OHIO HOUSE OF REPRESENTATIVES
SELECT COMMITTEE ON THE ELECTION CONTEST
IN THE 98TH HOUSE DISTRICT

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PROCEEDINGS

of the Select Committee, at the Ohio Statehouse, 1 Capitol Square, Columbus, Ohio, on Tuesday, May 7, 2013 at 10:13 a.m.

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COMMITTEE:

Representative Huffman, Chair
Representative Stautberg, Vice Chair
Representative Clyde, Ranking Minority Member
Representative Curtin
Representative Dovilla
Representative Pelanda
Representative Redfern
Representative Stebelton
Representative Strahorn

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Tuesday Morning Session,

May 7, 2013.

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CHAIRMAN HUFFMAN: I will call the Select Committee to order. I apologize for being late. I was down the hall attending to other matters.

At this time, please take the roll.

MS. MEDEN: Chairman Huffman.

CHAIRMAN HUFFMAN: Here.

MS. MEDEN: Vice Chairman Stautberg.

REPRESENTATIVE STAUTBERG: Here.

MS. MEDEN: Ranking Member Clyde.

REPRESENTATIVE CLYDE: Here.

MS. MEDEN: Representative Curtin.

REPRESENTATIVE CURTIN: Here.

MS. MEDEN: Representative Dovilla.

REPRESENTATIVE DOVILLA: Present.

MS. MEDEN: Representative Pelanda.

REPRESENTATIVE PELANDA: Here.

MS. MEDEN: Representative Redfern.

REPRESENTATIVE REDFERN: Here.

MS. MEDEN: Representative Stebelton.

REPRESENTATIVE STEBELTON: Here.

MS. MEDEN: Representative Strahorn.

REPRESENTATIVE STRAHORN: Here.
CHAIRMAN HUFFMAN: The next item on the agenda is to approve the minutes for the previous meeting. I believe those are available in this document for all the members of the committee.

Do I have a motion to approve?

REPRESENTATIVE STAUBERG: So moved.

CHAIRMAN HUFFMAN: Vice Chair.

REPRESENTATIVE STEBELTON: Second.

CHAIRMAN HUFFMAN: Representative Stebelton.

Any objection to the minutes?

The transcript has been approved.

(Motion passes.)

CHAIRMAN HUFFMAN: The agenda for today is to vote on recommendations to the full House of Representatives for resolution of the election of the contest in the 98th House District.

I believe in all the members' folders there is a set of recommendations that I prepared for the committee to consider, and those are titled "Report of Findings and Recommendations of the House Select Committee on the Election Contest in the 98th House District," and I hope all the committee members have had a chance to review that in the last several minutes as we have gone through.
The recommendations were prepared based, of course, on the record that was forwarded to us by the Supreme Court, on the arguments of counsel, and the --

REPRESENTATIVE CLYDE: Mr. Chair.

CHAIRMAN HUFFMAN: If I can finish without being interrupted, I would appreciate that. -- and also based on the laws of the state of Ohio, the statutory law, case law, and, of course, the recommendations or the directives of the Secretary of State.

So the committee members, if you need any additional time to review that, we can take a few minutes to do that, and at this time I will entertain a motion for the recommendations to be approved and forwarded to the full House of Representatives.

REPRESENTATIVE STAUTBERG: So moved.

REPRESENTATIVE STEBELTON: Seconded.

CHAIRMAN HUFFMAN: Moved by Representative Stautberg; seconded by Representative Stebelton.

Representative Clyde.

REPRESENTATIVE CLYDE: Mr. Chair, before we got started, I had sent to your office a letter requesting that we record the committee hearings, and
it didn't receive a response. So before we got started, I wanted to ask you whether we could record the hearings. My request was submitted under the rules.

CHAIRMAN HUFFMAN: Representative Clyde, consistent with the other hearings that we've had, that's not going to happen. So thank you for your question.

REPRESENTATIVE STEBELTON: We have a record, though.

CHAIRMAN HUFFMAN: We have a record, obviously, going. That's a good point, Representative Stebelton.

I understand you want to have the staff videotape or something like that, but, again, consistent with our other hearing, we are not going to do that.

Discussion on the motion.

Representative Redfern.

REPRESENTATIVE REDFERN: Mr. Chairman, thank you. Certainly we'll have a vote and associate ourselves with the remarks or not and offer a minority response or report in lieu of this, and, of course, we will be defeated; but I wanted to just point out my objections for the record with
the belief by some that those votes were counted in
this particular House district, and the committee's
recommendation that the race itself and the election
was conducted in compliance with the Ohio
Constitution, Ohio statutes, Ohio Secretary of State
directives, and other applicable law is incorrect,
and that's what we are asserting and have asserted
throughout the course of this discussion. I just
wanted that on the record.

Thank you, Mr. Chairman.

CHAIRMAN HUFFMAN: Thank you,

Representative Redfern.

Further discussion on the motion to adopt
the report.

Representative Clyde.

REPRESENTATIVE CLYDE: So are we
voting -- is this a motion to adopt the entire report
and the resolution as well?

CHAIRMAN HUFFMAN: The report will
ultimately be memorialized in the resolution. The
portion we are voting on is Representative
Stautberg's motion. The resolution itself is the
document that the full House will have to pass
ultimately.

REPRESENTATIVE CLYDE: A follow up
CHAIRMAN HUFFMAN: Sure.

REPRESENTATIVE CLYDE: So it's my understanding that a resolution has to be introduced to the House under Rule 37, and it would be formally introduced and a public hearing scheduled for that resolution.

Can you just explain how this follows that House rule, or is this different, and if so, how is it different?

CHAIRMAN HUFFMAN: Well, I guess I'm not clear that your understanding is, in fact, what has to happen. And I defer to counsel for either party to review the process. But as I understand it, in this particular procedure our job as a panel is examine the record, hear the arguments of counsel, understand the law, and then make a report. And the resolution itself is something that the full House will decide. I don't know that we have to have a public hearing or that the hearing we are going to have in the House is a public hearing.

MR. LENZO: We will follow the normal resolution process.

CHAIRMAN HUFFMAN: Representative Clyde.
REPRESENTATIVE REDFERN: Could you identify counsel for the record?

CHAIRMAN HUFFMAN: Mike Lenzo.

REPRESENTATIVE REDFERN: Thank you.

CHAIRMAN HUFFMAN: Representative Clyde.

REPRESENTATIVE CLYDE: My understanding is different in that a normal resolution has to be introduced and scheduled for a public hearing under House Rule 37. I don't think -- it will be introduced, and a public hearing will be scheduled after its formally introduced? Or is this the public hearing, and it hasn't been formally introduced yet, as required by Rule 37?

CHAIRMAN HUFFMAN: If I can be corrected, again, by counsel here, this is not a public hearing on the resolution because the resolution hasn't been introduced yet.

Representative Strahorn.

REPRESENTATIE STRAHHORN: Thank you, Mr. Chair. Like one of my previous colleagues, I just want to be on record and convey my concerns about the report, my disagreement with the report, and with all due respect to Representative Landis, and even to the challenger, Josh O'Farrell, I am less concerned about those two individuals as I am about
the process.

I think I have a fairly good reputation about that. When I look through some of these things, I think what is at stake here is just to make sure that the voters in the 98th District have been represented well and votes have been counted and not cast out, and I'm particularly sensitive to that,

And when I read what some of the guidance on this is in terms of the challenger is entitled to rid a result of the election of all ignorance and like mistakes, crime, and fraud, and when I look at some of these inconsistencies, and there are, I think, in my opinion, hard to deny some inconsistencies about this, I just think some of these ballots, if not all of these ballots, a good number of these ballots, really do deserve an opportunity to be counted.

And I don't know what the outcome of that would be. I'm just a little disturbed by those voters not having an opportunity to have their votes counted. I, again, like my previous colleague, I just want to be on record in disagreeing with this report.

And I do thank you for allowing me the opportunity to state that for the record. Thank you,
Mr. Chair.

CHAIRMAN HUFFMAN: Any representative, further discussion?

REPRESENTATIVE REDFERN: Yes.

CHAIRMAN HUFFMAN: Representative Redfern.

REPRESENTATIVE REDFERN: I move to amend.

CHAIRMAN HUFFMAN: What is the amendment?

REPRESENTATIVE REDFERN: I believe it's in each of the packets, the minority report. I'd like to strike your motion as the majority report and accept the minority report as the report that is to be moved.

CHAIRMAN HUFFMAN: To be clear, your motion is to amend?

REPRESENTATIVE REDFERN: Yes. I move to amend your motion that the committee accept the majority report, the report of the Chair, with this particular report of the minority.

CHAIRMAN HUFFMAN: We need a second.

REPRESENTATIVE CLYDE: Second.

CHAIRMAN HUFFMAN: Motion and second to --

REPRESENTATIVE STAUTBERG: Object.

CHAIRMAN HUFFMAN: And there's an
objection -- is to remove the report and recommendation, this document that has the seal on it, and to insert, as I understand it, Representative Redfern, this document.

REPRESENTATIVE REDFERN: Yes, you understand correctly.

CHAIRMAN HUFFMAN: Under discussion, a couple of things. I did have a chance to review this document. One of the first concerns I have, there are a variety of statements and conclusions based on things that are not part of the evidentiary record forwarded to us by the Supreme Court.

And I know we have kind of gone through this process I think in each of our hearings, but, just again, when there's an election contest in the state of Ohio, there's a set of statutes that describe how that happens. Election contests that happen within a county are determined in that common pleas court. Election contests that involve more than one county or election contests that involve statewide officials for the Court of Appeals, which, in some cases, are more than one county and some cases are not, those go to the Ohio Supreme Court, and, actually, specifically to the Chief Justice, and that is done by way of a record.
In other words, the Chief Justice does not sit down and have a hearing where each of the witnesses are called. It's done by deposition transcript and then presented to the Chief Justice, and the Chief Justice makes that decision based on that record.

In this case, however, because it involves a member of the General Assembly, the statutes dictate that record be forwarded to either the House or the Senate, obviously, the House in this case, for the House to review that record, and then based on that record, and in this case, based on the arguments of counsel, the House then makes a decision.

Now, both parties, as I understand it, have presented multiple depositions. You can review the record and see that. A variety of witnesses were called, testimony was presented, and that record, three volumes of it, was presented to the committee for us to review.

This report involves a whole set of, again, statements, conclusions, arguments, however one wants to describe them, which are outside of the record and, therefore, cannot be considered by the committee. It's much like if a case were before a
judge or a case is before a jury, and if the jury
decided, as sometimes happens in cases, that one of
jurors says, "Well, I'm going to go out and look at
the accident scene for myself," well, the judge will
instruct the jury not to do that because that's not
part of the evidence before them, only the things
that are presented in court.

And so to the extent this document
presents those items, the report is, in my mind, in
violation of the evidentiary rules and in violation
of the statutes. There's a variety of other
conclusionary statements and items that are in the
report.

So I would be opposed to this document,
first of all, be opposed to really two parts, taking
out the recommendations that are submitted that are
part of the motion; and then, I guess, countered upon
them, since Representative Redfern chose to do that,
inserting a "Count the Votes" document -- I guess I
won't strike it for the moment -- as the actual
recommendation.

Further discussion, Representative
Stebelton.

REPRESENTATIVE STEBELTON: Thank you,
Mr. Chairman. I would object to this as well because
what this is titled, "Count the Votes, Recommendations of the Minority Party Members of the Select Committee on the Election Contest to the 98th House District to Members of the Ohio House of Representatives" with the date of May 6, 2013, this merely is a rehash of arguments of counsel for the contestant, Mr. O'Farrell. It is not an appropriate document for findings of fact, conclusions of law, and findings based upon the evidence. This is merely an argumentative document, so I object to it.

CHAIRMAN HUFFMAN: Further discussion.

REPRESENTATIVE CLYDE: Yes.

CHAIRMAN HUFFMAN: Representative Clyde.

REPRESENTATIVE CLYDE: Thank you Mr. Chair. You know, I resent allegations that in some way something we submitted to the committee is inappropriate. The materials were pulled from the records. I'll be happy to go over individually what those items are that were not part of the record, but they were. So that's not true about the report that we worked hard on and submitted to this committee.

Also the legal standard that you are discussing I think is very much under debate. I do not agree with what you asserting is the legal standard. The House owes no deference to the prior
decisions of the Boards of Elections and the Secretary of State not to correct the glaring errors and mistakes that kept 52 ballots and possibly 70 additional ballots from being counted in this race.

The guidance in case law before us makes clear that this body is charged with bringing the November 2012 election irregularities due to mistake, neglect, fraud, and any violations of law and procedure committed by poll workers, board officials, Secretary of State officials, or any other person.

We have clear evidence provided from the record that there was mistake, neglect, fraud in this election. We laid that out plain and simple in this report, and that is the reason for this amendment today.

CHAIRMAN HUFFMAN: Thank you, Representative Clyde.

To be clear, perhaps you misheard or it's possible I misspoke, but I don't think I mentioned anything about deference to the decision of the Boards of Elections. I don't think you are correct in a suggestion about that. The Boards of Elections did, on a bipartisan basis, I should add four to zero, approve the results of this election.

Again, in an election contest before a
common pleas court judge, that judge can change that, and much like we can decide the Board of Elections acted, for whatever reason. Again, I think that should be based on the record before us, and the arguments of counsel, things that we already said. But I did want to clear up that one specific point.

Representative Redfern.

REPRESENTATIVE REDFERN: Thank you, Mr. Chairman. I appreciate that, your comments. I would note, however, history in this case is filled with examples, as you know, of local Boards of Elections certifying results, and those results being questioned in certain courts and being overturned in the course of the appellate process as laid out in the law.

One of the differences that we're dealing with, and that you noted in our first meeting, when you make the decision, with the support of the majority of the committee, not to gather further evidence, not to allow counsel from either side through the Chair or through the ranking member to subpoena witnesses, to gather further evidence -- I'm not a party to either side. I'm not a party to either side, and I am not bound as a member of this Select Committee to abide by any thoughts other than
laid out by the law.

And as a coequal branch of government, with all due respect to the Chief Justice, her sealing of the record has no role in my decision-making, zero. And this body at any time could collect further evidence, could subpoena witnesses before this body, could cross and could ask intent and examine the record, but for reasons which were clearly laid out won't happen in this case.

Thank you, Mr. Chairman.

CHAIRMAN HUFFMAN: Thank you, Representative.

Further discussion on the motion to amend?

Please call the roll.

MS. MEDEN: Chairman Huffman.

CHAIRMAN HUFFMAN: No.

MS. MEDEN: Vice Chairman Stautberg.

REPRESENTATIVE STAUTBERG: No.

MS. MEDEN: Ranking Member Clyde.

REPRESENTATIVE CLYDE: Yes.

MS. MEDEN: Representative Curtin.

REPRESENTATIVE CURTIN: No.

MS. MEDEN: Representative Dovilla.

REPRESENTATIVE DOVILLA: No.
MS. MEDEN: Representative Pelanda.

REPRESENTATIVE PELANDA: No.

MS. MEDEN: Representative Redfern.

REPRESENTATIVE REDFERN: Yes.

MS. MEDEN: Representative Stebelton.

REPRESENTATIVE STEBELTON: No.

MS. MEDEN: Representative Strahorn.

REPRESENTATIVE STRAHORN: Yes.

(Motion fails, 5-4.)

CHAIRMAN HUFFMAN: The motion to amend does not pass.

Now we are still on discussion on the motion to adopt the recommendations as submitted.

Further discussion upon that motion.

Representative Clyde.

REPRESENTATIVE CLYDE: Thank you, Mr. Chair. I further propose amendments to the report. I can read those aloud to the committee.

CHAIRMAN HUFFMAN: Are they written down anywhere?

REPRESENTATIVE CLYDE: Yes, they are written down. Would you like them?

CHAIRMAN HUFFMAN: Yes. That would be helpful.

REPRESENTATIVE CLYDE: Can we have a few
minutes to make some copies?

CHAIRMAN HUFFMAN: Sure. I mean, you have written amendments to this report?

REPRESENTATIVE CLYDE: Right.

CHAIRMAN HUFFMAN: And how many -- are they typed up and ready to go?

REPRESENTATIVE CLYDE: Well, this is a bit of an on-the-fly process where we just received this so we went through and made some written changes to this.

CHAIRMAN HUFFMAN: How many copies do you have?

REPRESENTATIVE CLYDE: One, we have one copy here of it.

CHAIRMAN HUFFMAN: How many amendments do you have for this report, just one?

REPRESENTATIVE CLYDE: Well, they can be all done in one document, so, yes, one.

CHAIRMAN HUFFMAN: Okay. I'll tell you what. Why don't you do this. If you want to go ahead and read the amendment, and then we can probably have discussion while the written document is being prepared. So that might be helpful.

REPRESENTATIVE CLYDE: Okay.

CHAIRMAN HUFFMAN: So go ahead and read
your proposed amendment, and then if committee
members also need some additional in writing, that
probably would be helpful. Go ahead, Representative
Clyde.

REPRESENTATIVE CLYDE: Thank you. On
page 2 of the report under question, we would request
an amendment to say in line 7 that the 98th House
District -- I'm sorry -- that the "general election
for the office of State Representative for the 98th
Ohio House District was not 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 invalid" -- strike
"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," and add, "and that the
uncounted ballot votes in the 98th House District
race be counted and the prevailing candidate be
issued a certificate of election."

Moving on to page 3 --

CHAIRMAN HUFFMAN: Representative Clyde,
these are written? I'm sorry to interrupt you. If
your counsel has them, could she hand them so the clerk can run across the hall and get copies.

REPRESENTATIVE CLYDE: We are having copies made.

CHAIRMAN HUFFMAN: Sorry. Go ahead.

REPRESENTATIVE CLYDE: That's okay.

Under No. 1 of the recommendations of the committee it will read, "The Committee finds that O'Farrell has offered clear and convincing evidence that fraud or election irregularities that would change the outcome of the election occurred."

No. 2 would read, "The Committee recommends that the Ohio House of Representatives find that the 2012 general election for the office of State Representative for the 98th House District was not conducted in compliance with the Ohio Constitution, Ohio statutes, Ohio Secretary of State directives, and all other applicable law; and that the seating of Al Landis, the Representative-elect for the 98th District holding a certificate of election, is invalid," and strike the rest.

Moving on to page 4, the second whereas, "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 not conducted in compliance with the Ohio Constitution, Ohio statutes, Ohio Secretary of State directives, and all other applicable law, and.

"WHEREAS" -- this is the third whereas -- "the Select Committee upon considering all of the evidence taken before Chief Justice Maureen O'Connor and the Supreme Court of Ohio finds that the people of the 98th Ohio House District, which comprises Tuscarawas County and parts of Holmes County, have not been provided the opportunity of a fair election."

Under the fourth whereas, "WHEREAS, the Select Committee further finds that the seating of Al Landis, the Representative-elect from the 98th District holding a certificate of election, is invalid by reason of the unconstitutional and unlawful conduct of said election in Tuscarawas and Holmes Counties."

Skip to the "Resolved" on page 4.

"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 unlawfully and unconstitutionally conducted;
and be it further

"RESOLVED, by the House, that the seating of Al Landis, the Representative-elect in the 98th District holding the certificate of election, is invalid," strike from "and shall continue, and he shall" strike all the way to "House District," and add, "and that the uncounted ballot votes in the 98th House District race be counted and the prevailing candidate be issued a certificate of election."

We will have those, I think, momentarily in written form.

CHAIRMAN HUFFMAN: Okay. Is there a second to the motion?

REPRESENTATIVE STRAHRON: Second.

CHAIRMAN HUFFMAN: Second, Representative Strahorn.

Representative Stautberg, I don't think that this is so complicated that we need to have the written document before us.

Is there any discussion on the motion?

REPRESENTATIVE REDFERN: I move to call the question.

CHAIRMAN HUFFMAN: The motion and second as stated by Representative Clyde, and are you comfortable with going forward with the vote, even
though the written document hasn't been presented?

REPRESENTATIVE CLYDE: Yes.

CHAIRMAN HUFFMAN: All right. Go ahead and take the roll.

MS. MEDEN: Chairman Huffman.

CHAIRMAN HUFFMAN: No.

MS. MEDEN: Vice Chairman Stautberg.

REPRESENTATIVE STAUTBERG: No.

MS. MEDEN: Ranking Member Clyde.

REPRESENTATIVE CLYDE: Yes.

MS. MEDEN: Representative Curtin.

REPRESENTATIVE CURTIN: No.

MS. MEDEN: Representative Dovilla.

REPRESENTATIVE DOVILLA: No.

MS. MEDEN: Representative Pelanda.

REPRESENTATIVE PELANDA: No.

MS. MEDEN: Representative Redfern.

REPRESENTATIVE REDFERN: Yes.

MS. MEDEN: Representative Stebelton.

REPRESENTATIVE STEBELTON: No.

MS. MEDEN: Representative Strahorn.

REPRESENTATIVE STRAHORN: Yes.

(Motion fails, 5-4.)

CHAIRMAN HUFFMAN: All right, the motion does not pass.
Again, we are on the motion to adopt the Report of Findings and Recommendations that I have submitted to the committee. Is there further discussion on the motion to adopt the Report of Findings and Recommendations?

Please call the roll.

MS. MEDEN: Chairman Huffman.

CHAIRMAN HUFFMAN: Yes.

MS. MEDEN: Vice Chairman Stautberg.

REPRESENTATIVE STAUTBERG: Yes.

MS. MEDEN: Ranking Member Clyde.

REPRESENTATIVE CLYDE: No.

MS. MEDEN: Representative Curtin.

REPRESENTATIVE CURTIN: No.

MS. MEDEN: Representative Dovilla.

REPRESENTATIVE DOVILLA: Yes.

MS. MEDEN: Representative Pelanda.

REPRESENTATIVE PELANDA: Yes.

MS. MEDEN: Representative Redfern.

REPRESENTATIVE REDFERN: No.

MS. MEDEN: Representative Stebelton.

REPRESENTATIVE STEBELTON: Yes.

MS. MEDEN: Representative Strahorn.

REPRESENTATIVE STRAHORN: No.

(Motion passes, 5-4.)
CHAIRMAN HUFFMAN: All right. Members of the committee, I want to thank everyone for their attention and patience in this proceeding. Members of the public may or may not know, we don't get paid extra for this, and we, of course, do it because it's a service to the people of the state, and I know this has been a lot of extra work for all of us.

I again want to thank counsel who presented arguments in the case. It was very helpful for all of us.

I also want to thank staff, both legal counsel for both sides, who did, I think, an admirable job. And I also want to thank Averel for keeping us on track.

I want to make sure that the document is signed here. And if there is nothing else to come before the committee, we are adjourned.

(The hearing adjourned at 10:41 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, May 7, 2013, and carefully compared with my original stenographic notes.

Rosemary Foster Anderson,
Professional Reporter and Notary Public in and for the State of Ohio.

My commission expires April 5, 2014.

(RFA-72314)

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