear in the Elections Officials Manual (EOM)? Mr. Musson said no. Board Member Davis Chappell stated that completion of the nominating petition portion of the petition is required in terms of meeting the substantial compliance and strict compliance standards. She asked if it had been in the EOM anywhere since 2019. Has it been updated to include the Weller decision? Mr. Musson said it was not in the relevant sections. Board Member Chappell said that the CCBOE should contact the Secretary of State's (SOS) office to make sure that the dictates and parameters of the Weller decision are in the EOM. When the CCBOE encounters something that changes in the law or results from a case or complaint brought against the CCBOE, good efforts are made to alert other counties. She said there should be a way for when there are significant changes in the law that somehow counties communicate together or let the SOS know. The CCBOE wants to make sure it is delivering the best advice. Board Member Davis Chappell said Mr. Hubble acknowledged and took responsibility for his own petition, but the CCBOE is helping and answering questions and needs to be in the best position to do that. The CCBOE does rely on the EOM. There should be some tripwire function at the SOS when there is a case against a County BOE; somebody is looking at the case, and if there is a significant change like this, the CCBOE gets that information. The CCBOE should follow up with the SOS to see if a change can be made to the EOM and an Advisory to all Boards of Elections to ensure that nobody else is encountering this and unaware of the Weller decision. Board Member Davis Chappell said the CCBOE also needs to do some things internally, as discussed at the last meeting, regarding making sure the information on the website is only as to form, and the petition may or may not be compliant. Candidates need to know they need to go the extra step. There is significant case law that says an individual can not rely on the CCBOE. The case law indicates it would be an abuse of discretion on the CCBOE's part to certify these individuals to the ballot. Board Member Davis Chappell stated it was with a heavy heart that she would not be able to put Mr. Hubbell or Mr. Walker, who came to the last board meeting and gave a statement about his situation, which was similar. She said the legal advice

was very clear that the Board does not have any way to rectify this or move forward with putting these candidates on the ballot. Board Member Stickan stated as someone who did run for local office, she understood how hard and exciting it is to circulate, was told that the petitions are valid, and you start campaigning. Especially for the two individuals who filed early. She stated she knows that Brent Lawler and the staff in Candidate and Petition Services do an excellent job dealing with so many petitions throughout the County, and it is disappointing to find out about this after the filing deadline. Board Member Stickan said the Board was concerned and asked legal questions. Was this something where these individuals did rely on the CCBOE, and what does that mean legally for this Boards body? Board Member Stickan said additionally, does the Board have discretion, are these unique situations? She said Mr. Musson very clearly answered the concerns. One of the things this Board does is it does want to follow the law, even when it is difficult personally because you feel for the candidates and look for a way to see if the Board could accommodate these candidates under the law properly and fairly. Given the case provided and reviewing it and the analysis of whether or not the CCBOE did miss the case law if it was not in the EOM or because other counties did not communicate it, does that impact the CCBOE? Board Member Stickan said the key is the deadline. Had this been known earlier, the Board would not having this hearing. Based on the case law Mr. Musson provided, notably *Donegan vs. Cuyahoga County Board of Elections*, 136 Ohio App. 3d 589 (8th Dist. 2000) clearly states that it is really on the candidate even if essentially the Board of Elections gives mistaken advice and there is a plethora of case law with similar holdings. It is clear even if the Board missed a step or misinterpreted or something came late after, the CCBOE has to follow the law, and it does not absolve the CCBOE from that. Board Member Stickan said the other question was, as Board Members, is there discretion to say the candidates relied on it, and the Board says the candidates substantially complied? Mr. Musson stated it would be an abusive discretion by the Board if these individuals were certified. Board Member Stickan said the Board would not abuse its discretion. The CCBOE learned from this case law and will move forward and contact the SOS office to get that updated. She stated she felt bad for the candidates and thanked Mr. Musson for being clear. The Board then discussed if there was discretion if only the name or office was completed on the nominating petition and determined the nominating petition statement must be fully completed. Board Member Stickan noted that in Mr. Hubbell's petitions, there was one petition form in that the information was left off, as opposed to all three forms, that the other individual did not complete any of the forms nominating portions. She asked if that makes a difference. Mr. Musson answered that the two petitions that were completed correctly could be counted, but the part petition that did not have the nominating petition portion completed was excluded. There were not enough signatures on the remaining two valid part petitions.

Chairman Curtis moved not to certify Mr. Jason M. Hubbell for the office of Brooklyn City School District Board Member for the November 7, 2023, General Election. Board Member Davis Chappell seconded. Board Member Stickan commented that the Board did hear legal comments and analysis, and if the Board had some discretion, the Board would look to that if it was legal, but seeing there is no discretion, it would be abusing its discretion. Following the law is important, and this is a hard vote. Chairman Curtis concurred and said this is not something Board Members on a personal level want to do, but based on the parameters of the law, the Board has to do it. It is part of the Board's obligation as public officials in this matter. Board Member Davis Chappell stated that the CCBOE needs to figure out how to make sure this does not happen again and to maybe help other counties that probably are not aware of this either. The CCBOE needs to put in place disclaimers on the website. Board Member Davis Chappell said with the help of the SOS to make sure when there has been a significant lawsuit against a challenge to other Boards of Elections, like the result in the Weller decision or any other decision, somehow all Boards of Elections are made aware of it. Also, the EOM is updated, or an advisory is issued to reflect the actual state of the law. She said that will be the take-home and the

learning from the situation, albeit at the expense of these candidates. She expressed her heart goes out to these candidates, but the Board has no choice. The motion passed unanimously.

Mr. Tony Walker, candidate for Richmond Heights Council, Ward 1, did not complete the nominating petition clause of the petition. Therefore, the petitions do not have the qualifying minimum of valid signatures. Mr. Walker addressed the Board with his comments.

Chairman Curtis moved not to certify Mr. Tony L. Walker for the office of Richmond Heights Council, Ward 1, for the November 7, 2023, General Election ballot. Board Member Davis Chappell seconded. The motion passed unanimously.

Chairman Curtis stated there are candidate and local option petitions that do not have the qualifying minimum valid signatures and, therefore, should not be certified to the November 7, 2023, General Election to include East Cleveland City School District Board Member candidate Deborah N. Abdu Rahim; Moreland Hills Member of Council candidate Heather Sinn; and Local Option Cleveland 04-E Chilies Beverage Question 2.

Chairman Curtis moved not to certify Deborah N. Abdu Rahim, East Cleveland City School District Board Member; Heather Sinn, Moreland Hills, Member of Council; and Local Option Cleveland 04-E, Chillie's Beverage Question 2 to the November 7, 2023, General Election ballot. Board Member Davis Chappell seconded. The motion passed unanimously.

Mr. Lawler stated the petitions Local Option Cleveland 06-G, Juicy Seafood and Wing, Question 1, petitions were reviewed by Mr. Wheat, Registration Manager, and Mr. Lawler had reviewed the petitions with the client and determined that four signatures are not valid. The representative for Juicy Seafood had sent an email with affidavits of six names for Board review. The Board determined one of the signatures considered not registered was a valid registered voter, leaving the petition short three signatures. Representatives for Juicy Seafood, Mr. John Neal and Mr. Alex Bibisi, addressed the Board. Mr. Neal stated affidavits were obtained by Mr. Bibisi from five individuals confirming they had signed the petition and asked the Board to certify the issue. The Board reviewed the information and discussed the matter. Board Member Davis Chappell asked Mr. Lawler if there are enough valid signatures? Mr. Lawler confirmed yes. Chairman Curtis stated there would be two motions: a motion to accept the validity of the affidavits submitted to the Board. This would then move the Board into the threshold to make the petitions valid. Then, the subsequent motion would be based on whether or not those petitions were valid.

Board Member Stickan made a motion based on the affidavits of the signatures in question the petitions are sufficient to be accepted. Board Member Davis Chappell seconded the motion with a friendly amendment to add the affidavits to the record of the proceedings today so the Board has a full record of what has been submitted and what the Board is basing the decision on. Board Member Stickan said sufficiently there were enough signatures that would lead to the second motion. The motion passed unanimously.

Chairman Curtis moved to certify Local Option Cleveland 06-G, Juicy Seafood and Wing, Question 1, to the November 7, 2023, General Election Ballot. Board Member Davis Chappell seconded. The motion passed unanimously.

Chairman Curtis moved to approve the Certification of Candidates for the November 7, 2023, General Election, as set forth in the board materials. Board Member Davis Chappell seconded. The motion passed unanimously.

Agenda Item 3: Certification of Issues for the November 7, 2023, General Election

Chairman Curtis moved to Certify the Issues for the November 7, 2023, General Election, as set forth in the board materials. Board Member Davis Chappell seconded. Chairman Curtis clarified for the record that Juicy Seafood is an Issue and will be included as an Issue as opposed to being a candidate. The motion passed unanimously.

Agenda Item 4: Authorization to pay 2 Voting Location Managers x \$275 = \$550; 2 Voting Location Deputies x \$275 = \$550; 12 Precinct Election Officials x \$250.00 = \$3,000 for the September 12, 2023, Primary Election

Chairman Curtis moved to authorize to pay 2 Voting Location Managers x \$275 = \$550; 2 Voting Location Deputies x \$275 = \$550; 12 Precinct Election Officials x \$250.00 = \$3,000 for the September 12, 2023, Primary Election. Board Member Davis Chappell seconded. The motion passed unanimously.

FIS-V-A. Approval of the voucher and resolution for the US Postmaster

Shaunquitta Walker, Fiscal Services Manager, presented information from the board packet regarding the adding additional funds to the postal permit for the remainder of the year to cover all required mailings for the November election. Board Member Chappell clarified the total was \$162,048.76. Ms. Walker stated yes.

Chairman Curtis moved to approve the voucher and resolution for the US Postmaster. Board Member Davis Chappell seconded. The motion passed unanimously.

NEW BUSINESS

Director Perlatti stated the August 29, 2023, Board Meeting will include protest hearings against individuals who have been certified to the ballot. The CCBOE has received legal opinions from the municipalities where people are challenging the interpretation of Charters and how they apply to the petitions. The agenda will also include Certifying the August 8, 2023, Special Election. There will also be initiatives for the biennial budget. The Biennial Budget will be going to the County sometime in September 2023. Board Member Davis Chappell asked how many protests are there and if the filing deadline is over? Director Perlatti stated the protest deadline is August 25, 2023, and currently, the CCBOE has approximately eight protests.

PUBLIC COMMENT

EXECUTIVE SESSION

There was no executive session

Chairman Curtis moved to recess the meeting at 10:16 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 21, 2023.

Henry F Curtis, IV, Chairman



Inajo Davis Chappell, Board Member



Terence M. McCafferty, Board Member

Lisa M. Stickan, Board Member



Anthony Perlatti, Director

