



Via Electronic Mail

September 8, 2023

Brandon Clay, Director
Michelle Forrider, Deputy Director
Union County Board of Elections
855 East 5th St., Suite A
Marysville, OH 43040

Re: Tie Vote Regarding a Protest on a Referendum Regarding an Annexation Ordinance

Dear Director Clay and Deputy Director Forrider,

On August 11, 2023, a protest was filed with the Union County Board of Elections (the "Board") concerning a referendum on an annexation ordinance (the "Protest"). On August 23, 2023, the Board held a Protest hearing and heard evidence on the Protest (the "Protest Hearing"). Following the submission of evidence, a motion was made "to deny the protest and proceed with the referendum" (the "Motion").

The resulting vote ended in a 2-2 tie, with Board Members Barbara Luke and William Steele voting "aye" on the Motion, which would allow the referendum to remain on the ballot, and Board Chairman Dean Cook and Board Member Gary Lee voting "nay" on the Motion, which would remove the referendum from the ballot. On August 25, 2023, the Board of Elections certified this tie vote to my Office in accordance with Ohio Revised Code 3501.11(X) and [Chapter 2 of the Ohio Election Official Manual](#). On that date, the Board also submitted substantial position statements and supporting evidence to consider. Additionally, on September 5, 2023, the Board provided an expedited transcript of the Protest Hearing to my Office.

Allow me to clarify at the outset that the question before my Office does not relate to the arguments for or against any rezoning matter, specifically the approval or disapproval of a housing development in the City of Marysville. The opinion stated in this letter applies only to the question of whether the signatures for a referendum petition concerning the annexation of certain property were appropriately gathered such that the referendum may remain on the ballot in the upcoming November 7, 2023 General Election.

1. Background on the Protest Hearing

On May 3, 2022, an annexation petition was filed with the City Council for Marysville, Ohio, a charter city, seeking to annex 263.25 acres of unincorporated Paris Township, Union County property into the City.

On November 14, 2022, the City Council approved the annexation via Ordinance 055-2022 (the "Annexation Ordinance"). At that same Council meeting, it also approved a rezoning ordinance, Ordinance 056-2022, involving 196.05 acres that constitute a portion of the annexed property.

Subsequently, a referendum petition seeking to place the annexation on the ballot was filed with the Board (the "Referendum"). On March 3, 2023, the Board certified the Referendum to the November 7, 2023 General Election ballot.

On August 11, 2023, the Protest at issue was filed with the Union County Board of Elections, protesting the Referendum.¹ Said Protest argued that the way in which the Referendum had been circulated was both inaccurate and misleading to its signers.

On August 23, 2023, an evidentiary hearing on the Protest was held before the Union County Board of Elections. Following this hearing, a Motion was made "to deny the protest and proceed with the referendum." Board Members Barbara Luke and William Steele voted "aye," which would allow the Referendum to proceed, and Board Chairman Dean Cook and Board Member Gary Lee voted "nay" on the Motion, which would remove the Referendum from the ballot.

On August 25, 2023, the Union County Board of Election submitted tie vote materials to my Office for consideration.² My duty herein is "to decide the matter by casting the tie-breaking vote"³ and to submit my "vote as the fifth member of the Board."⁴

¹ Note that I am aware of a first protest that the Board previously heard and denied that was against the same Referendum. However, as the first protest filed against the Referendum has no bearing on my decision in this current matter, I will consider information from only the current Protest.

² R.C. [3501.11\(X\)](#) provides that "(i)n all cases of a tie vote . . . if no decision can be arrived at, the director or chairperson shall submit the matter in controversy, not later than fourteen days after the tie vote or the disagreement, to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final."

³ *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 119, 122 (2009).

⁴ 1932 OAG 4040, P. 196; 1932 Ohio AG LEXIS 1092

2. Analysis of the Issue

In examining this matter, I have reviewed the summaries presented by the four Board members, the expedited transcript from the Protest Hearing, and a letter from the Board of Elections summarizing the Protest hearing proceedings.

That information leads me to find that the map presented to Referendum signers was inaccurate and objectively misleading to an average voter. Rather than presenting signers with an accurate map of the 263.25 acres to be annexed, the evidence before me shows that signers were presented with a map of a much smaller area, being 196.05 acres. Testimony from both those in favor of and those opposing the Protest were undisputed on this matter.

This was no minor error. This was a difference of over 67 acres between the actual land to be annexed and the land presented on the map, an inaccuracy of more than 23 percent. These inaccuracies could easily mislead signers into believing that if annexation occurred, the resulting population density would be much greater than actually anticipated and planned by the City. Further, at least two citizens testified that circulators addressed issues concerning tax increases, the number of houses to be built, issues with utility and infrastructure, and other matters that were not relevant to the annexation itself when the Referendum petition was circulated for their signatures.⁵

3. Conclusion and Vote Cast on the Tie Vote

In my role as Ohio's Secretary of State, I have consistently erred on the side of granting citizens ballot access whenever possible. However, election laws require strict compliance and are mandatory.⁶ When the law is clear on a matter, my sworn duty requires me to uphold and faithfully execute that law. In this case, I believe the law is clear.

Accordingly, it is my view that evidence provided to my Office indicates that the map and other information presented to Referendum petition signers were objectively inaccurate, misleading, or contained material omissions that would confuse the average person as to the annexation ordinance. Such misleading information "may have poisoned would-be signers," and, as such, the Referendum petition should be deemed invalid.⁷

⁵ Those matters may have been relevant to a rezoning ordinance involving the 196.05 acres, but no Referendum was filed as to a rezoning ordinance.

⁶ *State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain County Bd. of Elections*, 96 Ohio St.3d 308, 317 (2002).

⁷ *See, State ex rel. Jacquemin v. Union County Bd. of Elections*, 147 Ohio St.3d 467 (2016).

As such, I am breaking the tie by voting “nay” on the Motion to deny the protest and proceed with the referendum, consistent with the votes of Board members Cook and Lee. The Referendum will therefore not be placed on the November 7, 2023 ballot.

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: Dean Cook, Chairman of the Union County Board of Elections
Gary Lee, Board Member
Barbara Luke, Board Member
William Steele, Board Member