

Via Electronic Mail

February 14, 2024

Karla Herron, Director
2079 US Highway 23 N
PO Box 8006
Delaware OH 43015

Re: Tie Vote Regarding a Challenge to Candidacy Petition

Dear Director Herron,

On January 23, 2024, the Delaware County Board of Elections (the "Board") voted on three related motions: 1) a motion to conduct a hearing on a protest to the candidacy of Judge Patricia Delaney to the March 19, 2024 primary election ballot; 2) a motion to "take up the voter challenge" to Judge Delaney's personal right to vote; and 3) a motion to accept Judge Delaney to the March 19, 2024 ballot. The Board tied 2-2 on each vote. The Board then submitted each of the three tie votes to my office on February 5, 2024.

1. Background

Judge Patricia Delaney currently sits on the Fifth District Court of Appeals and is running for reelection in 2024. Judge Delaney is a registered Democrat, but she wants to run as a Republican in the March 19, 2024 primary election. To do so, Judge Delaney filed a Declaration of Candidacy for Party Primary form and a Declaration of Intent to Change Political Party Affiliation form. These forms stated her intent to switch from the Democrat Party to the Republican Party and her intent to run as a Republican in the 2024 primary election. Judge Delaney properly filed these forms with the Stark County Board of Elections.

On January 16, 2024, Shawn Parker, the Chairman of the Delaware County Republican Party, filed a protest to Judge Delaney's candidacy petition with the Board. Mr. Parker also filed a challenge to Judge Delaney's individual right to vote. In addition to filing these with the Delaware County Board of Elections, Mr. Parker also filed these protests with the Stark County Board of Elections, as Judge Delaney had filed her candidacy petition and her intent to change party form in Stark County.

The Board then held a meeting on January 23, 2024. At this meeting, Member Cuckler moved to conduct a hearing on Mr. Parker's protest to Judge Delaney's candidacy petition. The vote on this motion resulted in a tie, with Members Cuckler and Foos voting for the motion and Chairman Helvey and Member Watkins voting against the motion.

Member Cuckler then moved to "take up" the challenge to Judge Delaney's individual right to vote submitted by Mr. Parker. This vote also ended in a tie, with Members Cuckler and Foos voting for the motion and Chairman Helvey and Member Watkins voting against the motion.

Finally, Member Watkins moved to accept Judge Delaney to the March 19, 2024 ballot for the office of Judge of the Court of Appeals in the 5th District for the term beginning February 11, 2025. This vote ended in a tie as well, with Chairman Helvey and Member Watkins voting for the motion and Members Cuckler and Foos voting against the motion.

The Board then submitted these three tie votes to my office on February 5, 2024, along with position statements and accompanying evidence from the Board members on each motion.

2. Analysis of the Issue

In examining this matter, I have reviewed the meeting minutes from the January 23, 2024 Board Meeting, a summary of the proposed motions and the resulting tie votes, and the position statements provided by the four Board members.

The first motion that resulted in a 2-2 tie was a motion to conduct a hearing on Mr. Parker's protest to Judge Delaney's candidacy. A protest to a candidate petition must be filed with the Board of Elections where the candidate filed their petition. Judge Delaney properly filed her candidacy petition with the Stark County Board of Elections; therefore, a protest of this candidacy must be filed with Stark County. It should be noted that the same protest was filed in Stark County; however, Stark County dismissed this protest as untimely filed. Protests to a candidate petition must be made in writing and must be filed with the Board of Elections by 4PM on the 74th day before the primary election. In this case, Mr. Parker filed his protest with the Board too late. Mr. Parker filed the protest on January 16, 2024, which is 63 days before the March 19, 2024 election. Even if Delaware County had the authority to decide on the protest itself, which it does not, the protest was not timely filed, and the Board cannot consider a protest filed after the statutory deadline.

The second motion that resulted in a 2-2 tie was a motion to “take up” a challenge to Judge Delaney’s individual right to vote. When such a challenge is filed, the Board of Elections is required to consider its own records and then determine whether the challenge can be granted or denied on those records alone. If it can, then the Board must grant or deny the challenge accordingly. If the Board cannot decide the challenge based only on its records, the Board must hold a hearing on the challenge. Based on the statements and accompanying evidence submitted by the Board, it appears that the Board did not consider its records related to Judge Delaney’s voter registration, which it is required to do. Since the Board is required to examine its records and to determine whether it has sufficient evidence to grant or dismiss the challenge to the right to vote before any further action can be taken on the challenge, my office is not in the position to determine the merits of the challenge at this time.

The final motion resulting in a tie vote was on the question of whether to accept Judge Delaney to the March 19, 2024 ballot as a candidate for the office of Judge of the Court of Appeals in the 5th District. This motion is not properly before the Delaware County Board. The board of the most populous county of a district is responsible for certifying the names of the candidates who will appear on the primary election ballot to the other boards within the district. As Stark County is the most populous county in the district at issue, Stark County is responsible for determining whether Judge Delaney will appear on the March 19 ballot. Delaware County cannot make this determination.

3. Conclusion and Vote Cast on the Tie Vote

Based upon the evidence provided to my office and the law as it relates to this matter, the protest to Judge Delaney’s candidacy should have been filed in Stark County rather than in Delaware County. **Accordingly, the Board’s vote on this motion is out of order, and I have no authority to take any further action.**

As to the second motion, the Board has not taken the necessary steps to get to the merits of the challenge to Judge Delaney’s personal right to vote. **Therefore, I am breaking the tie vote by voting “aye” on Member Cuckler’s motion to “take up” the challenge submitted by Mr. Parker to Judge Delaney’s personal right to vote.** I encourage the Board to review its records and determine whether it has sufficient evidence to rule on the merits of Mr. Parker’s challenge.

Lastly, as I have established, the motion to accept Judge Delaney to the March 19, 2024 ballot is not properly before the Delaware County Board of Elections. Rather, the law requires the Stark County Board of Elections to make this determination. As that Board has accepted Judge Delaney to the ballot and certified her as a candidate to the Delaware

County Board of Elections, **I am unable to take any further action.**

While I respect the concerns expressed by the protester about the candidate's political identity given a long history of voting in another party's primary elections, I highly encourage the Board to engage in further dialogue between its members and the Delaware County Prosecutor in coming to a determination as to how it will proceed with each of these motions.

If you have any questions regarding this decision, please contact Paul Disantis, Chief Legal Counsel at the Secretary of State's office, at pdisantis@ohiosos.gov.

Yours in service,



Frank LaRose
Ohio Secretary of State

cc: Ed Helvey, Chairman of the Delaware County Board of Elections
Steve Cuckler, Board Member
Tom Foos, Board Member
Peg Watkins, Board Member