



Via Electronic Mail

October 2, 2024

Karla R. Herron, Director
Delaware County Board of Elections
2079 US Hwy 23 N.
PO Box 8006
Delaware, Ohio 43015

Re: Tie Vote regarding voter challenges

Dear Director Herron:

I have reviewed the tie vote referred to me by the Delaware County Board of Elections ("the Board") on August 13, 2024, as well as the statutory guidelines and full evidentiary material relevant to the matter, some of which was not provided to my office until more than a month after the Board's original hearing date. Due to insufficient evidence presented, Ohio law unfortunately requires me to reject the voter registration challenges that resulted in the Board's tie vote. This is not a determination I prefer to make, as some of the evidence presented to the Board could be valid. However, challenges to an elector's eligibility must meet a specific legal standard called a "clear and convincing" burden of proof, and the challenges presented to the Board in this matter fall short of that standard. As such, they likely would not withstand further adjudication.

Let me state clearly that I commend the citizens who are passionate enough about the integrity of our elections to crowd-source the veracity of our voter rolls. Their civic engagement must be applauded, and I share their commitment to honest and accurate elections. My office is the first in state history to publicly disclose our voter list maintenance process, and I created the first-ever, fulltime investigative unit devoted exclusively to enforcing election laws. Ohio is one of only a handful of states that makes its voter list transparent to the public for review and inspection, and state law allows a qualified elector of a county to challenge individual voter registrations they believe to be ineligible. This process has been afforded under Ohio law for nearly 20 years, and our system is more accountable because of it.

Background

On August 1, 2024, the Board conducted a hearing concerning challenges to approximately 300 electors who allegedly registered and/or voted in one of six states: Texas, Georgia, Florida, Michigan, North Carolina, and Tennessee.

Upon reviewing the evidence presented from North Carolina's public government records, the Board voted to accept the challenges made to individuals who appear to have voted that state and ordered them removed from the voter rolls. However, the Board tied on two other motions regarding the remaining challenges to roughly 240 electors who allegedly registered and/or voted in Texas, Georgia, Tennessee, Michigan, and Florida.

The Ohio Revised Code sets forth the criteria for determining a challenge to the residential qualifications of an Ohio elector:

"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."¹

The motion(s) to consider the challenges to electors in the above-mentioned states resulted in a tie due to a dispute over whether the evidence presented for consideration met the standard of law in Ohio. In accordance with Ohio Rev. Code Section 3501.11(X) and procedures outlined in the Ohio Election Official Manual, the Board submitted a request to my office on August 13, 2024, asking me to break the tie votes.

Evidence

The evidence presented to the Board in the challenge(s) to electors allegedly now registered and/or voting in Texas, Georgia, Tennessee, Michigan, and Florida came from the National Change of Address ("NCOA") database and information obtained from non-governmental websites. It is well established that a change of address alone, including information from an NCOA form, is insufficient to grant a challenge under R.C. 3503.24.² For the challenges to electors alleged to have voted in North Carolina, the Board was presented with official government records, considered to be the original source of the information. However, the remaining evidence related to individuals in the

¹ R.C. Section 3503.02(H).

² See Election Official Manual, Chapter 4, Section 4.15.

other five states relied not on government records but rather secondary sources, specifically screen shots of third-party websites containing the following disclaimers:

- No claim is made as to the accuracy of the data or other information presented. All data is provided "as is" and should not be relied upon for any legal or official use.
- Analysis presented by this website is based on the ... voter filer which is a public record. The analysis provided can be used as guidance for further analysis/investigation. We encourage your independent thought over and above the analysis provided.

As these disclaimers suggest, such websites may serve as a useful starting point for further investigation, but their content is discouraged for legal use and, therefore, cannot be used to demonstrably prove a challenged elector's voting record. The legal precedent is that a person challenging an elector's qualification must provide "clear and convincing evidence,"³ and I am duty-bound to uphold that standard. I must also note here that, while the evidence is presently insufficient, some challengers failed to even attend the Board's hearing to defend it. To be clear, as demonstrated in the challenges related to North Carolina, the challengers in this matter need only to take the additional step of acquiring the relevant state's official voter information to provide the Board with additional evidence on which to proceed.

Decision

In conclusion, I strongly urge boards of elections to further investigate challenged electors when possible and with any assistance you might need from my office. Challengers should attempt to identify whether official records can demonstrably prove the electors in question have lost residency under R.C. 3503.02(H). My office is also working to establish reliable, state-to-state data sharing agreements that would facilitate the secure exchange of voter records to better aid in these election integrity investigations.

I commend the individuals working to uphold the accuracy of Ohio's voter rolls, and I appreciate the Board's willingness to give these challenges consideration. However, the evidence presented here falls short of the "clear and convincing" burden of proof. I am

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

duty-bound to enforce state and federal law and, therefore, break the tie vote against sustaining the challenges before the Board at this time based on a lack of "clear and convincing evidence."

Yours in service,



Frank LaRose

Ohio Secretary of State

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