

HEARING OFFICER'S REPORT & RECOMMENDATIONS

TO: The Honorable Jon Husted, Ohio Secretary of State

DATE: June 4, 2014

RE: The matter of removal of Ron Rothenbuhler, Jon Stainbrook, and Anthony DeGidio as Members of the Lucas County Board of Elections and Gina Kaczala and Dan DeAngelis as Director and Deputy Director, respectively, of the Lucas County Board of Elections.

BACKGROUND

Prior to the May 6, 2014 primary election, the Secretary of State established a bipartisan Transparency Committee of experienced and well-respected public officials to bring much needed light to the functions of the Lucas County Board of Elections and therefore ensure an open, transparent and effective elections process. The Transparency Committee was chaired by Scott Borgemenke, former Assistant Secretary of State to Ohio Secretary of State Jon Husted and included former Ohio Secretary of State Jennifer Brunner, Jon Allison, former Assistant Secretary of State to Ohio Secretary of State Bob Taft, and Jim Ruvolo, former Board Member of the Lucas County Board of Elections. The circumstances that precipitated the Transparency Committee's appointment included accusations of improper election administration from at least one Board Member against his staff, accusations of misconduct by at least one Board Member against at least one other Board Member, accusations of malicious interference from Board staff against one of their Board Members, accusations of harassment from Board staff against other Board staff, and accusations of election administration irregularities and public records violations from the public about the agency in general. The Transparency Committee's work was preceded by at

least two other interventions in as many years: a top-to-bottom management review performed by Mr. Allison and Mr. Ruvolo in 2013,¹ and the appointment of two experienced local election administrators, Keith Cunningham, former Director of the Allen County Board of Elections, and Arch Kimbrew, Jr., former Director of the Geauga County Board of Elections, to act as special masters providing direct operational oversight of the 2012 presidential general election.

To bring transparency to the Lucas County Board of Elections, to make sure that the right questions were being asked, and to make sure that questions and allegations were on the record, (Transcript of April 9, 2014 Meeting, Hearing Exhibit 8, page 4), the Transparency Committee conducted three hearings in Toledo prior to the May 6, 2014 primary election. These hearings were noticed and fully open to the public, including local media, and were attended by each of the four members of the Lucas County Board of Elections, its Director, Deputy Director, other essential Board personnel, and each of the four members of the Transparency Committee.² Despite these three hearings, where members of the Transparency Committee shed much needed light on the functions of the board to ensure an open, transparent, and effective elections process for the May 6, 2014 primary election, the agency's administration of that election was troubled, (*See, generally*, DVD of May 9, 2014 Meeting, Hearing Exhibit 11), prompting the Transparency Committee to hold a fourth and final public hearing on May 9, the Friday following the election.³

Having heard over twenty-one hours of testimony, the Transparency Committee determined

¹ After conducting their management review of the Lucas County Board of Elections, Mr. Allison and Mr. Ruvolo issued a report. (*See*, Allison-Ruvolo Report, Hearing Exhibit 3).

² The transcripts of the Transparency Committee's April 9, 2014, April 15, 2014, and April 23, 2014 public hearings are marked Hearing Exhibits 8, 9, and 10, respectively. The video recording of the Transparency Committee's May 9, 2014 public hearing of May 9, 2014 is marked Hearing Exhibit 11.

³ Mr. Allison was not present for the May 6, 2014 meeting of the Transparency Committee, but participated via phone in the Transparency Committee's deliberations and was "on board with the recommendations." (DVD of May 9, 2014 Meeting, Hearing Exhibit 11, Disc 3 of 3, at 01:26).

that the cancers inherent within the Board of Elections are so advanced, and the long term prognosis so severe, that the prospect of this Board of Elections healing itself is simply not a viable solution from their perspective. As such, the Transparency Committee publicly recommended that the Secretary of State terminate the public service of Board Members Ron Rothenbuhler, Jon Stainbrook, and Anthony DeGidio, Director Gina Kaczala, and Deputy Director Dan DeAngelis.

On Monday, May 12, 2014, the Secretary of State sent a letter⁴ to these five officials notifying them that he intended to remove them from their positions pursuant to R.C.

3501.16, which reads, in relevant part:

The secretary of state may summarily remove or suspend any member of a board of elections, or the director, deputy director, or any other employee of the board, for neglect of duty, malfeasance, misfeasance, or nonfeasance in office, for any willful violation of Title XXXV of the Revised Code, or for any other good and sufficient cause.⁵

The notice informed the aforementioned individuals that they could appear at a hearing scheduled for Thursday, May 15, 2014 to address the question of their removal and could be represented by counsel. In the alternative, the offer of resignation was extended. In response, only Deputy Director Dan DeAngelis tendered his resignation to the Secretary. (The remaining four individuals will be referred to herein, collectively, as “respondents.”) The hearing proceeded in a manner consistent with the precedent of past practice of the Secretary of State’s Office.

⁴ The letter was sent electronically and via United States mail, and none of the individuals in question dispute that they received the letter on May 12, 2014.

⁵ LAWriter Ohio Laws and Rules, as found at www.codes.ohio.gov/codes/3501.16 (last accessed by the Hearing Officer on May 23, 2014), omits the phrase “or for any other good and sufficient cause” from its recording of R.C. 3501.16. A review of Am. Sub. H.B. 99 (121st General Assembly) (effective August 22, 1995), the most recently enacted legislation affecting this section, confirms that the text of the law, as set forth in this Report & Recommendations, is a correct and accurate rendering of the statute as it presently exists in state law.

THE HEARING

A. INTRODUCTION

Pursuant to the Secretary's May 12, 2014 letter, this matter came before the Hearing Officer at a hearing at Toledo, Ohio's One Government Center on May 15, 2014. The May 15 hearing was approximately seven hours in length and a court reporter was present to create a transcript of the proceedings. Eleven Exhibits were accepted into evidence, and are referenced throughout this document.

All respondents—Mr. Rothenbuhler, Mr. Stainbrook, Mr. DeGidio, and Ms. Kaczala⁶—were present at the hearing. Additionally, all four members of the Transparency Committee were present for the hearing in order to state their findings from the approximately twenty-one hours of hearings they had with the Lucas County Board of Elections. At the beginning of the May 15 hearing, the Hearing Officer explained the purpose of the meeting: “[T]o allow [respondents] the opportunity to be heard as to why each should not be removed from their respective positions with the Lucas County Board of Elections.” (Hearing Transcript, page 4).

After calling the hearing to order and explaining the purpose of the meeting, the Hearing Officer explained how the hearing would unfold. (Hearing Transcript, pages 5-7). The hearing started with a “global statement” from the Transparency Committee. This “global statement” provided the Transparency Committee with an opportunity to reiterate their recommendations from their May 12 hearing. Second, after the “global statement,” Mr. Rothenbuhler provided his opening statement of about fifteen minutes. The opening statement was permitted to be used in whatever manner Mr. Rothenbuhler found most helpful. Third, the Transparency Committee had approximately thirty minutes to offer

⁶ As was her right, Ms. Kaczala was represented by counsel, Mr. Paul T. Belazis.

information specific to Mr. Rothenbuhler. Fourth, Mr. Rothenbuhler had forty-five minutes to respond to the Transparency Committee. Fifth, the Transparency Committee concluded with a brief closing statement. Sixth, and lastly, Mr. Rothenbuhler concluded with his brief closing statement. The process, specifically Steps Two through Six, were repeated for Mr. Stainbrook, Mr. DeGidio, and Ms. Kaczala, respectively,⁷ except that from time to time, the Hearing Officer, in his sole discretion, allowed the Transparency Committee the opportunity to rebut statements made by one of the respondents during Step 4 and then allowed the respondent to respond.

In addition to stating the process for the hearing, the Hearing Officer reminded the respondents that the hearing was not a formal legal proceeding. (Hearing Transcript, page 13). For this reason, the rules of procedure and rules of evidence did not apply in the traditional sense for the hearing. (Hearing Transcript, page 13). The Hearing Officer made clear that any evidence admitted would be given the weight it deserves. (Hearing Transcript, page 14). After concluding the introductory statement, the Hearing Officer turned the matter over to the Transparency Committee for its opening statement, and then followed the aforementioned process for Mr. Rothenbuhler, Mr. Stainbrook, Mr. DeGidio, and Ms. Kaczala.

B. OBJECTIONS

Prior to discussing the Transparency Committee and respondents' arguments, it is necessary to address the objections made at the hearing. During the course of the hearing, several objections were made. One objection—the matter of admitting the three

⁷ The order was originally set by the Hearing Officer at the beginning of the hearing to be Mr. Rothenbuhler, Mr. DeGidio, Mr. Stainbrook, and Ms. Kaczala, (Hearing Transcript, page 6), but following Mr. Rothenbuhler's portion of the hearing, Mr. DeGidio requested a change of order which was granted by the Hearing Officer: Mr. Rothenbuhler, Mr. Stainbrook, Mr. DeGidio, and Ms. Kaczala. (Hearing Transcript, page 57).

Transparency Committee meeting transcripts and the one Transparency Committee DVD⁸ from its last meeting—was decided at the hearing itself. Here, Ms. Kaczala, through counsel, and Mr. DeGidio expressed their objection to the Transparency Committee moving to admit the Transparency Committee transcripts and DVD as exhibits on the basis that the transcripts and DVD were not available to them prior to the hearing. At the end of the hearing, after due consideration, the Hearing Officer overruled the objection to the Transparency Committee transcripts and DVD being placed in the record. (Hearing Transcript, pages 284-285). As was made clear at the hearing, the objection was overruled because all respondents were present for each of the Transparency Committee hearings and the transcripts were likewise not available to the Transparency Committee for its preparation at the May 15 hearing. The Hearing Officer, finding that no one was “advantaged or disadvantaged” by the process of the Transparency Committee transcripts and DVD, overruled respondents’ objection. (Hearing Transcript, pages 284-285).

At the hearing, Mr. DeGidio and Ms. Kaczala, by and through her counsel, also raised objections on due process grounds.⁹ The due process objections relate to three complaints Mr. DeGidio and Ms. Kaczala had regarding the hearing. First, both assert that they received no notice of the specific charges brought against them. Second, both claim they did not have sufficient time to prepare for the hearing. Third, Mr. DeGidio and Ms. Kaczala believe they were not properly provided with the format of the hearing and how it would proceed.

⁸ For the Transparency Committee’s last hearing, on May 9, the hearing began without a court reporter apparently due to an oversight by the Board staff. (Hearing Transcript, page 225). In lieu of a court reporter, the beginning of that hearing was audio-recorded until a videographer could arrive to record a video transcript. (Hearing Transcript, pages 225-226).

⁹ Mr. Rothenbuhler and Mr. Stainbrook did not object to the hearing on any grounds. However, the same due process analysis applies to all four individuals present at the hearing.

As the Hearing Officer, I find that the due process objections do not have merit. All four individuals present at the hearing received notice of the charges against them from Secretary Husted's May 12, 2014 letter instructing them to appear in person at Toledo's One Government Center building on May 15, 2014 for an opportunity to be heard. The May 12 letter put respondents on notice that the proceedings could result in a determination to remove them from office pursuant to R.C. 3501.16. The letter also emphasized that the Secretary's action was the result of the Transparency Committee's in-depth inquiry into the Lucas County Board of Elections, as well as the "long-line of intervention measures that [the Board] has required."

In addition to the notice of the charges within Secretary Husted's letter, the Transparency Committee hearings served to further inform respondents of the basis for these removal proceedings.¹⁰ On May 9, 2014, the Transparency Committee concluded approximately twenty-one hours of work with a list of the "macro issues" leading to its recommendation that the Secretary remove respondents. (*See* DVD of May 9, 2014 Meeting, Hearing Exhibit 11). The Committee noted that no one disputes that these issues occurred. The "macro issues" included the failure to file campaign finance reports for at least two years, the failure to properly audit precinct election official numbers and training, the failure to implement a policy of how a Board meeting is run, the failure to properly set an agenda for Board meetings, the failure to follow the agenda when it was set, the failure to have regular Board meetings, the failure to set and/or follow a policy for the hiring, firing, and management of seasonal employees, the failure to have a policy regarding nepotism, the

¹⁰ The four individuals admit that they were present for the Transparency Committee hearings, including its fourth and final meeting at which the Committee presented its recommendations. (For Rothenbuhler, *see* Hearing Transcript, page 46; for Stainbrook, *see* Hearing Transcript, page 64; for DeGidio, *see* Hearing Transcript, pages 233-244; for Kaczala, *see* Hearing Transcript, page 283). All were present for the May 15 hearing.

failure to fill vacant election positions in a proper timeframe, the failure of proper communication between the staff and board, the failure to maintain proper decorum at the Board, and the continued flood of accusations which only further created a “toxic and harmful” atmosphere.¹¹ The Committee made clear that these findings, as well as the long history of problems with the Lucas County Board of Elections, led to its recommendation that Secretary Husted act to remove respondents. Each of the respondents were present on May 9 for the Transparency Committee’s statement of these “macro issues.”

Finally, the May 15 hearing began with the Transparency Committee further emphasizing the charges against respondents. The Transparency Committee summarized at the beginning the same “macro issues” it identified in the May 9 hearing. The Committee stated it believed the Secretary was permitted to remove respondents pursuant to R.C. 3501.16 on all the grounds enumerated in that statute. In addition, the Hearing Officer made clear to Mr. DeGidio that the hearing was proceeding under “the totality of that section of the code [R.C. 3501.16] and not necessarily any one particular phrase or word...” (Hearing Transcript, page 124).

The charges laid out in the Secretary’s May 12 letter, as well as the Transparency Committee’s May 9 meeting, lead me to conclude that the objections related to lack of adequate notice are unfounded, and accordingly, to overrule them.

Additionally, respondents had sufficient time to prepare for the May 15 hearing. At the May 9 meeting, the Transparency Committee, as detailed above, discussed its findings related to respondents and informed them that its recommendations would be immediately submitted to the Secretary and the decision on how to proceed would be his to make. Thus,

¹¹ The Transparency Committee used the following as examples of accusations leading to concern: the taping of private discussions, improper physical contact, residency issues, and further accusations made in the multiple police reports. (*See, generally*, DVD of May 9, 2014 Meeting, Hearing Exhibit 11).

the May 12 letter—sent in the morning the next business day after the Transparency Committee publicly made its recommendations—should not have come as a surprise. The May 12 letter gave the individuals more than two full business days to prepare for the administrative hearing. Respondents were well prepared and able to speak at length about each topic, at least partly due to the fact that they had discussed many of the same topics at various times during the past three years and again, in great depth, during the twenty-one hours of Transparency Committee hearings. Further evidence of adequate preparation time is that Mr. DeGidio had time on the eve of the hearing to write the Secretary a lengthy e-mail stating that he would resign if certain demands were met. (*See*, Email of May 13, 2014 at 6:21 PM from Anthony DeGidio to Jon Husted, Hearing Exhibit 4). Additionally, Ms. Kaczala had the opportunity to collect a number of letters of support from employees at the Lucas County Board of Elections. (*See* Twelve (12) Letters of Support for Gina Kaczala, Hearing Exhibit 7). Neither Ms. Kaczala, by or through counsel, or Mr. DeGidio asserted that there was any specific evidence or argument they did not have time to obtain, develop, or present. Therefore, I find respondents had sufficient time to prepare for the administrative hearing and overrule the objections.

Lastly, I overrule the objections that the individuals did not have information regarding the format of the hearing and how it would proceed. The Secretary's May 12 letter informed each individual that they would have the right to appear in person at the stated location to receive a hearing. The letter further informed them that the hearing was to provide respondents with an opportunity to be heard as to why each should not be removed from their respective positions with the Lucas County Board of Elections, (Hearing Transcript, pages 4-5), and that they would be permitted counsel at the hearing. Beyond the

letter, at the beginning of the hearing, I detailed the process that was about to unfold for respondents and the Transparency Committee. (Hearing Transcript, pages 5-7). Both the individuals and the Committee were on equal footing and received the process at the same time. It is worth noting also that the two individuals specifically raising the objection, Mr. DeGidio and Ms. Kaczala, had their portions of the hearing after Mr. Rothenbuhler and Mr. Stainbrook. While this was a coincidence and not a factor in overruling their objections, I believe it is noteworthy given that this order of events allowed Mr. DeGidio and Ms. Kaczala to hear their colleagues' arguments and see the actual hearing process play out. I overrule the objections, as I find that the individuals had sufficient information on the hearing process.

C. RON ROTHENBUHLER

At the hearing, the Transparency Committee summarized its findings from the preceding four public hearings that led to their recommendation that Mr. Rothenbuhler be removed from the Board.

Mr. Rothenbuhler had played a role, whether actively or with tacit approval through other actions, in keeping items off of the Board's agenda. (Hearing Transcript, page 32). Related to this misconduct involving public meetings, the Lucas County Board of Elections, with Mr. Rothenbuhler as its Chairman, failed to follow the statutory mandate to establish a schedule of regular meetings where any matter could be considered by the Board without notice. (Hearing Transcript, page 32). The Board, instead, treated every meeting as a special meeting, which limited the ability of at least one Board Member, Mr. Stainbrook, to place items on the agenda. When Mr. Stainbrook was finally able to place items that he believed were important to fulfill his responsibilities on the agenda, the Board adjourned before

completing its noticed purposes thus limiting Mr. Stainbrook from exercising what he believed were his duties as a Board Member. (Hearing Transcript, page 33).

Mr. Rothenbuhler, as the member of the Board with the most seniority, took no action to push the other members of the Board to fill important staff positions. (Hearing Transcript, page 35). Further, Mr. Rothenbuhler did “absolutely nothing” in the face of potential physical violence between Board Members and between Board Members and agency personnel on more than one election night, (Hearing Transcript, pages 34 and 39-40), and when presented with the Allison-Ruvolo report in February 2013, Mr. Rothenbuhler did not provide a second to Board Member Irish’s motion to implement its recommendations. (Hearing Transcript, page 36).

Finally, the Transparency Committee presented what “... appear[ed] to be this tacit collusion between the two [political] parties, Mr. Stainbrook, Mr. Rothenbuhler each being the chair of the part[ies] ...” in the “nonreferral of campaign finance reports to the Elections Commission for two-and-a-half years.” (Hearing Transcript, page 38).

Mr. Rothenbuhler’s response, generally, to the Transparency Committee’s concerns was that he had done everything he could “to try to promote goodwill and not be a dictator.” (Hearing Transcript, page 43). Mr. Rothenbuhler added, “... maybe I failed, but it wasn’t because I didn’t try and it wasn’t because I intentionally was playing partisan, in fact, I think to the opposite, I was less partisan than some people thought I should be.” (Hearing Transcript, page 44). Specific to the Transparency Committee’s concerns that Mr. Rothenbuhler had done little, if anything, to implement the Allison-Ruvolo recommendations, Mr. Rothenbuhler said: “But I did not want to fire somebody, I’ve told people that I believe that they could have another chance ... I’m also a person that wants to

give somebody another chance to do what I thought was an important job. By not dissecting it, I see in retrospect that may have been a problem.” (Hearing Transcript, page 42).¹²

The Transparency Committee noted that “Mr. Rothenbuhler admirably displays compassion and loyalty to the employees at the Board and ... at all times his intentions were good.” (Hearing Transcript, page 49). The Committee also made clear that Mr.

Rothenbuhler ’s comment that, “... I wouldn’t want my granddaughter working here because of the unpleasant situation ...” is a concerning indictment of both Mr. Rothenbuhler and the culture at the Lucas County Board of Elections. (Hearing Transcript, page 22).

D. JON STAINBROOK

At the hearing, the Transparency Committee provided a summary of its findings following four public meetings in a mixed format of statements from Mr. Stainbrook and a series of questions with answers from Mr. Stainbrook.

In his opening statement, Mr. Stainbrook said “[t]he Lucas County Board of Elections has had problems for decades.” (Hearing Transcript, page 60; *see also* Letter of May 15, 2014 from Jon Stainbrook to Ohio Secretary of State Jon Husted, Hearing Exhibit 1, page 2). As follow-up to Mr. Stainbrook’s opening remarks, Mr. Borgemenke asked Mr. Stainbrook the following questions, which were answered by Mr. Stainbrook:

Q: And you tried to fix that since you’ve been on the Board?

A: Yes, I truly believe in my heart that both Ron [Rothenbuhler] and I have both tried to
fix that.

Q: Sure. And you believe that we’re in a place that it’s fixed?

A: No. You’ll get no argument on that from me, Scott.

¹² Mr. Rothenbuhler provided the following additional testimony in response to questions from the Hearing Officer about the Allison-Ruvolo report: “...in regard to Mr. Irish making a motion, I was totally unaware that that motion was going to be made, caught me off guard, so therefore, my reaction wouldn’t have been any different except for I was a bit shocked that that motion was going to be made, but my reaction would have been the same.” (Hearing Transcript, pages 45-46).

(Hearing Transcript, page 67).

Specific to Mr. Stainbrook's time on the Board of Elections, the Transparency Committee alleged a culture of partisanship, which resulted in the list of certified candidates for the May 6, 2014 not being timely provided, with an imputed political advantage to Mr. Stainbrook and his allies who were seeking to retain control of the Lucas County Republican Party. (Hearing Transcript, pages 70-71). The Transparency Committee was aware of no evidence that Mr. Stainbrook had worked to undo the campaign finance referral log-jam. On the contrary, the Transparency Committee heard allegations that Mr. Stainbrook, as Chairman of the Lucas County Republican Party, may have personally or politically benefited from the Board's inaction on campaign finance referrals. (Hearing Transcript, page 77). Additionally, Mr. Stainbrook did not provide a second to Mr. Irish's motion to adopt the Allison-Ruvolo recommendations, rejecting the Secretary's effort's to help the Board improve its operations. (Hearing Transcript, page 71). Finally, and certainly most troubling if true, is the allegation that Mr. Stainbrook took deliberate steps via text message to persuade Republican-patronage employees to slow down the logic and accuracy of the voting machines assigned for use on Election Day and not to report any errors. (Hearing Transcript, pages 72-74; *see also* Letter of April 21, 2014 from Eric LaPlante, Hearing Exhibit 2).¹³

For his part, Mr. Stainbrook said that "the candidates list wasn't posted ... because it wasn't correct, and the prosecutor ... told us not to post it ..." (Hearing Transcript, page 118; *see also* pages 119-120). Mr. Stainbrook proffered that he had tried to get the campaign finance referrals on the Board's agenda, that he had met with Mr. Rothenbuhler twice to "get

¹³ When given the opportunity to object to including the Letter of April 21, 2014 from Eric LaPlante, as an exhibit to the record of this hearing, Mr. Stainbrook declined to do so. (Hearing Transcript, page 84).

this taken care of” with no success, (Hearing Transcript, page 86-87), and that “we tried to get this done but there was never a policy agreed on about how it was going to be referred, that was the sticky wicket, that’s the problem.” (Hearing Transcript, page 92). As for the Allison-Ruvolo recommendations, Mr. Stainbrook “thought it was a great report” and “worked hand in hand with Meghan Gallagher and other staff ... to make sure we could try to implement that, and Ron and I both talked about it. But then it got stuck in internal politics in the office and Ron and I would look at drafts of stuff that needed to be done, some things that we did do.” (Hearing Transcript, page 90). On the question of the text message, Mr. Stainbrook likened its use in the forum of the public hearings (including this hearing) as character assassination, (Hearing Transcript, page 110), and denied having sent any such text, (Hearing Transcript, pages 85-86, 89, 109-111), calling the allegation a “bold-faced lie.” (Hearing Transcript, page 87).¹⁴

Secretary Brunner explained Mr. Stainbrook’s case in part, as follows:

Mr. Stainbrook did raise some genuine issues [about the problems at the board of elections] but doing it in such a way that it really exacerbated the already difficult situation that both he and that, as he put it, that he and Secretary Husted inherited. I would suggest that in Mr. Stainbrook’s case, that inheritance was squandered because of the methodology that he used to try to make his view known about this.

(Hearing Transcript, pages 68-69).

¹⁴ As Mr. Allison noted, at no time did the Transparency Committee act as “criminal investigators.” (Hearing Transcript, page 78). For that matter, neither is the Hearing Officer acting as a criminal investigator. According to testimony at the hearing, the Lucas County Board of Elections has, or intends to, set into motion an investigation into this specific allegation. (Hearing Transcript, pages 218-224). An act of this nature, as alleged, may fall under R.C. 3599.24(A)(3), which prohibits any person from attempting to prevent an election official from performing the official’s duties. Because of the potentially criminal nature of the allegation, and the administrative nature of this forum, the Hearing Officer will not consider this accusation of possible criminal conduct as relevant to the extent that it may relate to the “malfeasance, misfeasance, or nonfeasance in office” or “for any willful violation of Title XXXV of the Revised Code” standards as justification for removal under R.C. 3501.16. The Hearing Officer does, however, consider the accusation relevant information as to the culture of the Lucas County Board of Elections, as described below under *FINDINGS*, which may go to the “any other good and sufficient cause” portion of the removal statute.

During the hearing, Mr. Stainbrook made this point clear: "...[I]f removing me [from] the Board will make it better, I'm all for it, so there's really no argument." (Hearing Transcript, page 87).

E. ANTHONY DeGIDIO¹⁵

At the hearing, the Transparency Committee summarized its findings from the preceding four public hearings that led to their recommendation that Mr. DeGidio be removed from the Board. Specifically, at its fourth and final hearing, the Transparency Committee described at least eight particular failings that led to the Committee's recommendation that respondents be relieved of their public service with the Lucas County Board of Elections, among which are the failure to file campaign finance reports for at least two years, and the failure to implement the Allison-Ruvolo recommendations. (*See* DVD of May 9, 2014 Meeting, Hearing Exhibit 11).

During the course of his rebuttal, Mr. DeGidio's defense for himself, relative to the allegations of the Board's improper application of Ohio's public meeting laws or the failure to refer violations of campaign finance laws to the Ohio Elections Commission, was to deflect the blame to others. (*See, e.g.*, Hearing Transcript, pages 204-205, 210-212 and 233).

However, Mr. DeGidio did represent that he *would have* voted to implement the Allison-Ruvolo recommendations, but was not permitted to do so as a result of a conflict of interest: "I've checked with a couple of authorities and everybody seems to be in agreement that I would violate my ethical duties as an attorney if I did anything. And so when Irish's

¹⁵ Mr. DeGidio is an attorney whose license to practice law in the State of Ohio is presently under suspension. (Hearing Transcript, page 135; *see also* Order of the Ohio Supreme Court, Case No. 2012-1697, Hearing Exhibit 6). Ohio Secretary of State Directive 2007-35 reads, in relevant part, "members ... of the boards of elections who are licensed professionals shall comply with the codes of professional conduct for their professions" (Sec. II, Paragraph D); "members ... of the boards of elections shall not participate in the consideration of any matter involving ... business associates" (Sec IV, Paragraph A); and "[v]iolations of this ethics policy by a member ... of the boards of elections may result in disciplinary action ... including removal of a board member" (Sec. VII, Paragraph J). (Hearing Exhibit 5).

motion was made ... I couldn't because I was under an ethical duty as an attorney not to vote.” (Hearing Transcript, page 131). This conflict of interest was due to his professional relationship with the then-Director of the Lucas County Board of Elections, Meghan Gallagher, as her former legal counsel and the subsequent complaints she had filed against him first with the Toledo Bar Association and later with the Ohio Supreme Court. (Hearing Transcript, pages 130-132). Earlier in his tenure, however, Mr. DeGidio had voted to elect Ms. Gallagher as Director despite having the same conflict of interest resulting from their attorney-client relationship. (Hearing Transcript, pages 132-133).

As to the May 6, 2014 primary election night, in the course of the hearing, Mr. DeGidio admitted to being absent during the unofficial canvass. “I don't know, I might have been in my car sleeping or I might have been down the street getting something to drink.” He added that the Board of Elections was “... on break and ... we're not required to sit there the entire break, especially if it's two hours long.” (Hearing Transcript, pages 217-218).¹⁶

F. GINA KACZALA

The portion of the hearing devoted to Ms. Kaczala took on a different tenor from the previous three segments. In his introduction, Ms. Kaczala's attorney, Mr. Belazis, represented that Ms. Kaczala began working for the Lucas County Board of Elections on December 13, 2011, that she was elected Director a little over two years later, on March 4, 2014, (Hearing Transcript, page 241), and that during her service prior to being appointed Director she had two basic responsibilities: secretary to the Board and assistant to the Director. (Hearing Transcript, page 242). Mr. Belazis represented that since becoming Director, Ms. Kaczala has worked to remedy a number of the items that the Transparency

¹⁶ R.C. 3505.30 requires that Boards of Elections “... shall remain in session from the time of the opening of the polls, *continuously*, until the results of the election are received from every precinct in the county and such results are communicated to the secretary of state.” (emphasis added).

Committee had noted during their four previous hearings as irregularities or points of concern. She communicated to agency personnel upon being named Director that “from that point forward there would be an atmosphere of respect, courtesy and teamwork.” (Hearing Transcript, page 245). According to Mr. Belazis, Ms. Kaczala “immediately posted the names of the candidates,” began referring campaign finance violations to the Ohio Elections Commission, and scheduled the GEMS manager for training. (Hearing Transcript, page 245). And, she “began to make arrangements for regular board meetings ... she immediately cut through that and somehow got this board, whose members you heard from today, to agree to do that. And they’re now scheduled for the first Tuesday of every month and there’s one scheduled for June.” (Hearing Transcript, pages 248-249). These revelations came to the surprise of the Transparency Committee, with Ms. Kaczala not having brought them up during the previous four hearings. (Hearing Transcript, pages 248-249 and 253).

For its part, the Transparency Committee expressed some sympathy for Ms. Kaczala but noted that she “is part of the culture” and “does not ha[ve] the ability and the leadership ... to lead [the] Board of Elections.” (Hearing Transcript, page 27). Specifically, the Transparency Committee expressed concern about Ms. Kaczala’s readiness to fulfill the role of Director of a large county board of elections. For example, on the same day she was named Director by the Lucas County Board of Elections, Ms. Kaczala fired Melissa Brogan for insubordination. (Hearing Transcript, pages 255-256). Ms. Brogan was a staff member for the Board, and had a personal relationship and a child with her supervisor, Matt Toepfer. The Transparency Committee believed this immediate firing of Ms. Brogan may have unnecessarily exposed the Board to legal liability and should have been discussed more prior to action. (Hearing Transcript, pages 255-257).

Overall, the Transparency Committee's views on Ms. Kaczala may best be summarized by Mr. Ruvolo's statement:

I think being the director of the Lucas County Board of Elections right now is not the job you should have. I think that for a variety reasons, the most important being that you did come into a toxic environment, and whether it was your fault or not, you were unable to defuse that My second reason for recommending that you not be retained is I think the new Board, if there is one, ought to be able to pick the new director and deputy director. I think ... that the leadership that comes in has to have the ability to hire the best people they can find and to give those people the autonomy to do their job. Now, if you apply for one of those positions and they hire you, I wouldn't have a problem with that but ... if there is one, the new Board ought to have the ability to pick the staff leadership they need to move this Board forward. And that's why I move to support your dismissal at this time.

(Hearing Transcript, pages 274-275).

FINDINGS

A. GROUP FINDINGS & GENERAL OBSERVATIONS

The aforementioned actions and inactions described by the Transparency Committee, and as discussed by respondents on the record, are specific infractions that may justify removal of any or all of the respondents from their positions with the Lucas County Board of Elections. However, it is the tranche of individual vignettes that aggregate into a single narrative: the Lucas County Board of Elections is organizationally and operationally dysfunctional to its core, and helplessly so, given its current cast. The challenge for the Hearing Officer in compiling the report, and this section in particular, has not been what to include from the thousand pages that constitute the record of these proceedings, but what *not* to include.

Clearly, there is an ingrained culture of passing the buck at the Lucas County Board of Elections in which everyone has skin in the game and an opinion to contribute but no one to take responsibility. According to Mr. Allison,

[I]t is not just a Republican problem with this Board of Elections, that everybody in many circumstances we found on the record that people wanted to point fingers when problems arose, that nobody understood, there was no policy, there wasn't a clear line of authority and both sides pointed the fingers at each other and the conclusion was, you know, nobody is in charge so nobody can be held responsible for what happened or didn't happen, and that is a key component of the cultural deficiency that we've discovered.

(Hearing Transcript, pages 79-80).

Depending on the particular issue, whether it be failing to properly administer campaign finance laws; violations of public meeting rules and procedures; incomplete logic and accuracy testing; unannounced and unapproved absenteeism; mission-critical personnel positions going unfilled, including precinct election officials on Election Day; missing machine cards; nepotism; physical, verbal, and emotional harassment; tape-recording conversations; uninvited late-night visits to employees homes; text messages; and generally being asleep at the wheel, the individual refrain was the same: it's not *my* fault.

Even when the Lucas County Board of Elections was able to make policies and procedures attempting to deal with some of these Board problems, they were often ignored. As Mr. DeGidio described it: "I don't think we need any more policies because we can't enforce them anyway." (Hearing Transcript, page 197). The fact that policies and procedures were put into place by the Board and then forgotten about is a concern that evidences a severe leadership deficit that touches each of the members of the Board.

Prior to presenting my findings on the individual respondents, I find it necessary to address two matters discussed at the hearing. These two matters were not considered in making my final recommendations, but I believe I would be doing a disservice in not bringing further light to them. First, is the matter of the relationship between Mr. DeGidio and Mr. Stainbrook. According to Mr. DeGidio, the Lucas County Republican Party owed

him money from when he was the party's counsel. (Hearing Transcript, pages 142-147). Both before and after Mr. DeGidio was on the Lucas County Board of Elections with Mr. Stainbrook, Mr. DeGidio alleged he and Mr. Stainbrook had discussed an agreement where the Lucas County Republican Party would recommend him to a judgeship, and in exchange, the legal bills owed by the party would "go away," (Hearing Transcript, 144-147), but, Mr. DeGidio added, "... there wasn't any more talks about it after I indicated that I felt we had to fire Meghan Gallagher." (Hearing Transcript, page 147).¹⁷ While not a matter considered in my recommendation, I find it warranted to note this potential agreement between Mr. DeGidio and Mr. Stainbrook because of its troubling nature.

Second, is the matter of the alleged text message from Mr. Stainbrook. As noted above, this hearing was not conducted as a criminal investigation. The allegation, albeit in writing, (Letter of April 21, 2014 from Eric LaPlante, Hearing Exhibit 2), was not made as a part of a notarized, sworn statement. Mr. Stainbrook vigorously denies its truthfulness and asserts that opening his personal Verizon cell phone account to unnamed reporters at the region's newspaper of record constitutes irrefutable evidence that no such text message was sent. (Hearing Transcript, page 85). While such a text may or may not have been sent, and that matter will be sorted out by the proper authorities in due course, there is an important question here—which may be applied to the matter above also: What is it about the culture of the Lucas County Board of Elections that enables these kinds of accusations to ring true for some? Such an accusation would be universally rejected as preposterous in any of the other 87 boards of elections. I give no weight to the merits of the accusation, or to its

¹⁷ As previously noted, this administrative hearing did not constitute a criminal investigation. However, the Hearing Officer finds it important to here note for the record that the Board Members, as public officials, should they retain their positions, must be mindful to carefully adhere to the state's ethics laws and to steer far clear of any appearance of impropriety.

rebuttal. I do, however, give credence to the existence of an opprobrious culture in which such an accusation may fester rather than quickly dissipate.

I offer a final point on the environment of the Lucas County Board of Elections. During the May 15 hearing, Mr. Ruvolo engaged Ms. Kaczala in a line of questioning that I find particularly relevant as it relates to the toxic environment at the Lucas County Board of Elections. In response to a question, Ms. Kaczala revealed that “Mr. Stainbrook would ask me to keep an eye out in the office, watch people, report any information to him.” (Hearing Transcript, page 271). Mr. Ruvolo asked, and it was confirmed by Ms. Kaczala, that her relationship with Meghan Gallagher, Ms. Kaczala’s former supervisor (and presumably with Mr. Stainbrook), “went south” when “Betsy Schuster [of the Secretary of State’s Office] came up” and asked her to speak with representatives of the Secretary of State’s Office during a management review in 2012. (Hearing Transcript, pages 261-264). The cultural lesson seems clear: if one cooperates with the Secretary of State and participates in any meaningful effort to improve the workings of the Board of Elections then there will be consequences to suffer from those with a contrary agenda.

The organizational and operational morass, this toxic environment that is at the heart of the problems at the Lucas County Board of Elections, is the worst dynamic I have seen or heard of in my experience as an election administrator in Ohio. The voters and taxpayers of Lucas County deserve better.

B. INDIVIDUAL FINDINGS: RON ROTHENBUHLER

I find as follows with respect to Mr. Rothenbuhler:

1. During his tenure as a member of the Board of Elections, the Board has failed to refer campaign finance reports to the Ohio Elections Commission for two

and a half years, resulting in the Elections Commission having no information on reports from Lucas County to examine for purposes of validation or investigation.

2. During his tenure as a member of the Board of Elections, the Board has consistently failed to have regular meetings. As of May 15, 2014, the Board had not had a regular meeting since October of 2013.
3. During his tenure as a member of the Board of Elections, the Board was placed under administrative oversight and two bipartisan election administration consultants—Jon Allison and Jim Ruvolo—were sent by Secretary Husted into the Lucas County Board of Elections to examine the Board and deliver a report to the Secretary on how the Board should move forward. The resulting Allison-Ruvolo Report was issued in February 2013. Board Member John Irish made a motion at a Lucas County Board of Elections Meeting to accept the report and implement its recommendations, which was not seconded by Mr. Rothenbuhler.

C. INDIVIDUAL FINDINGS: JON STAINBROOK

I find as follows with respect to Mr. Stainbrook:

1. During his tenure as a member of the Board of Elections, the Board has failed to refer campaign finance reports to the Ohio Elections Commission for two and a half years, resulting in the Elections Commission having no information on reports from Lucas County to examine for purposes of validation or investigation.

2. During his tenure as a member of the Board of Elections, the Board has consistently failed to have regular meetings. As of May 15, 2014, the Board had not had a regular meeting since October of 2013.
3. During his tenure as a member of the Board of Elections, the Board was placed under administrative oversight and two bipartisan election administration consultants—Jon Allison and Jim Ruvolo—were sent by Secretary Husted into the Lucas County Board of Elections to examine the Board and deliver a report to the Secretary on how the Board should move forward. The resulting Allison-Ruvolo Report was issued in February 2013. Board Member John Irish made a motion at a Lucas County Board of Elections Meeting to accept the report and implement its recommendations, which was not seconded by Mr. Stainbrook.

D. INDIVIDUAL FINDINGS: ANTHONY DeGIDIO

I find as follows with respect to Mr. DeGidio:

1. During his tenure as a member of the Board of Elections, the Board has failed to refer campaign finance reports to the Ohio Elections Commission for two and a half years, resulting in the Elections Commission having no information on reports from Lucas County to examine for purposes of validation or investigation.
2. During his tenure as a member of the Board of Elections, the Board has consistently failed to have regular meetings. As of May 15, 2014, the Board had not had a regular meeting since October of 2013.

3. During his tenure as a member of the Board of Elections, the Board was placed under administrative oversight and two bipartisan election administration consultants—Jon Allison and Jim Ruvolo—were sent by Secretary Husted into the Lucas County Board of Elections to examine the Board and deliver a report to the Secretary on how the Board should move forward. The resulting Allison-Ruvolo Report was issued in February 2013. Board Member John Irish made a motion at a Lucas County Board of Elections Meeting to accept the report and implement its recommendations, which was not seconded by Mr. DeGidio.
4. While on the Lucas County Board of Elections, Mr. DeGidio represented then current Director of the Board Meghan Gallagher. Mr. DeGidio voted to hire Ms. Gallagher as Director of the Lucas County Board of Elections. Later, Mr. DeGidio used the conflict with Ms. Gallagher to excuse himself from being involved in discussions in whether the Lucas County Board of Elections should adopt the Allison-Ruvolo Report.
5. On May 6, 2014, when the unofficial canvass at the Lucas County Board of Elections was taking place on primary election night, Mr. DeGidio was absent for a portion of the canvass.

E. INDIVIDUAL FINDINGS: GINA KACZALA

I find as follows with respect to Ms. Kaczala:

1. Prior to being Director, Ms. Kaczala had two different positions with the Lucas County Board of Elections – secretary to the Board and assistant to the

Director. Ms. Kaczala has been a full-time employee of the Board for approximately two and a half years.

2. Since being appointed Director of the Lucas County Board of Elections, Ms. Kaczala has done some important things to try and correct the problems at the Board; including, beginning to send the campaign finance reports to the Ohio Elections Commission.
3. On the same day Ms. Kaczala was appointed Director of the Lucas County Board of Elections, Ms. Kaczala fired Melissa Brogan. Given Ms. Brogan's personal relationship with her supervisor, this hasty termination may have unnecessarily opened the Board up to legal action.

RECOMMENDATIONS

Ohio Revised Code § 3501.16 empowers the Secretary of State to “summarily remove or suspend any member of a board of elections, or the director, deputy director, or any other employee of the board, for neglect of duty, malfeasance, misfeasance, or nonfeasance in office, for any willful violation of Title XXXV of the Revised Code, or for any other good and sufficient cause.” Based on the foregoing report,

1. I conclude that the failure to adopt and follow a policy for the holding of regular public meetings of the Lucas County Board of Elections, consistent with Ohio's public meeting laws, and the related misuse of special meetings, constitutes misfeasance on the part of Mr. Rothenbuhler, Mr. Stainbrook, and Mr. DeGidio.
2. I conclude that the failure of the Lucas County Board of Elections to refer candidate committees to the Ohio Elections Commission for failure to file and

the late filing of campaign finance reports constitutes nonfeasance on the part of Mr. Rothenbuhler, Mr. Stainbrook, and Mr. DeGidio.

3. I conclude that the failure of the Lucas County Board of Elections to implement the Allison-Ruvolo recommendations constitutes neglect of duty on the part of Mr. Rothenbuhler, Mr. Stainbrook, and Mr. DeGidio.
4. I conclude that the failure to avoid conflicts of interest resulting from his attorney-client relationships with Meghan Gallagher, in contravention of Secretary of State Directive 2007-35, constitutes malfeasance on the part of Mr. DeGidio.
5. I conclude that being absent during portions of the unofficial canvass constitutes neglect of duty on the part of Mr. DeGidio.
6. I conclude that the abhorrently dysfunctional organizational and operational culture of the Lucas County Board of Elections, as described in my *FINDINGS* above, constitutes good and sufficient cause for the removal of Mr. Rothenbuhler, Mr. Stainbrook, and Mr. DeGidio.
7. I conclude that the hasty termination of Ms. Brogan constitutes misfeasance on the part of Ms. Kaczala.
8. Finally, assuming that Mr. Rothenbuhler, Mr. Stainbrook, and Mr. DeGidio will be removed from their positions as Members of the Lucas County Board of Elections as recommended above, I conclude that it will be necessary and proper for the newly constituted board members, whomever they may be, to enjoy full freedom in selecting their own Director and Deputy Director. As such, I conclude this operational imperative constitutes good and sufficient cause for the removal

of Ms. Kaczala. If Mr. Rothenbuhler, Mr. Stainbrook, and Mr. DeGidio are not to be removed, I see no good and sufficient cause for the removal of Ms. Kaczala on this count alone.

As such, I recommend that the Secretary of State remove Mr. Ron Rothenbuhler, Mr. Jon Stainbrook, and Mr. Anthony DeGidio from their positions as Members of the Lucas County Board of Elections and remove Ms. Gina Kaczala as Director of the Lucas County Board of Elections.

There remains one personnel item that that I would like to address, that being the tenure of John Irish, also a Member of the Lucas County Board of Elections. The Transparency Committee did not recommend that the Secretary remove him as a Member of the Board of Elections. Based on the record, I believe this is at least partly due to the fact that Mr. Irish was the lone vote to implement the Allison-Ruvolo recommendations. I am in agreement with the Transparency Committee's recommendation on this account. However, Mr. Irish, despite being the most junior member of the Board, has nonetheless been a member during its most recent tumult, and the allegations of his actions on the night of May 6, 2014 do not comport with behavior becoming of a public official. If Mr. Irish continues as a Member of the Lucas County Board of Elections, he should be given little latitude in the event he proves to be a stumbling block, though I have no evidence at this time that he will be an impediment to reform.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Matthew M. Damschroder", written in a cursive style.

Matthew M. Damschroder
Hearing Officer