

Via Electronic Mail

October 22, 2024

Brett Riffle, Director
Jane Hanley, Deputy Director
Fairfield County Board of Elections
951 Liberty Drive
Lancaster, Ohio 43210

Re: Tie Vote of voter challenges

Dear Director Riffle and Deputy Director Hanley,

I have reviewed the tie vote referred to me by the Fairfield County Board of Elections ("the Board") on October 7, 2024, as well as the statutory guidelines and evidentiary material relevant to the matter. Based on the evidence presented, Ohio law supports the removal of most of the challenges brought before the Board regarding the eligibility of certain electors registered to vote in the county; however, the Board should reconvene to amend its motion.

Background

The Fairfield County Board of Elections held a hearing on September 23, 2024, to consider 32 elector challenges submitted by Sue Mazzarini, a resident of Fairfield County. Ms. Mazzarini presented evidence to the Board asserting that 32 individuals on Fairfield County's voter rolls had registered and voted in other states, resulting in a loss of their Ohio residency for voting purposes.¹ Ms. Mazzarini utilized the National Change of Address (NCOA) registry from the United States Postal Service and cross-referenced voter records from official government websites. After reviewing the evidence presented, Chairwoman Angela White offered a motion to accept "the challenge of the 32 voters presented by Ms. Mazzarini,"² which resulted in a 2-2 vote, with the two Republican members voting in favor of the motion and the two Democratic members voting to oppose it. The Board noted its statutory requirement to refer the matter to me, as the Secretary of State, for resolution.

¹ R.C. 3503.02(H).

² Fairfield County Board of Elections Challenge Hearing Transcript, p. 17, September 23, 2024

Evidence

Ohio law authorizes a county's board of elections to "establish and maintain a voter registration database of all qualified electors in the county who offer to register"³ and to "remove ineligible electors from voter registration lists in accordance with law and directives of the secretary of state."⁴ Further, Ohio law establishes the requirements for challenging an elector's eligibility based on residence and voting activity:

If a person goes into another state and while there exercises the right of a citizen by voting, the person shall be considered to have lost the person's residence in this state.⁵

Challengers to the qualifications of an Ohio elector must follow a legal standard of providing clear and convincing evidence, or "that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established."⁶

Ms. Mazzarini testified to the Board that her challenges to the 32 registrations in question came from her own personal review of each person's registration and voting history in a process involving government records, including the National Change of Address registry and information maintained by the relevant state and local election administration offices. She explained her process of "validating a record for accuracy" and individually verifying the key data points associated with each elector. This is an important assertion, as Board Member Paul Johnson stated that he opposed the challenges because "under the National Voter Registration Act, which is federal law, voters may not be removed from the polls within 90 days of a federal election under circumstances where there has been a systematic review of the voter file using the National Change of Address registry as the basis for that challenge."

However, Ms. Mazzarini's testimony demonstrates that she personally, thoroughly, and individually investigated each registration challenged before the Board. Contrary to Board Member Johnson's stated reason for opposing these challenges, Ms. Mazzarini did not conduct a systematic review as defined under the NVRA but rather an individual investigation of each record. As such, I have determined that her evidence overall meets the clear and convincing standard and qualifies for consideration by the Board.

³ R.C. 3501.11(T).

⁴ R.C. 3501.11(U).

⁵ R.C. 3503.02(H)

⁶ *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

Decision

I use the term “overall” here with purpose. During my office’s review of the evidence, we found that two of the challenged voters, Christopher White and April Freeze, previously registered and voted in North Carolina in 2008, but they subsequently registered to vote in Ohio. Although they have since re-registered in North Carolina, there is not “clear and convincing evidence”⁷ that these two individuals have voted in that state since registering in Ohio.

Unfortunately, the tie vote before me is limited to the motion to uphold “the challenge of the 32 voters” presented by Ms. Mazzarini, and I must therefore break the tie by voting no on the motion. I ask the Board to reconvene for the purpose of taking up a new motion to challenge the 30 electors for which there is clear and convincing evidence that, due to a change in residency and a record of voting in another state, they no longer qualify to be a registered elector in Ohio. I encourage the Board to follow the law and remove the challenged electors by unanimous vote, but should the matter again result in a tie, I am prepared to break it with alacrity in favor of accepting the challenges. Please direct any questions regarding this decision to Sarah Huffman, Deputy Chief Counsel for Elections, at the following email address: SHuffman@OhioSoS.gov.

Yours in service,



Frank LaRose
Ohio Secretary of State

cc: Angela D. White, Chairperson, Fairfield County Board of Elections
Michael Oatney, Fairfield County Board of Elections
Kyle Farmer, Fairfield County Board of Elections
Paul R. Johnson, Fairfield County Board of Elections

⁷ See *State ex rel. Holwadel v. Hamilton County Bd. Of Elections*, 144 Ohio St.3d 579, 2015-Ohio-5306, ¶ 32 & n.3 (2015).