

Via Electronic Mail

October 16, 2024

Lance Reed, Director
Pete Zeigler, Deputy Director
Summit County Board of Elections
470 Grant Street
Akron, Ohio 44311

Re: Regarding the Emilia Sykes Voter Eligibility Challenge

Dear Director Reed and Deputy Director Zeigler,

I have reviewed the tie vote referred to me by the Summit County Board of Elections (“the Board”) on October 14, 2024, as well as the statutory guidelines and evidentiary material relevant to the matter. Based on the evidence presented, Ohio law requires me to vote in favor of the motion for the Board to hold a hearing on a challenge filed by Thomas R. Zawistowski to the voter eligibility of Emilia Sykes.

Background

On October 1, 2024, the Board conducted a regular meeting, at which they were presented with a challenge to Ms. Sykes’ eligibility to be a registered voter in Summit County based on residency. A motion to conduct a hearing on the challenge resulted in a tie vote of 2-2, with the two Republican members voting in favor of the motion and the two Democratic members voting to oppose it. As required by Ohio law “in all cases of a tie vote,” the Board referred the matter to me to summarily decide the question in a decision that shall be final.¹

Evidence

Ohio Revised Code 3503.24 and Chapter 4 of the Election Official Manual (EOM) clearly set forth the process for reviewing Form 257 challenges and determining when a hearing is necessary. Notably, the decision on whether to hold a hearing does not contemplate arguments and evidence from the voter or their representative prior to a properly noticed hearing. Instead, Ohio law limits the Board’s initial review to a review of its own records. This step of the process, as explained in our Election Official Manual,

¹ R.C. Section 3501.11(X).

requires the board director and deputy director to determine (1) whether the person filing the challenge is eligible to do so and (2) whether the information submitted by the challenger is sufficient. The Manual further notes, "The determination that a challenge is facially valid and sufficient does not have any bearing on the ultimate merits of the challenge hearing."² If the challenger is eligible to file a challenge and has presented sufficient information to be considered, the Board must take the next step and conduct a hearing. Here is the relevant statute in this matter:

If the board is not able to determine whether an application or challenge should be granted or denied solely on the basis of the records maintained by the board, the director shall promptly set a time and date for a hearing before the board. The hearing shall be held, and the application or challenge shall be decided, no later than ten days after the board receives the application or challenge.³

Here, the Democratic members of the Board submitted a four-page position statement laying out arguments that would be presented and considered at a formal hearing. They conclude that "[t]he challenger has not alleged that Congresswoman Sykes has abandoned or failed to maintain her Summit County residence, nor has he alleged that she has chosen to make a habitation (i.e., residence) elsewhere her residence for voting purposes."⁴ Reaching this conclusion prior to a hearing negates the very purpose of the hearing itself, before which the challenged voter is notified of the meeting and afforded a "right to appear and testify, call witnesses, and be represented by counsel." In advance of a hearing, the Board also would have the opportunity to seek guidance from its own legal counsel, the county prosecuting attorney, regarding the statutory residency requirements of voter registration.

Decision

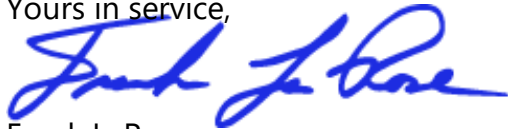
Based on my review of the evidence presented to me and the relevant laws applicable to this matter, I have determined that the Board has not fully complied with the challenge process required by state law and administrative directive. Therefore, I join the two Board members who sought to pursue that process and hereby break the tie in favor of the motion to conduct a hearing on the challenge. Please direct any questions regarding this decision to Sarah Huffman, Deputy Chief Counsel for Elections, at the following email address: SHuffman@OhioSoS.gov.

² Election Official Manual, Office of the Ohio Secretary of State, Section 4.15

³ R.C. 3503.24(B).

⁴ Rich and McKittrick Tie Voter Letter.

Yours in service,



Frank LaRose

Ohio Secretary of State

cc: William D. Rich, Chairperson, Summit County Board of Elections
Valerie J. McKittrick, Summit County Board of Elections
Bryan C. Williams, Summit County Board of Elections
Ray L. Weber, Summit County Board of Elections