Contest of the November 6, 2012
98th House District Election

Count the Votes

Recommendations of the minority party members of the Select Committee on the 98th House District Election Contest to the members of the Ohio House of Representatives

May 6, 2013
Executive Summary

Our duty as members of the Ohio House of Representatives is to count any valid vote that has not yet been counted in the 98th House District race. The election for State Representative of the 98th House District is not over. Eight votes separate the candidates now that 46,778 votes have been counted. But, in Tuscarawas County, 50 valid votes have not yet been counted, 11 other votes may not have been counted by the machines, and 59 additional ballots may not have been counted because of unlawful purging or the mishandling of their voter registration by the Ohio BMV and Secretary of State’s offices. In Holmes County, 2 ballots remain uncounted.

- 52 ballots definitely not counted
- 11 votes that may not have been counted
- 59 ballots cast by voters whose registrations may have been mishandled

It is the duty of this body, and only this body, to fix the problems with the November 2012 HD 98 election and make sure the voters’ voices are heard. The success of our democracy depends on the voters’ trust in the results of our elections. Our duty to count ballots that have thus far not been counted is a serious one.

The following ballots must be counted:

- 18 provisional ballots cast in the wrong polling place due to poll worker error
- 4 absentee ballots with birthdate errors while birthdate is not required
- 6 absentee ballots with address errors while address is not required
- 1 absentee ballot cast by a woman who used her married name
- 1 absentee ballot dropped off at her polling place
- 1 absentee ballot where the Board misread the ID number
- 2 provisional ballots with one signature instead of two
- 8 absentee ballots missing one of their two envelopes
- 8 absentee ballots with “Stub A” missing or detached or partially detached
- 1 provisional ballot the machine failed to read and count

The following ballots must be investigated further:

- 11 ballots that the machine may not have read and counted
  - The Committee or House should send 2 or 4 members to Tuscarawas County to hand count the provisional and absentee ballots in these precincts, ensuring that these valid votes are part of the count this time.
- 28 potential ballots cast by voters who were purged
The Committee or House should require the production of records from the Secretary of State’s office and the Bureau of Motor Vehicles to determine whether these voters were unlawfully purged.

- 31 potential ballots cast by voters that allegedly never registered
  - The Committee or House should require the production of records from the Secretary of State’s office and the Bureau of Motor Vehicles to determine if these voters actually did register to vote but the registrations were mishandled.
- 2 ballots in Holmes County possibly not counted for similar reasons to above
  - The Committee or House should require the production of records from Holmes County to determine the circumstances of 2 ballots that were not counted because of a missing printed name and being cast in the wrong polling location.

CONTEST GUIDANCE

It is the duty and responsibility of the House members only to decide this contest, and we cannot abdicate that duty nor transfer that responsibility to the courts, local election officials, the Secretary of State or any others. Our House rules make clear that we are the superior decisions makers over our courts in legislative contests, but we may look to court precedent for guidance on how to fix the problems in this election. Ohio case law says that in a legislative election contest, the challenger is entitled to rid the election of all ignorance, neglect, mistake, crime, or fraud in order to reveal the true result of the election. The House members may also examine the ballots and make decisions about counting them without regard to prior decisions by election officials about those ballots. Violations of a constitution, statute, or rule are election irregularities that we must cure to reach the true election result.

In addition we are governed by several general principles of election law in this state. We must construe election laws so as to avert the disenfranchisement of voters because of ignorance, neglect, or fraud by election officials. We must not apply unduly technical interpretations of the law that would deprive voters of their fundamental right to vote. And we must count ballots unless the voter’s intent is impossible to determine.

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. The House is also not bound by the actions of any other agency, such as the Bureau of Motor Vehicles, that might have disenfranchised voters. The guidance in case law makes clear that this body is charged with ridding the November 2012 election of 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.

THE VOTERS

In furtherance of our duty to rid the November 2012 election of irregularities due to mistake, neglect, fraud, and violations of law and procedure committed by any person, the House of Representatives must fix all of the violations of law and procedure that took place in the election. The House must count the votes of the following individuals who voted in the 98th House District race (voters are from Tuscarawas County except where noted):

- Wrong Polling Place
  18 voters whose ballots have not yet been counted because they were cast in the wrong polling place. IRREGULARITIES: Poll workers failed in their mandatory duty to direct the voter to the correct polling place. Six other voters' ballots cast in the wrong polling place were counted by the Board of Elections. Many other ballots cast in the wrong precinct were counted because poll worker error was presumed. The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.

  Apryl Babarcik, age 22, of New Philadelphia
  Natasha Benson, age 31, of Bolivar
  Erin Clute, age 36, of New Philadelphia
  Cheryl Harris, age 39, of New Philadelphia
  Kelly Lucas, age 34, of Dover
  Melissa Patterson, age 36, of Dennison
  Ginger Raber, age 40, of Sugarcreek
  Courtney Rees, age 30, of Dover
  Tina Snyder, age 48, of Dover
  Brandy Swanson, age 36, of Bolivar
  Carrie Thomas, age 39, of New Philadelphia
  Robert Buzzeo, age 41, of New Philadelphia
Michael Cottrell, age 23, of Uhrichsville
Dustin Freitag, age 25, of Strasburg
Dale Johnson, age 40, of Sugarcreek
Carl King, age 26, of Bolivar
Robert Morris, age 54, of Dover
Robert Patterson, age 40, of Dennison

- **Birth Year 2012**
  2 voters whose ballots have not yet been counted because the voters mistakenly indicated they were born in 2012 when writing their birthdate on their ballot envelope. **IRREGULARITIES:** Birthdate is not a required field under the law for counting ballots. The Board counted 6 other ballots with no birthdate at all. Other counties counted such ballots, including Cuyahoga, Hamilton, Marion, Allen, and Fairfield. The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.

  Katherine Carruthers, age 26, of Newcomerstown
  Chloa Herbert, age 27, of New Philadelphia

- **Birthdate Error**
  2 voters whose ballots have not yet been counted because the voters mistakenly provided a month or year that was one number off from their birthdate on their ballot envelope. **IRREGULARITIES:** Birthdate is not a required field under the law for counting ballots. The Board counted 6 other ballots with no birthdate at all. Other counties counted such ballots, including Cuyahoga, Hamilton, Marion, Allen, and Fairfield. The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.

  Judith Groff, age 73, of Newcomerstown
  William Tomer, age 68, of Bolivar

- **Address Error**
  5 voters whose ballots have not yet been counted because the voters made errors in completing their addresses on their ballot envelopes. **IRREGULARITIES:** Address is not a required field under the law for counting ballots. Ballots without any address would have been counted. Two of the women, when asked for “voting address,”
put the address of the church or school where their polling place is located, which is a clear error and not an attempt to change their home address to a school or a church. Two of the men, when asked for “voting address,” put the mailing address they had provided for sending their ballot to them. The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.

Eileen Blauch, age 81, of Sugarcreek

Brenda Hawkins, age 51, of New Philadelphia

Kathleen Durben, age 88, of Newcomerstown

William Pfister, age 76, of Sugarcreek

Robert Ehrhart, age 56, of Dover

- **BMV and Secretary of State Data Error**
  1 voter whose ballot has not yet been counted because he voted at his home address in Tuscarawas County. **IRREGULARITY:** The Ohio BMV and Secretary of State failed to update his registration to his school address in Portage County until one week before the election, even though he had tried to update his registration sometime before the October 9, 2012 voter registration deadline.

  Samuel Carnahan, age 21, of Sandyville

- **Married Name**
  1 voter whose ballot has not yet been counted because she used her married name when she signed her ballot envelope. **IRREGULARITY:** Karie Jo applied for her ballot with that same married name. The Board sent her a ballot even though her registered name was her maiden name. She cast her absentee ballot again providing her married name, but this time the Board said her name did not match her voter registration. The Board clearly erred.

  Karie Milburn, age 23, of Dover

- **Precinct Drop-off**
  1 voter whose ballot has not yet been counted because she returned her ballot to the precinct and poll workers accepted it. **IRREGULARITY:** This is not a reason to reject a ballot under the law. Poll workers failed to tell Leslie that they were instructed not to accept her ballot but instead to let her cast another one. The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.
Leslie Besozzi, age 32, of Uhrichsville

- **ID Mistake**
  1 voter whose ballot has not yet been counted because the Board claimed he provided the wrong ID number on his ballot envelope. **IRREGULARITY:** He actually provided the correct ID number. The Board made a mistake.

  Jacob McGaha, age 22, of Newcomerstown

- **Defective Form**
  2 voters whose ballots have not yet been counted because the voters signed the ballot envelope only once instead of twice. **IRREGULARITIES:** The form printed on the ballot envelope did not comply with the law prescribing the form to be used. The poll workers clearly erred in their mandatory duty to have the voter complete the form.

  David Amato, age 65, of Lawrence Township

  Tim Kramer, age 37, of Uhrichsville

- **Missing Envelope**
  8 voters whose ballots have not yet been counted because the voters did not return their inner ballot envelope. **IRREGULARITY:** They were not contacted and provided an equal opportunity to fix the error like their fellow HD 98 voters in Holmes County were. The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.

  Ashley Luthy, age 56, of Dover

  Carol Fichter, age 63, of Uhrichsville

  Lori Williams, age 56, of Dover

  Martha Buss, age 74, of New Philadelphia

  David Schwab, age 52, of Dover

  Ethan Weaver, age 19, of Bolivar

  William McGinnis, age 61, of New Philadelphia

  Benton Sours, age 91, of Midvale
- **Stub A**
  8 voters whose ballots have not yet been counted because the voters detached or partially detached Stub A from their ballot. **IRREGULARITIES:** They were not contacted and provided an equal opportunity to fix the error like their fellow HD 98 voters who made errors with their absentee ballots. Ohio law requires votes to be counted unless it is impossible to determine voter intent. The Civil Rights Act prohibits insignificant paperwork errors from depriving voters of their right to vote. The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.

  Amy Beitzel, age 45, of Dover
  Nancy Fenwick, age 63, of Newcomerstown
  Beth Baker, age 59, of Uhrichsville
  Larry Snedeker, age 73, of Uhrichsville
  George Reese, age 67, of Beach City
  Robert Baker, age 56, of Uhrichsville
  Joe Kienzle, age 43, of Mineral City (Stub was included in envelope.)
  Juanita McDermott, age 81, of Gnadenhutten (Stub was taped to ballot.)

- **Machine Failure**
  1 ballot that has not been counted yet because the ballot was scanned by the ballot-scanning machine without being kicked back but a hand recount of that precinct’s ballots revealed that the vote for candidate Josh O’Farrell was not read and counted. 11 other ballots marked for candidate O’Farrell with Xs and checkmarks may not have been counted by the machines, but hand recount opportunities have been denied thus far by the committee. **IRREGULARITIES:** The law requires that votes must be counted unless it is impossible to determine the voter’s intent. The Board acted inconsistently when it remade a similar ballot that was scanned by the machine because it was not known whether a mark had been counted or not. The Board does not have discretion on whether to count these votes. It is a mandatory duty. The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.

  Jane Doe of New Philadelphia, precinct 58 (hand recount proved vote by slash mark was not counted.)
  Jane Doe of New Philadelphia, precinct 26
  Jane Doe of Dennison Village, precinct 21
Jane Doe of Newcomerstown, precinct 60
Jane Doe of Newcomerstown, precinct 62
Jane Doe of Port Washington, precinct 66
Jane Doe of New Philadelphia, precinct 13
Jane Doe of New Philadelphia, precinct 28
Jane Doe of Urichsville, precinct 32
Jane Doe of Dover Township, precinct 39
Jane Doe of Bolivar Village, precinct 52
Jane Doe of Sandy Township, precinct 69

• **Unlawfully Purged Voters**
  28 voters’ ballots were not counted because they were purged from the voter rolls allegedly in compliance with the federal “Motor Voter” laws on list maintenance. **IRREGULARITIES:** Motor Voter prohibits removing voters from the rolls unless the voter confirms he moved out of the county or the voter is sent a confirmation mailing as part of a uniform and non-discriminatory mailing to ALL voters. Determination of whether these 28 voters in HD 98 were lawfully removed from the rolls has been impossible, because the Secretary of State’s office has refused to release records about its mishandling of registration offerings and data transmission from the BMV. But we do know that Ohio purge mailings target only voters who haven’t voted for 2 years and are not sent to ALL voters as required by Motor Voter. The following voters appear to have been unlawfully purged. Their ballots were not counted even though they did not move or did not move out of the county nor did they receive a mailing that was sent to ALL voters:

  Mark Albaugh of Dennison
  Aron Cummings of Dennison
  Rebecca Hoffman of Sandy Township
  Michael Petty of Sandy Township
  Keith Risley of Dennison
  Elizabeth Rose of Goshen
  Ryan Gribble of Dover
Fletcher Shryock of New Philadelphia
Traci Rooks of Gnadenhutten
Roy Caldwell of Dennison
Lennie Malterer of New Philadelphia
Angela Maurer of Franklin Twp
Alyssa Sulzener of New Philadelphia
Seth Sulzener of New Philadelphia

- **Possible Failure by BMV and Secretary of State to Register Voters**
  31 voters’ ballots were not counted because they were allegedly never registered. **IRREGULARITIES:** Voters are to be offered voter registration when they update their driver’s license address, but thousands across the state have not been provided that opportunity and have been misled by a BMV website that indicates the customers are registering to vote. Determination of whether these 31 voters in HD 98 registered at the BMV has been impossible, because the Secretary of State’s office has refused to release records about its mishandling of registration offerings and data transmission from the BMV.

- **Holmes County**
  According to limited records, 2 ballots in Holmes County may not have been counted for reasons similar to those alleged in Tuscarawas County by candidate O’Farrell. O’Farrell informed the committee that the Holmes County Board of Elections was closed for 2 weeks during the crucial time for preparing the election contest lawsuit and that Holmes County was not forthcoming with records needed for the contest. With limited time and not being able to be in two places at once, O’Farrell focused on Tuscarawas County. O’Farrell asked the committee to count valid ballots from Holmes County as well.

**CONCLUSION**

It is the duty of this body to correct any errors that occurred in the election. No deference is owed by this body to any court nor to any election official who may have committed these errors. No one is demanding that election officials, voters, or any persons must do their jobs perfectly, only that the members of the House of Representatives act in accordance with our oath to uphold the laws and constitution of the state of Ohio and the United States. To that end, we must vote to rid the November 2012 HD 98 election of irregularities due to **mistake, neglect, fraud, and violations of law**
and procedure – committed by poll workers, Board officials, Secretary of State officials, or any other person – by counting the votes of the people we serve.
Recommendations to the House of Representatives on the 98th House District Election Contest

INTRODUCTION

The election for State Representative of the 98th House District is not over. Eight votes separate the candidates now that 46,778 votes have been counted. But, in Tuscarawas County, 50 valid votes have not yet been counted, 11 other votes may not have been counted by the machines, and 59 additional ballots may not have been counted because of unlawful purging or the mishandling of their voter registration by the Ohio BMV and Secretary of State’s offices. In Holmes County, at least 2 ballots remain uncounted. It is the duty of this body, and only this body, to fix the problems with the November 2012 HD 98 election and make sure the voters’ voices are heard.

CONTEST GUIDANCE

It is the duty of the House members only to decide this contest. The only laws on legislative contests in Ohio make this clear. The Ohio Constitution commits the responsibility to determine the qualifications and election of its own members to the legislature. Oh. Const. Art. II, § 21. And the Ohio Revised Code contains the same requirement. ORC 3515.14. Mason’s Manual of Legislative Procedure, adopted by this body in the House Rules, explains that the legislature has the authority to take testimony and gather facts and that its power is superior to the courts in deciding its own election contests. National Conference of State Legislatures, Mason’s Manual of Legislative Procedure § 560 (2010).

Without any restrictions placed on us in conducting an election contest, we look to court precedent for guidance. In a legislative election contest, the challenger is entitled to rid the election of all neglect, mistake, crime, or fraud in order to reveal the true result of the election. "In a contest in either house, the broadest range is given contestants to purge the ballot and returns of the consequences of neglect, mistake, fraud, and crime, from the opening of the polls to the final declaration of the result." Dalton, Clerk v. The State ex rel. Richardson, 43 Ohio St. 652, 681 (Ohio 1885). “The rule is fundamental that the law will, so far as may be, without doing violence to the clear legislative intent, so construe election laws as to avert the disfranchisement of the legal electors of a precinct through the ignorance, neglect, or fraud of election officers.” Id at 667.

The House members may examine the ballots and make decisions about counting them. “Where a full understanding of such questions requires a personal inspection of
the returns of the election, it is the right of each party to the contest to ask that they be brought within reach of each member whose vote is to aid in the final determination of the contest." Ex parte Dalton, 44 Ohio St. 142, 155-56 (Ohio 1886).

Chief Justice Maureen O'Connor attempted to add to our understanding of the term “election irregularity.” “No case specifically defines an ’election irregularity,’ but examples from numerous cases indicate that it must at least involve the potential violation of a constitution, statute, or rule pertaining to the election in question, or defective language on the ballot, or some other egregious defect or fraud in the ballot or election procedure.” O'Farrell v. Landis, Slip Opinion No. 2013-Ohio-93, ¶ 11.

A more general principle of election law in this state is that we must avoid “unduly technical interpretations that impede public policy favoring free, competitive elections.” State ex rel. Myles v. Brunner, 120 Ohio St. 3d 328, 332 (Ohio 2008). In other words, the House owes no deference to the election officials who acted in strict adherence to the letter of unduly technical laws or Secretary of State directives and, in so doing, deprived voters of their fundamental right to vote.

Finally, Ohio Revised Code section 3505.28 states: “[N]o ballot shall be rejected for any technical error unless it is impossible to determine the voter’s choice.”

The House owes no deference to the prior decisions of any Board of Elections or the Secretary of State’s office, nor must it accept the impact of the actions of any other agency that affect voting, such as the Bureau of Motor Vehicles. The House must rid the November 2012 election of irregularities due to mistake, neglect, fraud, and violations of law and procedure, committed by poll workers, Board officials, Secretary of State officials, or any other person.
Wrong Polling Place Voters

18 voters’ ballots have not yet been counted because they were cast in the wrong polling place.

IRREGULARITIES:
- Poll workers failed in their mandatory duty to direct the voter to the correct polling place as evidenced by voter testimony and ballot paperwork that was incorrectly completed by poll workers. ORC 3505.181.
- Six other voters’ ballots cast in the wrong polling place were counted by the Board of Elections.
- Many other ballots cast in the wrong precinct but right polling place were counted because poll worker error was presumed.
- In every case, poll workers did not identify the voter’s correct precinct and polling place on the two forms they were required to fill out. ORC 3505.181.
- In multiple cases, poll workers told voters they had to vote provisionally because they “had not voted in a while.” That is just wrong. ORC 3505.181.
- In many cases, because of consolidation of precincts, the voter’s polling place was located in a different precinct from his own. This made it impossible for the voter to comply with the statutory requirement that the voter vote “in the polling place in the precinct in which that registered elector resides.” ORC 3503.16 and other sections.
- The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.

VOTERS:

Apryl Babarcik, age 22, of New Philadelphia
- Apryl showed up at the right polling place to vote but was sent to the wrong polling place.
- Apryl was told by poll workers and Board officials to vote at the polling location for 231 3rd Dr. NE instead of for 231 3rd Dr. SE where she lives.
- Apryl said: “So why would the board of elections give them the place I’m supposed to vote if I’m not supposed to be there to vote?”
- If Apryl had searched the Tuscarawas County BOE’s website for her address, she would have received this error message: “Based upon the data input, no records have been found. Please modify your search criteria.”
- Apryl’s correct polling location for Precinct 21 is not even located in her home precinct. It’s located in Precinct 22.
Robert Buzzeo, age 41, of New Philadelphia

- Robert and his wife Traci had moved to a new address so poll workers were correct that they had to vote provisionally but poll workers skipped the step of sending them to the right polling place. Oddly, Traci’s ballot was counted but Robert’s was not.

Cheryl Harris, age 39, of New Philadelphia

- Cheryl looked up where to vote on the Tuscarawas county Board of Elections website by searching for her name.
- She had previously updated her driver’s license at the BMV. If BMV had done its legal duty to update Cheryl’s address, she would have found her correct polling place when she looked up her name on the Board’s website.

Dale Johnson, age 40, of Sugarcreek

- Dale called the Board of Elections and explained that he had moved and was told by the Board of Elections staff and poll workers to vote in the polling place for 219 Ray Ave. NE. Dale lives on Ray Ave. NW.
- Dale’s correct polling location for Precinct 17 is not even located in his home precinct. It’s located in Precinct 18.
- Dale said, “I told my wife, I said, ‘I’m not sure I’m going to vote next time.’ I said, ‘This is not good.’ I mean, I just went where I was told to go… I got off work, I hurried to vote, I went where I thought I was supposed to vote, so I voted.”

Kelly Lucas, age 34, of Dover

- Poll workers directed Kelly to vote in the precinct for W. 14th Street, instead of E. 14th Street where she lives.
- Kelly’s correct polling location for Precinct 4 is not even located in her home precinct. It’s located in Precinct 8.
- Kelly had applied for an absentee ballot to be sent by mail to her current address but she never received a ballot. That’s why she voted in person on election day.
- Kelly had her baby with her while voting.

Robert Morris, age 54, of Dover

- Poll workers directed Robert to vote in the precinct for W. 4th Street instead of the precinct for E. 4th Street where he lives.
Melissa Patterson, age 36, and husband Robert Patterson, age 40, of Dennison

- Poll workers told them they would have had to update their registration address one week prior to the election to vote a regular ballot.
- Melissa said one poll worker was going to call but another poll worker, the mother of someone Melissa knew, said he didn’t have to call for every voter because they should just vote a provisional ballot.
- Asked, “Do you expect your poll workers to help you along during that process?” Melissa answered, “Yeah. Why would they let you vote if you can’t?”
- Robert and Melissa had just returned from several months in Alabama. He had found work in a steel plant there but was laid off. They stayed with Melissa’s dad when they returned to Ohio.
- Robert worked at Greer Steel and knows Al Landis who was a manager there.

Ginger Raber, age 40, of Sugarcreek

- Poll workers directed Ginger to vote in the precinct for Mill St. SW, instead of Mill St. NW where she lives.
- When Landis’ attorney suggested the poll workers must have told her she was in the wrong place, Ginger said, “They just said that my name wasn’t in the book and they handed me this instead. There was no arguing. There was no saying anything else. …just because my name isn’t in the book doesn’t mean I don’t have the right to vote. My thing is I didn’t know I was in the wrong place.”

Courtney Rees, age 30, of Dover

- Poll workers directed Courtney to vote in the precinct for Mill St. SW, instead of Mill St. NW where she lives.
- Courtney first went to the table for Precinct 1 and told the poll workers she moved a few days earlier. The poll workers sent her to the table for Precinct 2 in the same building, instead of to the separate location for Precinct 3.
- Courtney’s correct polling location for Precinct 3 is not even located in her home precinct. It’s located in Precinct 5.

Carrie Thomas, age 39, of New Philadelphia

- Carrie said, “I even asked them, do I need to go somewhere else? What do I need to do? And they said, it will be fine. Just go ahead and fill out this paper and we’ll do the – “ (cut off by Tuscarawas Board of Elections attorney)
Natasha Benson, age 31, of Bolivar
Erin Clute, age 36, of New Philadelphia
Tina Snyder, age 48, of Dover
Brandy Swanson, age 36, of Bolivar
Michael Cottrell, age 23, of Uhrichsville
Dustin Freitag, age 25, of Strasburg
Carl King, age 26, of Bolivar
Birthdate Error

**IRREGULARITIES:**

- Birthdate is not a required field under the law for counting ballots. ORC 3509.07.
- In an absurd move, the Board counted 6 other ballots with no birthdate at all.
- Other counties, including Cuyahoga, Hamilton, Marion, Allen, and Fairfield, counted ballots with birthdate errors because birthdate is not a required field.
- The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.

Born in 2012?

2 voters’ ballots have not yet been counted because the voters mistakenly indicated they were born in 2012 when writing their birthdate on their ballot envelope.

**VOTERS:**

Katherine Carruthers, age 26, of Newcomerstown

Chloa Herbert, age 27, of New Philadelphia

One Number Off

2 voters’ ballots have not yet been counted because the voters mistakenly provided a month or year that was one number off from their birthdate on their ballot envelope.

**VOTERS:**

Judith Groff, age 73, of Newcomerstown

William Tomer, age 68, of Bolivar
Address Error

IRREGULARITIES:

- Address is not a required field under the law for counting ballots. ORC 3509.07.
- Secretary Husted exceeded his authority when he issued a directive creating a new reason to reject absentee ballots and creating a situation where a voter who provides no address has his ballot counted but a voter who in good faith provides an unexpected address has her ballot rejected. ORC 3509.07.
- The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.
- The form asks the voter for his “voting address” which could easily be interpreted as the mailing address where the voter had his ballot sent or the polling location where the voter is assigned to vote. Here is what that section of the form looks like:

I am a qualified elector of the state and my voting residence in Ohio is:

________________________________________
(Street Address)

________________________________________
(City or Village and Zip)

Polling Place Address

2 of the women, when asked on the form for “voting address,” put the address of the church or school that houses their precinct’s polling place. This was a clear error and not an attempt to change their home address to a school or a church.

VOTERS:

Eileen Blauch, age 81, of Sugarcreek
Kathleen Durben, age 88, of Newcomerstown

Mailing Address

2 of the men, when asked for “voting address,” put the mailing address they had provided for sending their ballot to them.

VOTERS:

William Pfister, age 76, of Sugarcreek
Robert Ehrhart, age 56, of Dover

Unexpected address

1 voter provided an unexpected address, but her ballot would have counted if she had provided no address at all on the awkwardly worded form.

**VOTER:**

Brenda Hawkins, age 51, of New Philadelphia
BMV and Secretary of State Data Error

1 voter’s ballot has not yet been counted because he voted at his home address in Tuscarawas County.

**IRREGULARITY:**

- The Ohio BMV and Secretary of State failed to update his registration to his school address in Portage County until one week before the election even though he had attempted to update his registration prior to the October 9, 2012 deadline and even though registrations must be sent from the BMV to the Secretary’s office within 5 to 10 days of receipt. ORC 3503.11. 42 USC §1973gg-3(e). Student voters may register to vote at their home or school address. Voters vote where they reside.

**VOTER:**

  Samuel Carnahan, age 21, of Sandyville
Married Name

1 voter’s ballot has not yet been counted because she used her married name when she signed her ballot envelope.

IRREGULARITIES:

- Karie Jo applied for her ballot with that same married name and the Board sent her a ballot even though her registered name was her maiden name. ORC 3509.04.
- She cast her absentee ballot, again providing her married name on the envelope, but this time the Board said her name did not match her voter registration. The Board clearly erred in using two different standards for sending her a ballot and accepting her ballot.

VOTER:

Karie Milburn, age 23, of Dover
Absentee Ballot Dropped Off at Precinct

1 voter’s ballot has not yet been counted because she returned her ballot to the precinct and poll workers accepted it.

**IRREGULARITIES:**

- This is not a reason to reject a ballot under the law. ORC 3509.07.
- Secretary Husted’s exceeded his authority when he issued a directive creating a new reason to reject ballots by prohibiting the counting of absentee ballots dropped off at the polling place. ORC 3509.07.
- Boards are not immune from liability when blindly following an unlawful directive. ORC 3501.11.
- Poll workers failed to tell Leslie that they were instructed not to accept her ballot and that she could cast a provisional ballot or take her ballot to the Board.
- The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.
- Case law also required the Board to count the ballot. “[R]equiring a voter to personally place his or her ballot in a mailbox or hand it to a postal worker in order for the ballot to be counted raises form over substance.” In re Election of Member of Rock Hill Local Sch. Dist. Bd. of Educ., 76 Ohio St. 3d 601, 608 (Ohio 1996) (decision written by Justice Andy Douglas, attorney for the Tuscarawas County Board of Elections in the instant case). Similarly, requiring a voter to personally hand her ballot to the director of the Board of Elections, a requirement that was not applied to any other voter, “raises form over substance.”

**VOTER:**

Leslie Besozzi, age 32, of Uhrichsville
ID Mistake by Board of Elections

1 voter’s ballot has not yet been counted because the Board claimed he provided the wrong ID number on his ballot envelope.

**IRREGULARITY:** According to Jacob’s grandmother, Inice, with whom he resides, Jacob actually provided the correct ID number on his ballot envelope. The Board made a mistake. ORC 3509.04, 3509.07.

**VOTER:**

Jacob McGaha, age 22, of Newcomerstown
Defective Form Unlawfully Requiring Two Signatures

2 voters’ ballots have not yet been counted because the voters signed the ballot envelope only once instead of twice.

**IRREGULARITIES:**
- The form printed on the ballot envelope did not comply with the law prescribing the form to be used. The poll worker is supposed to sign a statement verifying that the voter completed the form. However, the form that the Secretary of State issued does not contain the poll worker verification statement. ORC 3505.182.
- Requiring voters to lawfully complete an unlawful form is an oxymoron.
- The poll workers clearly erred in their mandatory duty to have the voter complete the form. ORC 3505.181.

**VOTERS:**
- David Amato, age 65, of Lawrence Township
- Tim Kramer, age 37, of Uhrichsville
Missing 1 of 2 Absentee Ballot Envelopes

8 voters’ ballots have not yet been counted because the voters did not return their inner ballot envelope called the “ID envelope.”

**IRREGULARITIES:**

- These voters were not contacted and provided an equal opportunity to fix the error like their fellow HD 98 voters in Holmes County were.
- The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.

**VOTERS:**

- Ashley Luthy, age 56, of Dover
- Carol Fichter, age 63, of Uhrichsville
- Lori Williams, age 56, of Dover
- Martha Buss, age 74, of New Philadelphia
- David Schwab, age 52, of Dover
- Ethan Weaver, age 19, of Bolivar
- William McGinnis, age 61, of New Philadelphia
- Benton Sours, age 91, of Midvale

Ethan Weaver sent the following email to the Committee Chairman and Ranking Member asking that his vote be counted:

-----Original Message-----
From: Ethan Weaver [mailto:ethanweav@aol.com]
Sent: Monday, April 22, 2013 3:10 PM
To: Rep75; Rep04
Subject: Tomorrow’s meeting

Good afternoon,

My name is Ethan Weaver. Prior to November 4th of 2012, I casted my vote through an absentee ballot from Parris Island, South Carolina. I was actively going through Marine Corps boot camp and as a result did not have much access to the outside world. Little did I know at the time, something was wrong with the ballot I sent in and it was not counted. I was not aware of this until I returned home in mid December. It was brought to my attention that I could have been made know of this and given the opportunity recast my ballot but was not. This fact concerns me and I would be very satisfied if my vote was in fact counted as a result of tomorrows meeting. Thank you for you time.

Much appreciated,
PFC Ethan Michael Weaver
Absentee Ballots Missing "Stub A"

8 voters’ ballots have not yet been counted because the voters detached or partially detached Stub A from their ballot.

IRREGULARITIES:
- These voters were not contacted and provided an equal opportunity to fix the error like their fellow HD 98 voters who made this same error with their absentee ballots.
- These voters were treated dissimilarly from other absentee voters who made different but similarly insignificant errors with their absentee ballots.
- Ohio law requires votes to be counted unless it is impossible to determine voter intent. ORC 3505.28.
- The Civil Rights Act prohibits insignificant paperwork errors from depriving voters of their right to vote. 42 USC 1971(a)(2)(B).
- In one case, it was not determined that Stub A was actually detached from the ballot because tape was covering the perforation on the ballot of Juanita McDermott, age 81, of Gnadenhutten. ORC 3509.07.
- Requiring Stub A to be attached to the ballot for it to be counted is an unduly technical interpretation of the law. Ohio case law prohibits such interpretations from disenfranchising voters. State ex rel. Myles v. Brunner, 120 Ohio St. 3d 328, 332 (Ohio 2008).
- The Equal Protection clause of the United States Constitution was violated because similarly situated ballots were not treated similarly.

VOTERS:

Amy Beitzel, age 45, of Dover
Nancy Fenwick, age 63, of Newcomerstown
Beth Baker, age 59, of Uhrichsville
Larry Snedeker, age 73, of Uhrichsville
George Reese, age 67, of Beach City
Robert Baker, age 56, of Uhrichsville
Joe Kienzle, age 43, of Mineral City (Stub was included in envelope.)
Juanita McDermott, age 81, of Gnadenhutten (Stub was taped to ballot.)
Ballot-Counting Machine Failure

1 ballot from Precinct 58 has not been counted yet because the ballot was scanned by the ballot-scanning machine without being kicked back but a hand recount of that precinct’s ballots revealed that the vote for candidate Josh O’Farrell was not read and counted.

11 other ballots marked for candidate O’Farrell with Xs and checkmarks may not have been counted by the machines. It is impossible to know for sure because hand recount opportunities have been denied thus far by this committee.

IRREGULARITIES:

- The law requires that votes must be counted unless it is impossible to determine the voter’s intent. There was no disagreement over the voters’ intent. ORC 3505.28.
- The Board does not have discretion on whether to count these votes. It is a mandatory duty. ORC 3506.21, 3505.28.
- The Board acted inconsistently when it remade a similar ballot to ensure that a dot was not recorded as a vote. The Board all agreed the mark was not meant as a vote by the voter when examined together with the other votes. The vote count in that precinct did not change after the remake and rescan, proving that the mark had not been read and counted by the machine. Precinct 63 sample ballot illustrating the ballot that was remade and rescanned:

   ![Sample Ballot](image)

- The Board provided instructions that were badly designed and likely unclear to voters, especially voters with bad eyesight. The instructions:

   **INSTRUCTIONS TO VOTERS OF ABSENT VOTER’S BALLOTS**

   (O.R.C. 3509.04, 3509.05, 3505.08, 3505.181)

1. **INSPECT YOUR BALLOT:** Before voting your ballot, ensure that there are no marks on your ballot. If there are any marks on your ballot, immediately return it to the Board of Elections and ask for a new ballot.
2. **MARK YOUR BALLOT:** Mark your ballot according to the specific instructions provided on the ballot. Use a #2 pencil or dark ink pen.

   ![Correct and Incorrect Marks](image)
VOTERS:

Jane Doe of New Philadelphia, precinct 58 (hand recount proved vote by slash mark was not counted). Precinct 58 sample ballot:

Jane Doe of New Philadelphia, precinct 26. Precinct 26 sample ballot:

Jane Doe of Dennison Village, precinct 21. Precinct 21 sample ballot:
Jane Doe of Newcomerstown, precinct 60. Precinct 60 sample ballot:

Jane Doe of Newcomerstown, precinct 62. Precinct 62 sample ballot:

Jane Doe of Port Washington, precinct 66. Precinct 66 sample ballot:
Jane Doe of New Philadelphia, precinct 13. Precinct 13 sample ballot:

For State Representative (98th District) (Vote for not more than 1)

☐ Al Landis
Republican

Joshua E. O'Farrell
Democratic

Jane Doe of New Philadelphia, precinct 28. Precinct 28 sample ballot:

For State Representative (98th District) (Vote for not more than 1)

☐ Joshua E. O'Farrell
Democratic

☐ Al Landis
Republican

Jane Doe of Urichsville, precinct 32. Precinct 32 sample ballot:

For State Representative (98th District) (Vote for not more than 1)

☐ Al Landis
Republican

Joshua E. O'Farrell
Democratic
Jane Doe of Dover Township, precinct 39. Precinct 39 sample ballot:

For State Representative (98th District) (Vote for not more than 1)

☐ Al Landis
Republican

☐ Joshua E. O’Farrell
Democratic

Jane Doe of Bolivar Village, precinct 52. Precinct 52 sample ballot:

For State Representative (98th District) (Vote for not more than 1)

☐ Joshua E. O’Farrell
Democratic

☐ Al Landis
Republican

Jane Doe of Sandy Township, precinct 69. Precinct 69 sample ballot:

For State Representative (98th District) (Vote for not more than 1)

☐ Al Landis
Republican

☐ Joshua E. O’Farrell
Democratic
Even though this mark: was PROVEN NOT to have been read and counted by the machines, the Board refused to remake and scan the above ballots to ensure that the clear marks were read and counted by the machines. That is an irregularity we must fix by hand-counting these precincts' ballots.
Unlawfully Purged Voters

28 voters’ ballots were not counted because they were purged from the voter rolls allegedly in compliance with the federal “Motor Voter” laws on list maintenance.

**IRREGULARITIES:**

- **Motor Voter (42 USC § 1973gg)** prohibits removing voters from the rolls unless:
  1. The voter confirms he moved out of the county,
  2. The voter is flagged by the National Change of Address (“NCOA”) service, sent a confirmation mailing, and two federal election cycles pass with no response from the voter, or
  3. The voter is not flagged through the NCOA process but is sent a confirmation mailing as part of a uniform and non-discriminatory mailing to ALL voters, and two federal election cycles pass with no response from the voter. Ohio does not do this.
- Of the voters who are not flagged by the NCOA process, Ohio purge mailings target only those voters who haven’t voted for 2 years. The mailings are not sent to ALL voters as required by Motor Voter. 42 USC § 1973gg.
- Determination of whether these 28 voters in HD 98 were lawfully removed from the rolls has been impossible, because the Secretary of State’s office has refused to release records about its mishandling of registration offerings and data transmission from the BMV.

The following voters’ appear to have been unlawfully purged. Their ballots were not counted even though they did not move or did not move out of the county nor did they receive a mailing that was sent to ALL voters:

- Mark Albaugh of Dennison
- Aron Cummings of Dennison
- Rebecca Hoffman of Sandy Township
- Michael Petty of Sandy Township
- Keith Risley of Dennison
- Elizabeth Rose of Goshen
- Ryan Gribble of Dover
- Fletcher Shryock of New Philadelphia
- Traci Rooks of Gnadenhutten
Roy Caldwell of Dennison
Lennie Malterer of New Philadelphia
Angela Maurer of Franklin Twp
Alyssa Sulzener of New Philadelphia
Seth Sulzener of New Philadelphia
Possible Failure by BMV and Secretary of State to Register Voters

31 voters’ ballots were not counted because they were allegedly never registered.

**IRREGULARITIES:**

- Voters are to be offered voter registration when they update their driver’s license address but that is not happening. 42 USC § 1973gg.
- Thousands of people across the state have not been provided that opportunity when they change their address on the BMV website. 42 USC § 1973gg.
- People have been misled by the BMV address change website which contains language indicating that they are being registering to vote. Here is what they see:

![ODPS Ohio Bureau of Motor Vehicles Change of Address](image)

- Determination of whether these 31 voters in HD 98 registered at the BMV has been impossible, because the Secretary of State’s office has refused to release records about its mishandling of registration offerings and data transmission from the BMV.
Holmes County

According to the limited records available, 2 ballots in Holmes County may not have been counted for reasons similar to those alleged in Tuscarawas County by candidate O’Farrell. O’Farrell informed the committee that the Holmes County Board of Elections was closed for 2 weeks during the crucial time for preparing the election contest lawsuit and that Holmes County was not forthcoming with records needed for the contest. With limited time and not being able to be in two places at once, O’Farrell focused on Tuscarawas County. O’Farrell asked the committee at the last hearing to count valid ballots from Holmes County as well.

The following ballots in Holmes County should be counted:

- 1 provisional ballot where the voter did not include her printed name. These are similar to the 2 ballots in Tuscarawas County where the voter signed once, not twice, because the poll worker did not direct the voter to complete the envelope.
- 1 provisional ballot cast in the wrong polling place similar to the 18 wrong polling place ballots in Tuscarawas County. One Holmes County voter had been given the wrong ballot by a temporary worker at the Board and the Director caught it after the fact. The Director called the voter who was from the part of Holmes County outside the 98th House District to tell her where to go to cast a regular ballot that would be counted. The Director just happened to know this voter because the voter had moved into the Director’s friend’s former house. All voters should be given the same courtesy of having their wrong polling place ballot counted since it is apparent that poll worker error causes this problem no matter the county.
CONCLUSION

Members of the House take an oath to support the constitutions of Ohio and the United States. The Oath of Office for Ohio state representatives is as follows:

I, [name], do solemnly swear to support the Constitution of the United States, and the Constitution of the State of Ohio, and faithfully to discharge and perform all of the duties incumbent upon me as a member of the Ohio House of Representatives according to the best of my ability and understanding; and do this as I shall answer to God.

Our democracy depends on our doing our duties in good faith, on our giving effect to the voices of the people who put us here, and on our respecting their choices.

Many irregularities likely occur in almost every election but few elections’ results turn on those irregularities. When an election result is impacted by the normal everyday mistakes and oversights of election officials – whether they acted in good or bad faith – and the party affected by those errors seeks the remedy he is entitled to in this body, it is our duty to correct those mistakes and to render the correct result of the election.

RECOMMENDATION: The Ohio House of Representatives should vote to approve this report and complete the work of counting all of the valid votes in the 98th House District election.

*These recommendations are not meant to be an exclusive explanation of why House members must count the uncounted votes in this contest. The transcripts of the two previous hearings, the briefs and evidence of the two parties, your promise to uphold the laws of this state, and your conscience must also guide your decision in this important vote.