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September 22, 2010

William Anthony, Director
Franklin County Board of Elections
280 East Broad Street, Room 100
Columbus, OH 43215

Re: *Tie Votes of August 24, 2010 concerning Additional Dates for In-person Absentee Voting*

Dear Director Anthony:

The Franklin County Board of Elections met on August 24, 2010, to discuss, among other things, providing extended hours for in-person absentee voting at the office of the Board of Elections. The board considered three such motions; each resulted in a tie vote of the board. In accordance with R.C. §3501.11(X) and with the procedures outlined in the Ohio Election Official Manual, the Franklin County Board of Elections submitted the tie votes, including position statements of the board members and a transcript of the meeting, to me on September 8, 2010. My analysis and decision are outlined below.

Background

On August 11, 2010, the Franklin County Board of Elections met to determine the Board's hours of operation during the absentee voting period. In order to provide additional opportunity for in-person absentee voting, the Board unanimously agreed to expand the Board's regular hours of operation during the absentee voting period to the following schedule:

- Tuesday, September 28th through Friday, October 1st, 8:00 a.m. through 5:00 p.m.
- Saturday, October 2nd, 8:00 a.m. through 4:00 p.m.
- Monday, October 4th, 8:00 a.m. through 9:00 p.m.
- Tuesday, October 5th through Friday, October 8th, 8:00 a.m. through 5:00 p.m.
- Monday, October 11th through Friday, October 15th, 8:00 a.m. through 5:00 p.m.
- Monday, October 18th through Friday, October 22nd, 8:00 a.m. through 5:00 p.m.
- Monday, October 25th through Friday, October 29th, 8:00 a.m. through 7:00 p.m.
- Saturday, October 30th, 8:00 a.m. through 4:00 p.m.
- Monday, November 1st, 8:00 a.m. through 5:00 p.m.

On August 24, 2010, the board held a special meeting to consider extending the previously agreed upon office hours for in-person absentee voting. The board reached tie votes on the following three motions:

- 1) Board Member Kimberly Marinello made a motion for "the Board of Elections to be open for in-person absentee voting on Tuesday, September 28th from 5:00 to 7:00 p.m.," which was seconded by Board Member Zachary Manifold. Board members Marinello

and Manifold voted in favor of the motion, while Board Chair Douglas F. Preisse and Board Member Michael F. Colley voted against the motion;

- 2) Board Member Marinello made a motion for “the Board of Elections to be open for in-person absentee voting on Sunday, October 3rd, from 1:00 to 5:00 p.m.,” which was seconded by Board Member Manifold. Board Members Marinello and Manifold voted in favor of the motion, while Board Chair Preisse and Board Member Colley voted against the motion;
- 3) Board Member Marinello made a motion for “the Board of Elections to be open for in-person absentee voting on Sunday, October 31st, from 1:00 to 5:00 p.m.,” which was seconded by Board Member Manifold. Board Members Marinello and Manifold voted in favor of the motion, while Board Chair Preisse and Board Member Colley voted against the motion.

Discussion

The tie votes of the Franklin County Board of Elections (“the Board”) concern whether the Board should further extend the Board’s hours of operation for in-person absentee voting at the Board’s office. Section 3501.10(B) of the Ohio Revised Code gives the Board discretion to establish the office’s normal hours of operation. This statute specifically provides that “the board shall keep its offices and rooms open for a period of time that the board considers necessary for the performance of its duties.” All four Board members acknowledge that extending the Board’s hours of operation is in the best interest of voters. The dispute in this instance centers on whether it is appropriate to reconsider the Board’s hours and whether the extended hours would interfere with the Board’s ability to prepare for Election Day.

The position statement provided by Chairperson Preisse and Board member Colley asserts that they are not opposed to scheduling additional hours of operation of in-person absentee voting. However, they remain concerned that extending the Board’s hours of operation could place an “undue burden” on the Board staff. While consideration of the great demands placed upon Board staff is always appropriate, the concerns raised by Chairperson Preisse and Board member Colley may be ameliorated with proper scheduling and planning. Moreover, given the high demand for in-person absentee voting that Franklin County experienced during the primary election, it is reasonable to anticipate a similar or even greater demand for in-person absentee voting at the general election. As such, allowing a greater opportunity for voters to cast their absentee ballots in person at the board office does not create a burden that is “undue.”

Another concern raised by Chairperson Preisse and Board member Colley in their position statement is one of Board protocol. They emphasize that the Board unanimously agreed to office hours during the absentee voting period at a prior meeting of the Board. According to the position statement, revisiting the issue “erodes public confidence in the agency’s ability to administer elections without succumbing to external Party influences.” However, this viewpoint overlooks the simple fact that the Board had previously not provided voters with an opportunity to vote in-person on any Sunday during the absentee voting period. In order to accommodate those voters who work multiple jobs or nontraditional hours, the Board should offer Sunday hours. I disagree that holding a special meeting of the Board to correct this omission erodes the public’s confidence in the Board’s operations, since the purpose was to provide more access to voting, which does not appear to me to be a political issue.

The statement provided by Board Members Manifold and Marinello takes the position that the Board should provide as much opportunity for individuals to cast their ballots as possible given practical and fiscal considerations. They acknowledge that further extending the Board's hours of operation for in-person absentee voting will result in a cost to the board of elections; however, they note that the county commissioners have supported the Board's efforts to make in-person absentee voting available on an extended basis in the past. This support stems from the increasing demand in Franklin County, the state's second most populous voting jurisdiction, for in-person absentee voting. The cost to the Board of Elections for expanding office hours is a significant consideration; nevertheless, I agree that the expense is warranted to allow voters the opportunity to vote in-person during absentee voting.

I would also note that, unlike in 2008, in-person absentee voting is being conducted at the board offices and not at a satellite location, such as Veterans Memorial Hall. This is also a mitigating factor to the cost argument against the extended hours in that the board will not be required to pay extra expenses associated with the extended use of another facility.

Decision

For the foregoing reasons, I vote with Board Members Marinello and Manifold **in favor** of the motions to extend office hours on Tuesday, September 28th from 5:00 p.m. until 7:00 p.m., and to establish office hours on Sunday, October 3rd, from 1:00 p.m. until 5:00 p.m., and on Sunday October 31st, from 1:00 p.m. until 5:00 p.m. Accordingly, the motions pass. The Franklin County Board of Elections is hereby instructed to provide in-person absentee voting at the Board office in accordance with this tie vote decision.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Brunner". The signature is written in a cursive, flowing style.

Jennifer Brunner