

**MINUTES
OF
THE OHIO ELECTIONS COMMISSION**

Meeting of April 27, 2006

The Ohio Elections Commission came to order at 10:00 A.M. on Thursday, April 27, 2006 in the Office of the Ohio Elections Commission on the sixth floor of the Wyandotte Building, located at 21 W. Broad St., Columbus, Ohio.

MEMBERS PRESENT

Catherine A. Cunningham, Chair
William Booth, Vice Chair
William L. Mallory, Sr.
Benjamin F. Marsh
William L. Ogg
Martin O. Parks
Harvey H. Shapiro

STAFF PRESENT

Philip C. Richter, Staff Attorney
Betty Springer, Commission Secretary

Chair Cunningham called the meeting to order. After a roll call, all members of the Commission were present for the meeting.

Mr. Marsh moved to approve the minutes of the Probable Cause Panel of April 20, 2006. Mr. Booth seconded. The motion passed 4 – 0.

Mr. Mallory moved to approve the Minutes of April 20, 2006. Mr. Parks seconded. The motion passed 5- 0.

PRELIMINARY REVIEWS

GROUP CONSIDERATIONS:

Richard Grafin, et al. (Case No. 2006R-096). Richard Grafin was present and identified himself for the record. Mr. Grafin made a brief statement. Mr. Richter advised Mr. Grafin that his recommendation was to dismiss the matter since the referral was beyond the 2-year statute of limitations. Mr. Ogg moved to dismiss the matter as being beyond the 2-year statute of limitations. Mr. Booth seconded. The motion passed 7 – 0.

Mr. Richter spoke to Case Nos. 2006R-088, 2006R-097, and 2006R-098 and recommended that the Commission dismiss the matters as the referrals were beyond the 2-year statute of limitations. Mr. Ogg moved to accept Mr. Richter's recommendation. Mr. Booth seconded. The motion passed 7 – 0.

Mr. Richter advised the Commission that the following cases had filed the required reports with the appropriate filing office and an affidavit of response with the Commission and were now in compliance and recommended that the Commission find a violation but for good cause shown not to impose a fine or refer the matters for prosecution. Mr. Parks moved to find one or more violation(s) of Ohio campaign finance law(s) in the following cases but for good cause shown not to impose a fine or refer the matters for further prosecution: 2006R-040, 2006R-041, 2006R-042, 2006R-043, 2006R-045, 2006R-050, 2006R-051, 2006R-053, 2006R-054, 2006R-055, 2006R-056, 2006R-058, 2006R-059, 2006R-060, 2006R-061, 2006R-062, 2006R-063, 2006R-064, 2006R-077, 2006R-080, 20906R-081, 2006R-082,

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2006R-083, 2006R-085, 2006R-090, 2006R-091, and 2006R-092. Mr. Ogg seconded. The motion passed 7 – 0.

Randy Petersen (Case No. 2006R-003). Mr. Booth recused himself from this matter. Mr. Richter recommended that the Commission find a violation but for good cause shown not to impose a fine or refer the matter for prosecution. Mr. Shapiro moved to accept Mr. Richter's recommendation. Mr. Ogg seconded. The motion passed 6 – 0.

Cynthia Lee-Richardson, et al. (Case No. 2006R-069). Mr. Richter recommended that the Commission consolidate Case No. 2006R-069 and 2005R-026, find a violation but for good cause shown not to impose a fine or refer the matter for prosecution. Mr. Booth moved to accept Mr. Richter's recommendation. Mr. Shapiro seconded. The motion passed 7 – 0.

Mr. Richter requested that the Commission find a violation and impose a fine of \$50 in Case Nos. 2006R-044 and 2006R-057. Mr. Ogg moved to accept Mr. Richter's recommendation. Mr. Mallory seconded. The motion passed 7 – 0.

Jason Allen Debolt, et al. (Case No. 2006R-044). Mr. Richter noted for the record that Mr. Debolt had filed an affidavit of response and recommended that the Commission reconsider this matter and vacate their previous decision on this matter at today's meeting. Mr. Richter then recommended that the Commission find a violation but for good cause shown not to impose a fine or refer the matter for prosecution. Mr. Parks moved to accept Mr. Richter's recommendation. Mr. Marsh seconded. After a roll call vote the motion passed 6 – 0. Mr. Ogg had left the meeting when this matter had been decided. Although he was present during all other matters for consideration and the election of the Chair and Vice-Chair.

Brian Garry, et al. (Case No. 2006R-075). Mr. Richter recommended that the Commission consolidate Case Nos. 2004R-665 and 2006R-075, find a violation and impose a \$100 fine. Mr. Marsh moved to accept Mr. Richter's recommendation. Mr. Parks seconded. The motion passed 7 – 0.

Thomas J. Hart, et al. (Case No. 2006R-072). Mr. Richter spoke to this matter and recommended that the Commission find a violation but for good cause shown not to impose a fine or refer the matter for prosecution. Mr. Booth moved to accept Mr. Richter's recommendation. Mr. Mallory seconded. The motion passed 7- 0.

Michael N. Wick, et al. (Case No. 2006R-079). Michael N. Wick was present and identified himself for the record. Mr. Wick was sworn in for testimony and made a brief statement. Mr. Richter recommended that the Commission find a violation but for good cause shown not to impose a fine or refer the matter for prosecution. Mr. Booth moved to find a violation of R. C. §3517.13(D). Mr. Mallory seconded. After a roll call vote the motion passed 7 – 0. Mr. Shapiro moved that for good cause shown not to impose a fine or refer the matter for prosecution. Mr. Mallory seconded. After a roll call vote the motion passed 7 – 0.

Mr. Richter spoke to the issues in Case Nos. 2006R-046, 2006R-047, 2006R-049, 2006R-084, 2006R-094 and 2006R-095, and recommended that the Commission find a violation and impose a fine of \$25 a day commencing on the date the report was due until such time as the report is filed. Mr. Richter further recommended that the Commission may reconsider the matter if the report is filed and a properly notarized affidavit is received within

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30 days of the notification of the disposition. Mr. Ogg moved to accept Mr. Richter's recommendation. Mr. Booth seconded. The motion passed 7 - 0.

Mr. Richter spoke to the issues in Case Nos. 2006R-070 and 2006R-074, and recommended that the Commission find a violation and impose a fine of \$2,130 plus \$25 a day commencing on April 27, 2006 until such time as the reports are filed. Mr. Richter further recommended that the Commission may reconsider the matters if the report is filed and a properly notarized affidavit and a payment of \$200 are received within 30 days of the notification of the disposition. Mr. Mallory moved to accept Mr. Richter's recommendation. Mr. Booth seconded. The motion passed 7 - 0.

John H. Fenton, et al. (Case No. 2006R-066). Mr. Richter spoke to the issues in this case and recommended that the Commission consolidate Case Nos. 2005R-022 and 2006R-066. Mr. Richter further recommended that the Commission find a violation and impose a fine of \$2,130 plus \$25 a day commencing on April 27, 2006 until such time as the reports are filed. Mr. Richter further recommended that the Commission may reconsider the matters if the report is filed and a properly notarized affidavit and a payment of \$200 are received within 30 days of the notification of the disposition. Mr. Mallory moved to accept Mr. Richter's recommendation. Mr. Booth seconded. The motion passed 7 - 0.

Edith Thrower, et al. (Case No. 2006R-071). Mr. Mallory recused himself from this matter. Mr. Richter spoke to the issues in this matter and recommended that the Commission find a violation and impose a fine of \$8,600 plus \$100 a day commencing on April 27, 2006 and continuing until such time as the report is filed. Mr. Richter further recommended that the Commission may reconsider the matters if the report is filed and a properly notarized affidavit and a payment of \$2500 are received within 30 days of the notification of the disposition. Mr. booth moved to accept Mr. Richter's recommendation. Mr. Ogg seconded. The motion passed 6 - 0.

Lucas County Republican Party-Executive Committee, et al. (Case No. 2006R-086). Mr. Marsh recused himself from this matter. Mr. Richter recommended that the Commission find no violation against the current treasurer. Mr. Richter then recommended that the Commission find a violation against the Lucas County Republican Party Executive Committee and impose a fine of \$1,000. Mr. Parks moved to accept Mr. Richter's recommendation. Mr. Ogg seconded. The motion passed 6 - 0 (Mr. Marsh recused).

Chair Cunningham continued the following cases: 2006R-039, 2006R-048, 2006R-052, 2006R-065, 2006R-067, 2006R-068, 2006R-073, 2006R-076, 2006R-078, 2006R-087, 2006R-089, and 2006R-093.

HEARINGS

Urling v. Schmidt for Congress Committee, et al. (Case No. 2006E-011). Christopher Finney, counsel for the complainant, was present and identified himself for the record. William Todd, counsel for the respondents, was present and identified himself for the record. Chair Cunningham asked counsel if there would be an objection to consolidating Case Nos. 2006E-011 and 206E-012 for purposes of arguments and the presentation of evidence. Mr. Finney and Mr. Todd did not object. Mr. Finney and Mr. Todd made opening statements.

Mr. Finney presented complainant's hearing Exhibits A, B, C, D and E for consideration in these matters. Mr. Todd presented respondent's hearing Exhibits 1 and 2. Mr. Todd proffered the deposition of Jean Schmidt into the record. Mr. Finney objected to the submission of the deposition of Jean Schmidt as evidence. Mr. Todd proffered the

deposition of James Urling into the record. Mr. Finney proffered the deposition of Peter Schmidt into the record. There was no objection to the admission of the depositions of Peter Schmidt or James Urling. Mr. Finney argued that he had subpoenaed Jean Schmidt and objected to the admission of the deposition based on his not being given the opportunity to cross-examine Ms. Schmidt. Mr. Todd noted for the record that Ms. Schmidt was a member of the U.S. House of Representatives and that Congress was in session. Mr. Todd further spoke to his Motion to Quash and stated that members of Congress are exempt from submitting to a subpoena while Congress is in session. Mr. Finney did not dispute the exemption for Ms. Schmidt but argued that his ability to cross-examine Ms. Schmidt was necessary to properly present his case and that he had been hindered in properly examining Ms. Schmidt. Mr. Finney noted for the record that he had requested that she be made available for an additional deposition. Mr. Todd responded to statements by Mr. Finney and responded to questions from Chair Cunningham.

Chair Cunningham summarized the arguments and events as presented to the Commission and directed that the affidavit of Ms. Schmidt be admitted into the record. Chair Cunningham noted for the record that a member of the Commission must leave at approximately 2:30 P.M. and advised counsel that if they wish to continue the matter that she would grant such a continuance. Neither counsel desired to have such a continuance.

Chair Cunningham indicated that she will have a short recess for lunch and then allow counsel to present the case. After a 20-minute lunch break the Commission reconvened.

Mr. Finney called James Urling as a witness. Mr. Urling identified himself and was sworn in for purposes of testimony. Mr. Urling responded to questions from Mr. Finney and identified complainant's hearing Exhibits B, C, and D. Mr. Urling identified complainant's hearing Exhibit F. Mr. Todd objected to hearing Exhibit F. Chair Cunningham sustained the objection. Mr. Urling responded to questions from Mr. Finney. Mr. Todd objected to the line of questioning. Chair Cunningham sustained the objection. Mr. Todd cross-examined Mr. Urling. Mr. Urling identified complainant's Exhibit D-5, D-2 and B as attached to original complaint. Mr. Finney conducted redirect examination. Mr. Urling responded to questions from the Commission. Mr. Urling was directed to stand down.

Mr. Finney called Julie Faust as a witness. Ms. Faust identified herself and was sworn in for purposes of testimony and responded to questions from Mr. Finney. Mr. Todd objected to the line of questioning. Chair Cunningham sustained the objection. Ms. Faust responded to questions from the Commission. Mr. Todd cross-examined Ms. Faust. Ms. Faust responded to questions from Mr. Todd and identified respondent's hearing Exhibit 1. Mr. Finney objected to the line of questioning. Chair Cunningham sustained the objection. Ms. Faust was directed to stand down.

Mr. Finney moved to admit complainant's hearing Exhibits A, B, C, and D. The exhibits were admitted without objection. Mr. Finney further moved to enter into the record complainant's Exhibits A, B, C, D-1, D-2, D-3, D-4 and D-5 as attached to the original complaint in Case No.

2006E-011. The exhibits were admitted without objection. As to Case No. 2006E-012, Mr. Finney moved to enter into the record complainant's Exhibits A, B, C, D, E, F, and G as attached to the amended complaint. The exhibits were admitted without objection. Mr. Finney rested his case.

Mr. Todd moved to enter into the record the deposition of Joseph J. Braun, Peter Schmidt and Jeanette Schmidt. Mr. Finney objected to the admission of the deposition of Jeanette Schmidt. Chair Cunningham overruled the objection. The depositions of Joseph Braun and Peter Schmidt were admitted without objection.

Mr. Finney and Mr. Todd gave closing statements in Case No. 2006E-011. The Commission then considered their findings in this case.

Mr. Richter advised the Commission that the legal standard required to find a violation in this case was clear and convincing evidence. He responded to additional questions from the Commission.

After discussion, Mr. Shapiro moved to find no violation of R. C. §3517.21(B)(8), as it relates to Congressman Chabot's endorsement. Mr. Parks seconded. After a roll call vote the motion passed 6 – 1 (Mr. Booth voted no). Mr. Booth moved to find a violation of R. C. §3517.21(B)(8) as to the endorsement of Family Research Council by clear and convincing evidence. Mr. Mallory seconded. After a roll call vote the motion passed 7 – 0. After discussion, Mr. Ogg moved to find a violation of R. C. §3517.21(B)(8) by clear and convincing evidence as to the endorsement of Rep. Tom Tancredo. Mr. Mallory seconded. After a roll call vote the motion passed 5 – 2 (Mr. Parks and Chair Cunningham voted no).

Mr. Booth moved to find that there was good cause shown not to refer the matter for further prosecution and also not to issue a letter of public reprimand against the respondents as to the finding of a violation as to the endorsement of the Family Research Council. Mr. Ogg seconded. After a roll call vote the motion passed 7 – 0. Mr. Marsh moved to find good cause shown not to refer the matter for further prosecution and also not to issue a letter of public reprimand against the respondents as it relates to the violation of R.C. §3517.21(B)(8) regarding the endorsement of Rep. Tancredo. Mr. Ogg seconded. After a roll call vote the motion passed 7 – 0.

Mr. Finney and Mr. Todd gave closing statements in Case No. 2006E-012. The Commission then considered their finding in this case.

Mr. Richter spoke to previous cases before the Commission, citing the Commission's previous decisions and responding to questions from the Commission.

Mr. Marsh moved to find a violation of R. C. §3517.21(B)(10) by clear and convincing evidence against all respondents for including the statement, "*Bachelors Degree in Social Studies – Secondary Education, University of Cincinnati, 1986*," in various campaign materials during the 2005 election period. Mr. Mallory seconded. After a roll call vote the motion passed 7 – 0. Mr. Booth moved to find a violation of R.C. §3517.21(B)(2) against the candidate by clear and convincing evidence. The motion died for lack of a second. After further discussion, Mr. Parks moved to find good cause not to refer the matter for further

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prosecution, but instead to issue a letter of public reprimand to all respondents. Mr. Marsh seconded. After a roll call vote the motion passed 7 – 0.

Urling v. Schmidt for Congress Committee, et al. (Case No. 2006E-011). Please refer to Case No. 2006E-011 for details.

Chair Cunningham noted for the record that the Commission needed to elect a new Chair and Vice-Chair for 2006 – 2007. Harvey Shapiro commended Chair Cunningham on her tenure as Chairman and praised her for a job well done. Chair Cunningham thanked

Commission members for the opportunity to serve as Chair and stated that she had enjoyed presiding over the meetings. Chair Cunningham opened the floor for nominations. Mr. Parks nominated Mr. Booth as Chairman. Mr. Mallory seconded. After a roll call vote the motion passed 6 – 0. Mr. Marsh moved to nominate Judge Parks as Vice-Chair. Mr. Mallory seconded. After a roll call vote the motion passed 6 – 0.

Mr. Mallory moved to adjourn the meeting. Chair Cunningham declared the meeting adjourn.

The court reporter for today's meeting was Kim Payne of Runfola Reporters.

APPROVED: