



**Via Electronic Mail**

March 6, 2019

Anthony Perlatti, Interim Director  
Cuyahoga County Board of Elections  
2925 Euclid Avenue  
Cleveland, Ohio 44115  
[aperlatti@cuyahogacounty.us](mailto:aperlatti@cuyahogacounty.us)

Re: Tie Vote on the Certification of the Candidacy of Mr. Timothy Michael Zvoncheck

Dear Director Perlatti:

At a meeting held on February 12, 2019, the Cuyahoga County Board of Elections (“the board”) considered the petition and candidacy of Mr. Timothy Michael Zvoncheck. Board Member Jeff Hastings and Interim Chairman Rob Frost voted in favor of allowing Mr. Zvoncheck to be certified to the ballot for the May 7, 2019 Primary Election as a candidate for Strongsville City Council, Ward 3. Board Members Inajo Davis Chappell and David Wondolowski voted against the motion, resulting in a tie vote of the board. Pursuant to R.C. 3501.11(X)<sup>1</sup>, the board submitted the tie vote to the Secretary of State for a decision.

The City of Strongsville is a chartered municipality that holds a nonpartisan primary election to nominate candidates for each of its municipal elective offices to the general election ballot. (Art. VII, Sec. 3, Charter of Strongsville). Mr. Zvoncheck is one of only two individuals who filed for City Council, Ward 3. Therefore, in accordance with the Strongsville Charter (“the Charter”), both candidates, if certified by the board as candidates for the primary election, automatically advance to the general election.

The issue with Mr. Zvoncheck’s candidacy is that he did not use the petition form created by the board for nonpartisan primary elections. Neither the Charter nor the Ohio Revised Code prescribes the form of the petition for a candidate seeking to appear on the ballot in a nonpartisan primary. The board created its own form, Form 2-2-I-NP, for use in its county by editing Secretary of State Form 2-I, which is a declaration of candidacy and petition for a candidate running in a *party* primary election. The form of the petition filed by Mr. Zvoncheck was Secretary of State Form 3-O, which is intended for candidates seeking to appear on the ballot for a nonpartisan office for which no primary election is held.

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<sup>1</sup> R.C. 3501.11(X) provides that “[i]n all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy... to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final.”

There are only three material differences between the form created by the board and the one Mr. Zvoncheck used. The most noticeable of these differences is the date of the election.<sup>2</sup> The petition filed by Mr. Zvoncheck states that he desires to be a candidate for the “general election held the 5<sup>th</sup> day of November 2019” instead of the “primary election to be held on the 7<sup>th</sup> day of May 2019.” Everything else on Mr. Zvoncheck’s petition is correct, and it contains a completed circulator’s statement and the requisite number of valid signatures.<sup>3</sup>

R.C. 3513.07, the statute prescribing the form of declaration of candidacy and petition explicitly requires substantial compliance.<sup>4</sup> When, such as here, there is an error or omission on the declaration of candidacy and petition, the board must determine whether the prospective candidate substantially complied with the form of the petition.<sup>5</sup> In making this determination, the board must consider whether the omission on the petition misled a signer of the petition and whether there is a claim of fraud or deception.<sup>6</sup> With regard to the omission or the inclusion of the wrong date of the election, the Ohio Supreme Court repeatedly has found that a candidate has substantially complied with the form of the petition absent evidence that a signer was misled and a claim of fraud or deception.<sup>7</sup>

None of the signers of Mr. Zvoncheck’s petition appeared at the February 12, 2019 meeting of the board, and nothing in the documentation the board provided suggests that any of the signers of the petition were misled by the date of the election. Additionally, no one has alleged any fraud related to the completion, circulation, or filing of Mr. Zvoncheck’s petition. At the meeting of the board, Mr. Zvoncheck himself stated that “there was no deceitful or ill-intent using these forms to, you know, confuse anybody as to which election that I was filing for.”<sup>8</sup>

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<sup>2</sup> Another difference is that the petition filed by Mr. Zvoncheck states that it must be filed no later than the 90<sup>th</sup> day before the general election, but the correct filing deadline is no later than the 90<sup>th</sup> day before the primary election. Despite this difference, it is undisputed that Mr. Zvoncheck filed his petition by the correct deadline. The petition filed by Mr. Zvoncheck also states that he desires to be a candidate “for *election* to the office” instead of “for *nomination* to the office.” (Emphasis added.) This difference arguably is the least likely of the three differences to have confused or misled any signer of Mr. Zvoncheck’s petition.

<sup>3</sup> Cuyahoga County Board of Elections February 12, 2019 Meeting Transcript (“Transcript”), p. 3.

<sup>4</sup> R.C. 3513.07 (“The form of declaration of candidacy and petition \* \* \* shall be substantially as follows”).

<sup>5</sup> *Stern v. Cuyahoga Cty. Bd. Of Elections*, 14 Ohio St.2d 175, 184 (1968).

<sup>6</sup> *State ex rel. Stewart v. Clinton County Board of Elections*, 124 Ohio St.3d 584, 588 (2010) (citing *Stern v. Cuyahoga Cty. Bd. Of Elections*, 14 Ohio St.2d 175, 184 (1968); *State ex rel. Osborn v. Fairfield Cty. Bd. Of Elections*, 65 Ohio St. 3d 194, 196 (1992)) (“The public policy which favors free competitive elections, in which the electorate has the opportunity to make a choice between candidates, outweighs the arguments for absolute compliance with each technical requirement in the petition form, where the statute requires only substantial compliance, where, in fact, the only omission cannot possibly mislead any petition signer or elector, where there is no claim of fraud or deception, and where there is sufficient substantial compliance to permit the Board of elections, based upon prima facie evidence appearing on the face of the jurat which is part of the petition paper, to determine the petition to be valid.”)

<sup>7</sup> See *Stewart*, 124 Ohio St.3d 584 (2010) (candidate wrote dashes in the blank provided on the petition for the date of the election); *Hill v. Cuyahoga Cty. Bd. of Elections*, 68 Ohio St.2d 39 (1981)(candidate provided the wrong date of the election); *State ex rel. Eshleman v. Fornshell*, 125 Ohio St.3d 1 (2010) (candidate omitted the month and day of the election).

<sup>8</sup> Transcript, p. 10.

Based on the facts and the record presented to me, I determine that the public policy favoring free, competitive, and accessible elections outweighs the rejection of Mr. Zvoncheck's petition. I find that Mr. Zvoncheck's petition substantially complied with the required form pursuant to R.C. 3513.07 and break the tie in favor of the motion to allow Mr. Zvoncheck to be certified to the ballot.

Yours in service,



Frank LaRose

cc: Robert S. Frost, Interim Chairman, Cuyahoga County Board of Elections  
Inajo Davis Chappell, Member, Cuyahoga County Board of Elections  
Jeff Hastings, Member, Cuyahoga County Board of Elections  
David J. Wondolowski, Member, Cuyahoga County Board of Elections