

RI STATE BOARD OF ELECTIONS

MINUTES OF MEETING

OCTOBER 27, 2004

The Rhode Island State Board of Elections met at 2:00 p. m. A quorum included Chair Roger Begin, Vice Chair Thomas Iannitti, Commissioners Judith Bailey, Florence Johnson, Frank Rego and Raymond Xavier. Acting Executive Director George Bowen, III and Attorney Raymond Marcaccio were in attendance, also.

First Order of Business: Vice Chair Iannitti asked that the minutes of 9/14, 15, 17, 20 (9:30 a.m. & 10:00 a.m.), 9/21 (9:30 a.m. & 10:00 a.m.), 10/14, 10/19 and 10/22/04 be approved as presented to the Board. Commissioners Xavier and Rego made and seconded, respectively, the motion to accept the minutes. The motion carried unanimously.

Next Order of Business: Acting Executive Director Bowen presented **Grading State Disclosure 2004: The State of Disclosure in Rhode Island** (see attached). The Members were pleased to hear that according to the report changes in Rhode Island's electronic filing mandate and a number two rank in Disclosure Content Accessibility bumped the state from a C to B- overall, and turned its disclosure program into one of the ten best in the nation. The Board thanked Mr. Bowen for the presentation.

Before taking-up the next matter, the Members discussed the status

of certain campaign finance reports and the creation of a “pending” file. Vice Chair Iannitti commented that there are legislative laws in place (i.e. 28-day post election reporting requirement) that cause a rather large back-up in the agency’s electronic recording of filed campaign finance reports. The Vice Chair suggested that reports that are received and time-stamped by the agency be termed “pending”. This action would give staff members a chance to thoroughly review and post the reports electronically without giving the impression that these reports were either filed late or not at all.

With regard to Vice Chair Iannitti’s suggestion, the Acting Director remarked that the staff is currently working to resolve the Vice Chair’s (reporting) concerns. In the meantime, there is a disclaimer on the computer screen alluding to the fact that all reports filed may not appear on the screen due to the high volume of reports received. (Note: The BOE/general assembly is looking at legislation that will eliminate the 28-day post election reporting requirement. This action should free-up some of the staff and allow for the faster posting of reports.)

Next Order of Business: The Members discussed a written request from Michael Plasse, Chairman, Cumberland Board of Canvassers to assist the local board on election night and the next day by supervising Cumberland’s write-in count (see attached letter).

Mr. Plasse wrote that his office needed someone from the state that is familiar with the “write-in” process to confirm the canvassing

authority's procedures and to be available to rule on any dispute(s) that may arise with regard to the local board's determining the "intent of the voter".

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There was discussion, comments and recommendations from the Members and executive staff on the local board's (Cumberland) request as follows:

- the Chair stated that he believes in separation of powers and that it is the responsibility of the local board to tabulate the "write-ins". The canvassing authority should determine the "intent" of the voter;**
- Commissioner Bailey agreed with the Chair and is against participating in the tabulation or decision-making process;**
- Commissioner Rego wants to make sure that everything is done to make sure that the ballots are secured. However, he does not feel that the Board should lend a presence election night or the next day; and**
- Attorney Marcaccio recommended that the Board not participate in the decision-making process with regard to the (Cumberland) ballots. Any determination made to count/not count the "write-in" votes should be made independently by the local board.**

With the discussion complete, Chair Begin asked that a motion be made to deny Mr. Plasse's request. The motion, made by Vice Chair Iannitti and seconded by Commissioner Xavier, carried without opposition.

Next Order of Business: Chair Begin asked Acting Director Bowen to present the next matter for discussion and possible vote concerning East Providence's voting list. With this, Mr. Bowen offered that a group of East Providence voters had filed a lawsuit in Superior Court alleging that the certification of the voting roster by the East Providence Canvassing Board was an endorsement of voter fraud. The plaintiffs maintained that the list contains hundreds of people who no longer live in East Providence. The group wanted a judge to prohibit the city from using the current voter registration list and to order the local board to use the state-generated Central Voter Registration System (CVRS) list maintained by the Office of the Secretary of State. If the CVRS list could not be used, then the plaintiffs asked that any voter whose eligibility is in question be made to use a provisional ballot so that the (provisional) ballot could be kept separate and reviewed and verified after the election.

Upon conclusion of Mr. Bowen's presentation, Chair Begin asked if anyone had any questions, comments or discussion from the Members, executive staff or any other persons in attendance. (Note: Chairman Michael Solomon, member Thomas Reilly and canvassing clerk Maryann Callahan were at hand to represent the East

Providence Canvassing Authority. Petitioner and Republican House District 64 Candidate Attorney Michael Robinson was present, also.

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BOE Members questioned the local board officials as follows :

- Commissioner Rego asked if any of the 287 voters in question were deceased and, if so, had their names been removed from the voting roster. Messrs. Solomon and Reilly confirmed that two (2) voters had died and that their names had been removed;**
- When Vice Chair Iannitti queried what other measures were taken by the local board to correct the voting list, Mr. Reilly remarked that the city made every reasonable effort to correct the (voter) list by sending out certified mail and that voters (with undeliverable mail) were called to appear before the board, but that most did not appear. Not wanting to disenfranchise a voter based on undeliverable mail, the local board decided as follows : not to remove the voters' names from the voting list, to commence the confirmation process and to offer provisional ballots on election day to voters not responding to the**

local board's inquiries ; and

- Chair Begin queried if the local board had any evidence of fraud with regard to the 287 pieces of undeliberate mail. To this, Mr. Reilly answered that the RI State Police is investigating the matter of voters living in Seekonk and Bristol who have been voting for years in East Providence ;

- Commissioner Bailey asked Attorney Marcaccio for a clarification on the use of a provisional ballot;

- Commissioner Iannitti commented that even if voters' names were not removed from the voting list by the local board, officials could still challenge voters at the poll on election day. (Note: A challenged voter would be allowed to vote by provisional ballot with a final decision to count the vote coming after the close of the polls.);

- Commissioner Rego commented that no voter would be disenfranchised with the implementation of the provisional ballot; and

- Attorney Marcaccio commented that similar complaints were made with the City of Providence voting lists in 2002. At that time, the State Board ordered the Providence Canvassing Authority to within ninety (90) days of (after) the November 2nd election to go through those lists of names in question and to initiate the confirmation process and other required measures for making the registration rolls current and accurate.

Attorney Robinson requested the opportunity to address the Board. Mr. Robinson argued that the City of East Providence intended to use

the October 12, 2004 certified voting list even though it had since been determined to be inaccurate and contain evidence of voter fraud. He asked that the local board be made to conduct a mass mailing to all the voters of East Providence. Furthermore, if a voter's mail comes back as undeliverable, then that voter would be given a provisional ballot on election day.

At this point, the Chair asked for a clarification from Attorney Robinson. Chair Begin asked him (Robinson) if he maintained that every error on the voting list constituted fraud. Attorney Robinson answered that he felt the list consisted of two categories : one which contained 4 or 5 voters where there was evidence of fraud ; the other contained

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several hundred voters who had their mail returned as undeliverable (for whatever reason).

The Board questioned Mr. Solomon about a 10/21/04 meeting of the local board. The purpose of the meeting was to hear challenges concerning forty-four (44) East Providence voters. No vote was taken by the local board to remove any of the names that night, however,

the city's solicitor recommended that the local board begin the confirmation process with regard to several of the challenged voters.

Chair Begin asked if there were any further questions, comments or discussion on the matter :

- Commissioner Johnson asked Attorney Robinson if he expected to follow-up on those names that were in question ninety days after the election ; he answered in the affirmative ;

- the Members agreed that the implementation of the Central Voter Registration System (CVRS) at the end of the year should help to correct a number of the errors with the October 21st voting list ; and

- Commissioner Johnson suggested that the Board of Elections send a letter to the East Providence Canvassing Authority to solidify what was discussed today.

With the question, comment and discussion phase of the meeting complete, Chair Begin asked Attorney Marcaccio for a recommendation. Mr. Marcaccio recommended that the East Providence Canvassing Authority not remove any names from the list at this time due to the ninety-day law. However, if the local board did have evidence that voter fraud had been committed, it (local board) had the authority to remove said names at anytime. With this, Vice Chair Iannitti made the motion to accept Attorney Marcaccio's recommendation. The motion, seconded by Commissioner Johnson, carried without opposition.

At this time, Chair Begin declared the (East Providence) matter concluded and that the Members would recess before returning to take-up the remainder of the Board's agenda.

Next Order of Business : The Acting Executive Director presented to the Board a status report on election preparations for the November 2, 2004 General Election. Mr. Bowen reminded the Board of its next meeting to commence the certification of mail ballots ; that is, tomorrow at 9 :00 a.m.

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Next Order of Business: Executive Session

At 3:20 p.m., Vice Chair Iannitti made a motion for the Board to meet in executive session to discuss one or more of the following matters: the merits of three (3) complaints that allege campaign expenditure violations pursuant to RIGL 17-25-5(a)(7)(i); and to discuss a potential legal claim in accordance with RIGL 42-46-5(a)(2).

The motion, seconded by Commissioner Rego, carried without opposition.

At 3:40 p.m., Commissioners Rego and Johnson made and seconded, respectively, the motion to end the executive session, to seal the minutes of the (executive) session and to go back into open session. The motion carried without opposition. (Note: Discussion only; no votes taken in executive session.)

In open session and with no other matters for discussion, Chair Begin asked that a motion be made for the Board to conclude the meeting and to reconvene the next day, October 28, 2004 at 9:00 a.m. to commence the certification of mail ballots for the November 2, 2004 general election. Vice Chair Iannitti made the motion. The motion, seconded by Commissioner Xavier, carried without opposition. The Board adjourned at 3:45 p.m.

ATTEST:

Frances A. Keating, Coordinator, Special Projects