REPORT OF FINDINGS AND RECOMMENDATIONS OF THE HOUSE SELECT COMMITTEE ON THE ELECTION CONTEST IN THE 98TH HOUSE DISTRICT (LANDIS-O’FARRELL)

Committee Members:

Rep. Matthew Huffman, Chairman
Rep. Peter Stautberg, Vice Chairman
Rep. Michael Dovilla
Rep. Dorothy Pelanda
Rep. Gerald Stebelton

Rep. Kathleen Clyde, Ranking Minority Member
Rep. Michael Curtin
Rep. Chris Redfern
Rep. Fred Strahorn
SUMMARY

The Select Committee, appointed by authority of the House Speaker, has made a full and complete review of the record of proceedings submitted by the Ohio Supreme Court in Case No. 2012-2151, a Contest of Election proceeding regarding the November 2012 general election for the 98th House District. Additionally, the committee heard arguments from counsel for all parties. After due consideration, the committee recommends that the Ohio House of Representatives find that the 2012 general election for the office of State Representative for the 98th Ohio House District was conducted in compliance with the Ohio Constitution, Ohio statutes, Ohio Secretary of State directives, and all other applicable law; that the seating of Al Landis, the Representative-Elect from the 98th District holding the certificate of election, is valid and shall continue; and that he shall exercise the rights and privileges of a member in accordance with the results of the 2012 general election in the 98th Ohio House District.

BACKGROUND

Joshua E. O’Farrell, contestor (hereinafter “O’Farrell”) and Rep. Al Landis (contestee, hereinafter “Landis”) were the candidates for the office of state representative for the 98th House District for the State of Ohio, held in the November 6, 2012 general election.

On November 26, 2012, Respondent Tuscarawas County Board of Elections declared that Landis had defeated O’Farrell by a margin of 14 votes. Because the difference between the number of votes cast for Landis and O’Farrell was less than one-half of one percent of the total vote, an automatic recount was conducted by Respondents Tuscarawas and Holmes County Boards of Elections. Following the automatic recount, on December 13, 2012, the Tuscarawas County Board of Elections declared that Landis had defeated O’Farrell by a vote of 23,393 to 23,385, a difference of 8 votes.

On December 26, 2012, a petition for contest of election pursuant to R.C. 3515.08(B) was filed by O’Farrell against Landis in the Ohio Supreme Court.

Pursuant to Ohio Revised Code §3515.14, the Clerk’s Office of the Supreme Court of Ohio delivered to the Clerk of the House the record of the proceedings before the Supreme Court in Case No. 2012-2151, a Contest of Election proceeding regarding the November 2012 general election for the 98th House District.

Article II, § 6 of the Ohio Constitution reserves to the House the right to judge the election, returns, and qualifications of its own members. Pursuant to House Rules 13, 29, and 30, the Speaker appointed Representatives Matt Huffman (Chair), Peter Stautberg (Vice Chair), Michael Dovilla, Dorothy Pelanda, Gerald Stebelton, Kathleen Clyde (Ranking Member), Michael Curtin, Chris Redfern, and Fred Strahorn to examine the record provided by the Ohio Supreme Court and to report their recommendations back to the entire House for their consideration.

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SUMMARY OF MEETINGS & PROCEDURE

The Committee held an organizational meeting on Thursday, March 21, 2013 to distribute the election contest record, determine the schedule and agenda for the Select Committee, and adopt committee rules.

The rules established by the Committee permit legal counsel for O’Farrell, Landis, and respondent Boards of Elections to make presentations limited to one hour for O’Farrell and one hour total for Landis and respondents, allotted by agreement between counsel for those parties. Time was reserved under the rules for rebuttal by counsel for O’Farrell and questions from Select Committee members. The rules direct that the Select Committee consider only testimony and evidence that had been properly submitted to the Ohio Supreme Court and transferred to the House of Representatives, as provided in R.C. § 3515.14 and 3515.16. A court reporter transcribed all proceedings of the Select Committee, which transcription serves as the committee minutes.

The rules provide that at the conclusion of the Select Committee process, a report would be voted upon and issued to the House of Representatives that would (1) contain the Select Committee’s recommendations on resolving the election contest, (2) be memorialized in a resolution to be voted upon by the full House, and (3) lie over ten days after being voted upon by the Select Committee before being taken up by the House of Representatives.

On Tuesday, April 23, 2013 the Committee met to hear presentations from Don McTigue on behalf of O’Farrell; Andy Douglas on behalf of respondent Tuscarawas County Board of Elections; and W. Stuart Dornette on behalf of Landis.

The Chair requested that all recommendations from Committee members be submitted to the Chair’s office by noon on Monday, May 6, 2013. The Committee scheduled a meeting for Tuesday, May 7, 2013 to vote on recommendations to the Ohio House of Representatives to resolve the election contest.

RECOMMENDATIONS OF THE COMMITTEE

1. The Committee finds that O’Farrell has failed to offer clear and convincing evidence that fraud or election irregularities that would change the outcome of the election occurred in the counting of ballots cast in the 98th House District race.

2. The Committee recommends that the Ohio House of Representatives find that the 2012 general election for the office of State Representative for the 98th Ohio House District was conducted in compliance with the Ohio Constitution, Ohio statutes, Ohio Secretary of State directives, and all other applicable law; that the seating of Al Landis, the Representative-Elect from the 98th District holding the certificate of election, is valid and shall continue; and that he shall exercise the rights and privileges of a member in accordance with the results of the 2012 general election in the 98th Ohio House District.

3. The Ohio House of Representatives should act affirmatively on the Resolution recommended by the Select Committee.
RESOLUTION

Relative to the contest of election in the 98th House District

WHEREAS, a Select Committee consisting of Representatives Huffman (Chair), Stautberg (Vice Chair), Dovilla, Pelanda, Stebelton, Clyde (Ranking Member), Curtin, Redfern, and Strahorn has been appointed by the Speaker of the House to inquire into and make a full and complete review of the record of proceedings before the Ohio Supreme Court in Case No. 2012-2151, a Contest of Election proceeding regarding the November 2012 general election for the 98th House District, involving Joshua E. O’Farrell, Contestor vs. Al Landis, Contestee, and to make such findings and recommendations as the facts warrant, and

WHEREAS, said Select Committee has now made a full and complete review of the record, and has found that the 2012 general election in the 98th Ohio House District which comprises Tuscarawas County and parts of Holmes County was conducted in compliance with the Ohio Constitution, Ohio statutes, Ohio Secretary of State directives, and all other applicable law, and

WHEREAS, the Select Committee, upon considering all of the evidence taken before Chief Justice Maureen O’Connor of the Supreme Court of Ohio, finds that that the people of the 98th Ohio House District, which comprises Tuscarawas County and parts of Holmes County, have been provided the opportunity of a fair election, and

WHEREAS, the Select Committee further finds that that the seating of Al Landis, the Representative-Elect from the 98th District holding the certificate of election, is valid by reason of the constitutional conduct of said election in Tuscarawas and Holmes Counties, and

WHEREAS, Article II, Section 6 of the Constitution of Ohio requires that the House assume and exercise the responsibility of judging the election, returns, and qualifications of its own members, in particular, the member from the 98th Ohio House District, and

RESOLVED, by the House, that it is hereby declared that the 2012 general election for the office of State Representative for the 98th Ohio House District has been lawfully and constitutionally conducted; and be it further

RESOLVED, by the House, that the seating of Al Landis, the Representative-elect from the 98th District holding the certificate of election is valid and shall continue, and he shall continue to exercise the rights and privileges of a member in accordance with the results of the 2012 general election in the 98th Ohio House District.