



Via Electronic Mail

September 24, 2019

Director Debbie Craycraft
Deputy Director Heather Loudin
Highland County Board of Elections
1575 North High Street, Suite 200
Hillsboro, Ohio 45133

Re: Tie Vote on Antony Weissmann, a Write-In Candidate for Mayor of Hillsboro

Dear Director Craycraft and Deputy Director Loudin:

On August 22, 2019, the Highland County Board of Elections (“Board”) tied on the following question: “[W]hether Mr. Weissmann’s name as a write-in candidate would appear on the ballot based on his residency.” Pursuant to R.C. 3501.11(X),¹ the Board submitted the tie vote to the Secretary of State for a decision.

On August 5, 2019, Antony Weissmann filed a Declaration of Intent to be a Write-In Candidate for the Mayor of Hillsboro with the Highland County Board of Elections. On August 12, before the Board certified Mr. Weissmann, Rosemary Ryan filed a protest that claimed Mr. Weissmann had not resided in Hillsboro for a year and is therefore statutorily unqualified to be its mayor. The Board understood that the protestor was mistaken regarding the residency requirements for mayor of Hillsboro. However, the Board proceeded to hold a hearing because a protest was filed. On August 14, 2019, my office was notified that the County Prosecuting Attorney would hold the hearing on August 22, 2019. The minutes reflect that she participated in that hearing.

At the outset, it is unclear what specifically the Board was working towards at the hearing—there was no articulation of a new or amended ground for the protest. Ms. Ryan did not explain why she protested this uncertified candidate. A challenge of Mr. Weissmann’s right to vote pursuant to R.C. 3503.24 would have been appropriate under the circumstances, but the record does not suggest that occurred. To discern Ms. Ryan’s cause for the protest, I merely have the copy of the written protest, which is mistaken on the law, and the proposed minutes entitled “Hearing For Protest Challenge of Write-In Candidate for Hillsboro City Mayor.” To avoid ambiguity in judicial and quasi-judicial hearings, the person making an accusation generally states their case first and explains the grounds for the accusation, not the defense.

¹ R.C. 3501.11(X) provides that “[i]n all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy... to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final.” The Election Official Manual requires, among other things, a Board to “[s]ubmit in writing the motion that resulted in the tie vote, exactly as it was voted upon.” Ch. 2, p. 25.

There are several other issues with the Board's proceeding that make review difficult, including:

- There is no transcript, recording, or approved minutes to review; only proposed minutes from the hearing.
- At the hearing, the Board did not formally accept exhibits presented, take possession of them, or make copies of the exhibits Mr. Weissmann presented in his defense.²
- Only the candidate and protestor were sworn in, but the minutes show that others, Rory Ryan and David Osborne, Jr., also questioned the candidate at the hearing. The minutes do not explain Messrs. Ryan and Osborne's connection to the hearing, why they were not sworn in, why they could question the candidate, or what process the Board used to determine who would examine the candidate. In judicial and quasi-judicial hearings, a third party is typically only a witness; questioning a defendant or candidate is beyond the proper role of a witness.
- The legal burden was incorrectly placed upon the candidate, rather than the protestor. Just as in *State ex rel. Law v Trumbull County Bd. Of Elections*, "the board fundamentally misconstrued the appropriate inquiry. At the protest hearing, the burden was on the protestor..."³ Here the record reflects that neither the protestor, prosecutor, nor anyone else at the hearing produced *any* evidence against Mr. Weissmann's residency-not even a simple assertion that he resided somewhere other than where he claimed.

Finally, the Board voted on the following question: "[W]hether Mr. Weissmann's name as a write-in candidate would appear on the ballot based on his residency." This reflects fundamental confusion about the nature of write-in candidacy. No write-in candidate's name appears on the ballot; a voter writes the candidate's name in the process of voting for them. But this is the question the Board voted upon and that is the issue before me.

When summarily breaking a tie vote after a hearing, the Secretary of State is constrained by the evidence and record submitted. The Supreme Court of Ohio has explained that R.C. 3501.11(X) "does not expressly provide a process for the secretary of state to gather additional evidence or to return a matter to a board of elections once it has been submitted to [him] for a summary decision on the matter."⁴

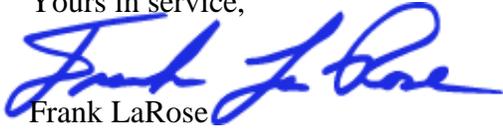
² After the hearing, the Board asked Mr. Weissmann to return with the documents he presented, allowing them to make copies. He obliged and the Board made copies, but they now question whether the returned documents are truly the ones furnished during the hearing. The Board's cover letter states, "After Mr. Weissmann had brought the receipts in that we had requested and left, we then realized that some of the documents he presented us with were not the ones he had shown us during the hearing."

³ Slip Opinion No. 2019-Ohio-3724. The protestor had the burden to prove by clear and convincing evidence that candidate's Declaration of Intent was invalid. See *State ex rel. Richards v. Stark County Bd. Of Elections*, 145 Ohio St. 3d 211, 2015-Ohio-3658, 48 N.E.3d 507. "Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm conviction of the allegations sought to be established." *Cross v. Ledford*, 161 Ohio St. 469 (1954).

⁴ *State ex rel. Husted v. Brunner*, 123 Ohio St. 3d 119, 2009-Ohio-4805, 914 N.E.2d 397.

Therefore, based on the lack of evidence presented to me, inappropriate processes, incorrectly applied burden, and a faulty question, I cannot vote to sustain this protest. The protestor did not meet her burden.

Yours in service,



Frank LaRose
Ohio Secretary of State

cc: W. Andrew West, Chair, Highland County Board of Elections
Kay Ayres, Member, Highland County Board of Elections
Dinah Phillips, Member, Highland County Board of Elections
Steve Hunter, Member, Highland County Board of Elections