

IN THE SUPREME COURT OF OHIO

STATE *ex rel.* SKAGGS, *et al.*

Case No. 08-2206

Relators,

v.

Original Action in Mandamus

JENNIFER L. BRUNNER
SECRETARY OF STATE OF OHIO,
et al.,

Respondents.

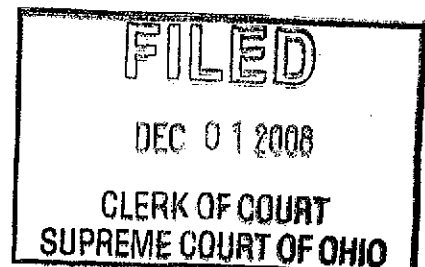
MERIT BRIEF OF RESPONDENT FRANKLIN COUNTY
BOARD OF ELECTIONS

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This matter is an original action in mandamus filed by the Relators against the Respondents, Franklin County Board of Elections (FCBOE) and the Ohio Secretary of State Jennifer Brunner. The Secretary attempted to remove this matter to the Federal Courts. On November 25, 2008, the United States Court of Appeals for the Sixth Circuit remanded this case back to the Court. See, *State ex rel Skaggs, et al v. Brunner, et al* (6th Cir., November 25, 2006), Case No. 2008-4585.

On November 14, 2008, the FCBOE met in special session to vote on issues related to provisional ballots. William Anthony, one of the Board members, made a motion to accept those provisional ballots that failed to contain the signature of the voter. (See Transcript of Nov. 14, 2008 Special Meeting of the FCBOE, pp. 16-17, Exhibit 1 of FCBOE Evidence.) Despite the contrary advice of the FCBOE's counsel (Ex. 1, pp. 17-19) and the vote of two of the four members that the signature was mandatory pursuant to R.C. §3505.183(B)(1)(a), the motion resulted in a tie vote along partisan lines. (Ex. 1, p. 21.) Secretary Brunner casts the tie-breaking vote pursuant to R.C. §3501.11(X).

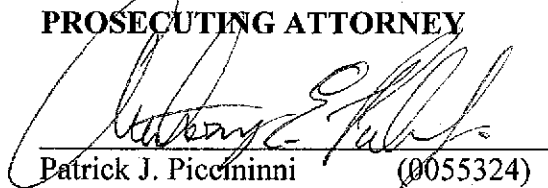
On Tuesday, November 18, 2008, the matter was referred to the Secretary to break the tie. (See Letter from Director Stinziano and Deputy Director Damschroder to Secretary Brunner, Exhibit 2 of FCBOE Evidence.) (See also, Letter from Douglas J. Preisse and Michael F. Colley, Exhibit 3, and Letter from William A. Anthony, Jr. and Kimberly E. Marinello, Exhibit 4 of FCBOE Evidence.) The written decision of the Secretary breaking the tie was rendered on November 20, 2008, after the United States District Court granted the Secretary's motion for summary judgment. (See Letter from Secretary Brunner to Director Stinziano, Exhibit 5 of FCBOE Evidence.) Thus, by virtue

of the Secretary's position in the tie-breaking vote, the FCBOE's position is that the disputed provisional ballots will be deemed valid, opened and counted.

As the Secretary has broken the tie, the FCBOE position has been set forth and it defers to her arguments in defense of this original action.

Respectfully submitted,

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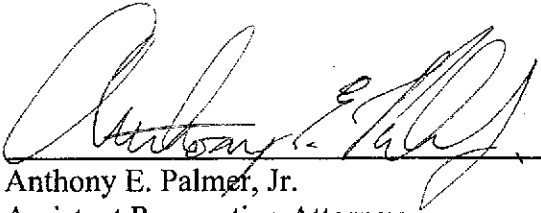
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served this 1st day of December 2008 via ordinary U.S. Mail and email upon:

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