



**Board Meeting  
9-14-2016**

**Attending:**

Inajo Davis Chappell, Chairwoman  
Robert S. Frost, Member  
Jeff Hastings, Member  
David J. Wondolowski, Member  
Pat McDonald, Director  
Anthony W. Perlatti, Deputy Director  
Brendan Doyle, Assistant Prosecutor

Linda D. Walker, Clerk to the Board  
Anthony Alto, Clerk to the Board  
Steven Mengelkamp, Court Reporter

The Board voted unanimously to begin the meeting at 9:40 a.m. via roll call vote:

Board Member Frost: Yes  
Board Member Wondolowski: Yes  
Chairwoman Chappell: Yes  
Board Member Hastings: Yes

**Agenda Item 1: Acknowledgement of Secretary of State Directives & Advisories:**

Director McDonald asked Candidate and Petition Services Manager, Brent Lawler to speak about the directives regarding the issue with validating the Drug Price Relief Act. Lawler said that the practice of the circulators is that if one witnesses more signatures than what is on the petition then the circulator turns in that petition. There was a hearing months ago regarding the Drug Relief Act and that's when the Secretary of State said that that is fraudulent. In this Directive, the Secretary of State explicitly says that over reporting signatures is okay so long as there is no indication of fraud or misrepresentation. When the Board of Elections received the petitions two (2) weeks ago they had no issues at all. The Director's Office contacted other counties and found that no other counties had issues either. The Board of Elections would like some direction in determining what the threshold for minor or negligent miscounts is. For instance there are 28 signatures on a petition, but the circulator crossed some out because the voters lived out of county. The circulator verified that there were 28 signatures because the circulator witnessed 28 signatures, but had to cross some out. The Board of Elections understands that. The Board of Elections' question is if the petitioner only has 19 signatures and the rest of them are blank, is that negligent? The Board of Elections has debated about setting a specific number, or percentage and would like some direction from the Board.

Chairwoman Chappell asked if there's anything in the decision of the case that speaks to negligent or minor miscounts. She said that she recused herself from a previous discussion on this because of a potential conflict, and that depending on how much discussion there will be today she might do the same

thing. She said she might recuse herself because her firm represents a number of drug companies. She then said that she doesn't believe the Board is in a position to give Board staff that kind of guidance today.

Lawler said that as a management team, the Board staff wanted to present it to the Board today, and have Brendan look at it, and come up with an opinion. In the meantime Director McDonald and Deputy Director Perlatti suggested that they, the Registration management staff, and Lawler all sit down together and work out any discrepancies if they arise.

Board Member Hastings said that he pulled up the case that is cited. What the case is referring to is that the court brought the circulators in to explain the problem and there was a reasonable explanation and so that is the tool that the court used to determine a minor or negligent miscount. He said that there needs to be more discussion, but it should be a percentage. To be relative it should be about 10 percent only because "beyond a reasonable doubt" in criminal law is 90 percent -95 percent. Due to lack of any other direction he is inclined to choose a 10 percent mark. He said if it gets around the 10 percent mark to bring people in and ask for explanations.

Board Member Frost said that if one sees a systematic method, then it's clear. If the petition starts getting around the 10 percent area then you should bring circulators in to explain. Regardless, even if the petition is off by just a little, the Board would still need to be notified because ultimately it would come within the discretion of the Board. He said that there is no broad rule unless Board staff sees such a clear indication of fraud.

Director McDonald said a problem with notifying the Board is the turnaround time. Sometimes there's only a two (2) day turnaround which might make it impractical to have to wait until the next Board Meeting.

Board Member Frost told Director McDonald that he could notify the Board between Board Meetings.

Director McDonald agreed and said that if a Board Member believes it would be a problem, they could call a meeting.

Lawler said he will take the Board's comments and add them to their procedures.

The Board voted unanimously to acknowledge the following directives and advisories

- Directive 2016-30 Instructions Regarding the Review, Examination, and Verification of Part-Petitions Proposing an Initiated Statute (Drug Price Relief Act) Fled Pursuant to Ohio Manufacturers' Association v. Ohioans for Drug Price Relief Act, Slip Opinion 2016-Ohio-5377
- Directive 2016-31 Ballots and Candidates for the November 8, 2016 Presidential General Election
- Directive 2016-32 Write-In Candidates for President and Vice President and U.S. Senator
- Advisory 2016-04 Electronic Registration Information Center, Inc. (ERIC)
- Advisory 2016-05 Sub. H.B. 359, Safe at Home/ Address Confidentiality Program (131<sup>st</sup> General Assembly)

## **Agenda Item 2: Approval of Board Meeting Minutes:**

Chairwoman Chappell asked the Clerk to change the verbiage from "return into public session" to "reconvene from recess".

The Board voted unanimously to approve the August 22, 2016 Board Meeting minutes with the friendly amendment.

**Agenda Item 3: Approval of moving the observation of the Columbus Day holiday from Monday, October 10, 2016 to Tuesday, December 27, 2016 to prepare for the November 8, 2016 Presidential General Election**

Director McDonald said that historically they have moved observance of this holiday to the day after Christmas to allow staff to prepare for the election.

The Board unanimously approved moving the observation of the Columbus Day holiday from Monday, October 10, 2016 to Tuesday, December 27, 2016 to prepare for the November 8, 2016 Presidential General Election.

**Agenda Item 4: Certification of Write-In Candidates, Issues, and Charter Amendments for the November 8, 2016 Presidential General Election**

Candidate and Petition Services Manager Lawler asked the Board to certify the two (2) candidates and issues list as presented, and also to discuss the East Cleveland issue.

The Board voted unanimously to certify the Write-In Candidates, Issues, and Charter Amendments for the November 8, 2016 Presidential General Election.

Deputy Director Perlatti said that new information has come forward regarding the East Cleveland Charter Amendment and it needs to be discussed.

Lawler said that on August 22, the Board certified all issues for the November election including East Cleveland ordinance 6-16 which was amending the recall portion of the charter. He said he was contacted by a concerned citizen on August 29, saying that their charter specifically says that they need a four (4) fifths (5) vote of the city council in order to pass legislation as a charter amendment and give it to the Board of Elections. The certification sheet that was given to the Board of Elections by the East Cleveland Law Clerk clearly shows that it was passed by the majority, but after looking at the actual legislation and vote count, it was passed three (3) to two (2). Lawler said he asked the East Cleveland Law Director for a legal opinion. Since the charter language states that it must be passed by four (4) fifths (5), not three (3) fifths (5), Board staff does not believe it should be on the ballot.

Chairwoman Chappell asked to let the record show the Board did receive and review the legal opinion from the East Cleveland Law Director. She asked Law Director Willa Hemmons to present her argument to the Board.

Law Director Hemmons referred the Board to her legal opinion and stated that she would like to reserve some of her time to Deputy Finance Director, Charles Iain. She said she sent a legal opinion to Mayor Gary Norton on July 22, 2016. She said that section 94 of the East Cleveland City Charter reads as follows "amendments to this charter may be submitted to the electors by the city by a four (4) fifths (5) vote." As opposed to what is required when the petitions are signed by a total number of voters, and that word is shall. So, in section 105 it reads "a majority of all the members elected to the council shall constitute a quorum, but a less number may adjourn from day to day and compel the attendance of absent members..." Then it says "the council shall legislatively act only by ordinance or motion. The affirmative vote of at least three (3) members shall be necessary to adopt any ordinance or motion. The passage of all ordinances or motions shall be taken by yeas or nays." She said that in her discussion "may" and "shall" have distinct meanings in legislative interpretations. "May" connotes discretion and choice as to

legislative decision making, whereas “shall” connotes mandatory and compulsory decision making. Her conclusion is section 105 usurps section 94 where it says that any ordinance or resolution shall be passed by three (3) members. So, with the majority voting to put the amendment on the ballot then it is sufficient. The words may and shall are discussed in the opinions provided citing cases, *Xenia City Board of Education v. Xenia Education Association*, *Berea College v. Commonwealth of Kentucky*, and *Hamilton Gaslight and Coke Company v. Hamilton City*. Discretionary language is secondary to mandatory language, therefore her legal opinion is in consideration of charter section 94 and in conjunction with section 105 confers upon council the ability to make to the electorate an ordinance that amends the charter when three (3) out of five (5) vote to do so.

Hemmons said East Cleveland has had several special elections which has burdened an already fiscally fragile city. She said that Board Member Frost sits on the financial advisory committee and can attest to that. Those elections have cost successive reductions in their revenue which has put the city in a very tenuous position.

Chairwoman Chappell asked Hemmons if she had any case law relevant to charter amendment. None of the cases cited deal with charter amendments.

Hemmons said she doesn't think there is any precedent concerning the difference between “may” and “shall” dealing with amendments. She said they have tried to research and shepardize the closest cases, and these three (3) are the closest that they come.

Chairwoman Chappell asked to offer a different interpretation. She said there's two (2) ways to amend the charter either by four (4) fifths (5) vote or by a petition. She said she doesn't agree with the distinction between “may” and “shall”. She said that often in corporate or municipal context amendments of the operational document often require more than a simple majority vote. She asked Assistant Prosecutor Brendan Doyle to give his opinion.

Doyle said that although he appreciates the points made by the law director in regard to the fiscal issue, however the charter is clear that if the council wants to amend its charter, it must do so by a super majority. It must be by four (4) fifths (5), three (3) fifths (5) is not sufficient. In respect to the “may” and “shall” language, is if they should receive petitions in sufficient numbers it would compel them to place the issue on the ballot. But, in this instance where they attempt to place a charter amendment on the ballot it was done so only by a three (3) fifths (5) majority. Therefore, Doyle's recommendation is that the issue should be removed from the ballot.

Board Member Hastings asked if there was anyone in attendance who would like to speak in opposition of the issue.

Chairwoman Chappell asked three (3) individuals to come up to speak in opposition of the issue. Each individual was given three (3) minutes to speak.

O. Mays, former councilman of East Cleveland, said that the Board and Legal Counsel spoke well in reference to the charter. He said he resents his city by infringing his Constitutional Rights. Any grievance he has, he has the right to petition the government through the recall. The Law Director cannot change the charter. The only people who can change the charter are the electors. That's who put the charter in place. When the Law Director raised her right hand to change the charter of the City of East Cleveland, she cannot do that. He said he hopes that she hears him and hears him well. He told her in the meeting that she cannot do it. He said she's trying to distinguish between “may” and “shall”. There are some things that are governed by “may” and some that are governed by “shall”, and they know the difference between “may” and “shall”. The charter plainly stipulates that “Amendments to this Charter may be submitted to

the electors of the City by a four (4) fifths (5) vote of the Council,” He said he hopes that the honored law director can comprehend that. He repeated that he thinks the Board has spoken well of the Charter and asked the Board to vote to remove the issue.

Dr. Patricia Blochowiak, a resident of East Cleveland, said she is in favor of rescinding the Board of Elections approval of the East Cleveland Charter Amendment regarding recall petitions. The resolution received three (3) votes, but the charter clearly states it needs four (4) votes. This charter amendment restricts the ability of registered voters to participate in legal recall attempts. She said by keeping it off the ballot it would prevent East Cleveland from being involved in another litigation. She said she hopes the Board will rescind it.

Cory Bush said he will waive his time because it’s been very clear that the attempts of the city were ridiculous.

Gerald Strothers Jr. said that he had an issue with the law director earlier in the year. He said she said she was not the law director, only a consultant. He said Mr. O Mays is one of the authors of the charter. So if Mays is saying that four (4) people are needed then he’s right.

Chairwoman Chappell asked Hemmons to come back up to respond

Hemmons said although the Charter says four (4) fifths (5) in section 94 how does one reconcile it with section 105 when it says the vote upon the passage of all ordinances and resolutions are passed by three (3) members. The adoption of any ordinance or resolution. So there is a conflict between the two.

Deputy Finance Director, Charles Iain said that it’s well documented that East Cleveland is in fiscal emergency. There is a recovery plan that the city is executing, but the special elections have burdened that recovery plan. He said the cost of the election is taken out of the property tax. Last year there was a recall election that cost the city \$10,600, and this year there was a recall election which cost \$10,600, and this year there will be another election in December that will cost the city \$25,400. That’s a total of \$46,000. The purpose of trying to change the charter is to help alleviate some expenses to the city. He said last year they spent 1.8 million dollars in health benefits for their employees. They have to pay almost \$100,000 per month to take care of the rubbish for their citizens. Instead of spending \$46,000 on recall elections, that money could have gone to something else that benefits the city.

Board Member Frost said that at times he has sat on an advisory financial committee for the City of East Cleveland. Since the fiscal impact of elections is part of East Cleveland’s argument he would consider recusing himself from this discussion, although the advisory committee that he occasionally sits on is not related to the discussion at hand. He said that if any party would feel that he should recuse himself he would do so.

Chairwoman Chappell said this issue pulls on her heartstrings because she grew up in East Cleveland. She understands that there’s a financial issue, however it does not deal with the issue relevant here today, and Board Member Frost should not have to recuse himself from the decision.

Board Member Frost said that she agrees with chairwoman Chappell that the fiscal impact of the East Cleveland elections is not relevant for their decision, and so he does not believe he should recuse himself.

Board Member Wondolowski said that he agrees that the cost issue is not relevant, although it’s a shame. He said the issue is very clear that the vote needs four (4) fifths (5) and the votes are not there.

Board Member Hastings said he appreciates Director Hemmons interpretation. He said that he would only

do that analysis if section 94 was ambiguous. However, section 94 is not ambiguous. While he appreciates her efforts, he moved to rescind the Board's prior certification of ordinance 06-16.

Chairwoman Chappell said that the reason why they originally approved the ordinance was because they received certification from the East Cleveland clerk that the amendment was passed unanimously.

Board Member Hastings interrupted and said that the certification letter stated that ordinance 05-16 was passed unanimously, but ordinance 06-16 was passed by three (3) fifths (5).

Board Member Hastings added a friendly amendment to his motion to order the removal of ordinance 06-16 from the ballot.

The Board voted unanimously to rescind the Board's prior certification of ordinance 06-16 and to remove it from the ballot.

**Agenda Item 5: Motion to Reconsider the Certification of the Seven Hills Income Tax Increase issue to the November 8, 2016 Presidential General Election**

Assistant Prosecutor Doyle said that at the last meeting there were arguments regarding whether it was appropriate to place Seven Hill's issue on the ballot based on the Ohio Revised Code as well as the Secretary of State's interpretation through the handbook. Board staff relies heavily on that handbook for direction. He said the Director contacted the Secretary of State's office and the Secretary of State reversed its interpretation. Based on that reversal, Seven Hills had followed the Ohio Revised Code. Therefore, the Seven Hills Income Tax Issue should be placed on the ballot.

The Board voted unanimously to reconsider the certification of the Seven Hills Income Tax Increase Issue

The Board voted unanimously to certify the Seven Hills Income Tax Increase issue to the November 8, 2016 Presidential General Election.

**Agenda Item 6: Withdrawal of Candidates and Issues from the November 8, 2016 Presidential General Election**

The Board voted unanimously to approve the withdrawal of Candidates and Issues from the November 8, 2016 Presidential General Election as presented.

**Agenda Item 7 Certification of the East Cleveland Mayoral and Ward 3 December 6, 2016 Special Recall Election issues**

Lawler said the Board of Elections received two petitions for recall of Councilman Wheeler and Mayor Norton. The receipt of the petitions puts the timeline after the 60 days after the general election deadline. He asked the Board to certify the election for December 6, 2016 due to the certification of the General Election and Thanksgiving.

Chairwoman Chappell clarified that the Board will certify both elections for December 6, 2016.

Director McDonald said that there was no need to separate the two elections. Early voting for that election will start on November 8, 2016.

Board Member Hastings asked if there would be any conflict.

Director McDonald said that they don't anticipate anyone coming in to vote in the East Cleveland

Election on November 8, but if they do they can vote on the second floor.

Board Member Hastings asked that even though the election is on the 6<sup>th</sup>, there will still be Board Meeting on the 19<sup>th</sup>.

Director McDonald answered yes.

**Agenda Item 8: Acknowledgement of appointments to elected office**

The Board voted unanimously to acknowledge the appointments to elected office as presented.

**Agenda Item 9: Approval of recommended revisions to Section 5 of the Cuyahoga County Board of Elections Policies and Procedures Manual regarding unpaid leave**

Business Administration Manager Sean Webster said these revisions are taken from the County's policies. Section five (5) will be replaced with the County's current policy regarding sick and medical leave. The changes will be that it will require an employee to be absent at least five (5) days before requesting extended sick and medical leave, and also use their three (3) month FMLA leave concurrently with the extended sick and medical leave if they can.

The Board voted unanimously to approve the recommended revision to Section five (5) of the Cuyahoga County Board of Elections Policies and Procedures Manual regarding unpaid leave.

**Agenda Item 10: Approval of Vouchers**

Webster said line item three (3) is the annual maintenance payment for the voting equipment and tabulation software. This is the fourth (4) and final year of the initial term of the contract. The Board is covered through September 30, 2017 after which there are an unlimited number of one (1) year renewal periods which are automatic unless either party declines to renew. Items covered under this maintenance contract include one annual preventative maintenance, installation of software updates, guarantees software will remain certified under state and federal law, and provides for emergency repair services.

Board Member Wondolowski asked if there will be a new price every year or if it will stay the same.

Webster said they could renegotiate the price. In the original maintenance contract, the initial term ended in 2013, but they decided to renegotiate and choose a one year renewal option. Webster said they could go back and renegotiate a longer contract with a set number of years with new pricing.

Board Member Wondolowski asked if the price of \$104,000 would remain the same every one year renewal.

Webster said that it would.

Board Member Wondolowski asked if they negotiate, they would negotiate for a longer period of time and at a lower price.

Webster said yes.

Board Member Hastings asked how many technicians they send out, how long they stay, and about how many parts do they replace?

Webster said they are out here for about two (2) weeks with about 15-20 technicians.

Ballot Manager Brian Cleary said that they mostly replace plastic bases, and other minor defects. There might be one or two mother boards. It takes them about 10-15 minutes per machine.

Board Member Wondolowski asked if the technicians come out when needed throughout the year.

The Board voted unanimously to approve the vouchers as presented.

### **Agenda Item 11: Approval of Personnel Agenda**

The Board voted unanimously to approve the personnel agenda as presented.

### **New Business:**

#### Update on Election Preparation

Director McDonald said that there are 55 days left until the Presidential Election. Early voting starts October 12<sup>th</sup>. The US Supreme Court declined to hear the case, so there will be no Golden Week. The Board staff is receiving many vote by mail applications. There are approximately 50,000 mailed in, and 10,000 that have been sent in from other avenues. He projected a total of 220,000 absentee ballot costs. He said he expects about 50,000 voters to vote in house. Board staff arrived at this number by comparing data from 2008 and 2012. He said that the loss of Golden Week could impact about 5,000 of those early votes. However, in 2012 there was Hurricane Sandy which impacted about 40,000 early voters. He said he expects about 380,000 voters to vote at the polls on Election Day. He said that would be between 72% and 75% of registered voters casting ballots. He said there was a great uptick in voter registration for this election due to independent groups.

Chairwoman Chappell asked Director McDonald to periodically update the Board via email in terms of the numbers in terms of in house voting and such.

Director McDonald said he expects a two (2) page ballot, although some communities could have a three (3) page ballot based on the amount of charter issues filed. He said the Board staff has hired over 240 temporary workers so far, and will hire another 70. He said there will be 60 stations for early voting which is an increase of 12 stations from 2012. Thursday will be the All Hands on Deck Meeting where staff will be updated on the Election. He thanked Chairwoman Chappell for agreeing to speak at the meeting. He said on Tuesday September 27, the Board staff will host a Presidential preparedness event for candidates.

Chairwoman Chappell asked if there will be adequate parking for early voters.

Director McDonald asked Business Administration Manager Sean Webster to speak about parking for both voters and employees.

Webster said there will be about 100 spaces during the weekday, and 300-400 on the weekend. He is also trying to secure parking for temps for early voting. There's a few lots that they're looking at but there are looking for more options as well. In 2012 they had several smaller lots, however this year there will be less lots, but more spaces. He said there's a lot for employees that's available Monday, Tuesdays, and Thursdays, but will need to find either a lot for Wednesdays, Fridays, and weekends, or another lot that could accommodate employees for the entire week.

Director McDonald said that poll worker recruitment is going well especially in respect to Republican poll workers. They have hired 73% of the goal. The recruitment letter was well received. On September 22<sup>nd</sup> there will be a Hispanic Roundtable to let them know they are prepared and ready. They are still

looking for special recruits such as ride along's, rovers, and drop off assistants. He said they are at about 40% with special recruits.

Director McDonald said he received a phone call from County Executive Armond Budish asking if they will be bringing in the 100 or so attorneys from New York. This was done before by former Board Member McNair. These lawyers were dispatched out to be rovers. Director McDonald said that he told County Executive Budish that he had not been in contact with anyone, nor prepared for them in the Election plan. He said he will talk to the managers to determine the benefit of the lawyers. He said he will revisit the issue if the lawyers reach out to him.

Director McDonald said they are reinstating earl memory stick retrieval. He said they are partnering with the county to assemble 30 bipartisan teams to help retrieve the memory sticks on Election night. He said they are doing location based scanning again, and doing split precinct poll books. He said they are doing limited E-Pollbook look up in designated locations. He said he will hire MaryAnn Sharkey to advise on a media plan on a personal contract. He then asked election Officials Department Manager Henry Curtis to present the Board with an Update on the Security plan.

#### Update on Security Plan

Manager Curtis said current precinct election officials and polling location coordinator's training sessions and corresponding training materials were enhanced for the November 2016 Presidential General Elections cycle. He said a new section was added to the first chapter of PEO and PLC training handbooks that specifically addresses how the field personnel are to handle emergency situations they encounter at the polling locations on Election Day, and to reinforce the enhanced training emphasis, a question on the PEO and PLC assessment was added to specifically address the security protocol covered in the training session. Each worker currently completes and signs an Employment Verification Form at the training class. The Employment Verification Form states, "Have you ever been convicted of a felony?" The applicant checks yes or no. He said if an applicant checks "yes", the trainer emails this information to Arriane Morrow, Supervisor of training in the Election Officials Department. Additionally, there is a certificate of application on the bottom of the employment verification form that states "I certify that all statements made in this application are true and complete to the best of my knowledge. I understand that any false statements or material facts will subject me to disqualification or dismissal." The Election Officials Department staff reviews the forms when they are returned to the office. Persons who self-identify as being felons are placed in a file and noted in DIMS, making them ineligible to be placed in a consolidation and the rejected applicant receives a letter stating the reason they cannot work.

Director McDonald said that he and Doyle had a call with the FBI concerning security. He said they asked him what other states do to ensure safety. The FBI said that it's a new issue for them but will do some research. He said they suggested to meet with the Sheriff's office to come up with a special Election Day plan. He also said they talked about intelligence gathering via social media.

Chairwoman Chappell asked if there would be monitoring.

Director McDonald said he hasn't talked to the Sheriff's Office yet, but no one has told him anything about it yet.

Doyle said there is a crime analyst in the Prosecutor's Office whose skills can be utilized on Election Day.

Chairwoman Chappell said that there is a tightrope they must walk concerning security, but the Board has an obligation to do everything they can to ensure the safety of voters. She asked to please be kept aware

of any opportunities there may be to further refine the security plan. She asked Director McDonald to speak on the expectations during the meeting on the 27<sup>th</sup>. She said she wants to emphasize that the Board has to get the counts right more than getting them done quickly.

Director McDonald said they are considering putting the voter notification card on the website.

The Board voted unanimously to adjourn at 11:11pm.

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 September 14, 2016.

Inajo Davis Chappell, Chairwoman

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Robert S. Frost, Member

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Jeff Hastings, Member

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David J. Wondolowski, Member

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Pat McDonald, Director

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