

ORIGINAL

Case No. 2012-2151

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In the  
**Supreme Court of Ohio**

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JOSHUA E. O'FARRELL,  
*Contestor,*

v.

AL LANDIS, et al.,

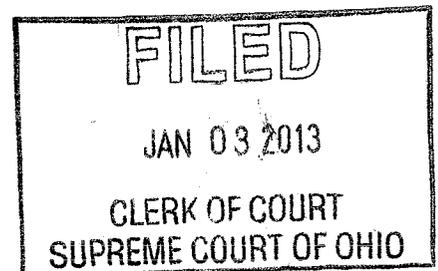
*Contestee/Respondents.*

*Petition for Contest of Election Pursuant to R.C. 3515.08*

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AMENDED MOTION FOR  
ORDER TO HAND COUNT AND/OR PERMIT INSPECTION OF  
CERTAIN BALLOTS AND NOTICE TO THE COURT

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<p>Donald Brey (0022849)  TAFT STETTINIUS &amp; HOLLISTER LLP  65 East State Street, Suite 1000  Columbus, Ohio 43215  Phone: (614) 221-4000  Facsimile: (614) 263-7078  <a href="mailto:dbrey@taftlaw.com">dbrey@taftlaw.com</a></p> <p><i>Counsel for Contestee</i></p>	<p>Stephen Knowling (0030974)  Holmes County Prosecuting Attorney  164 East Jackson Street  Millersburg, Ohio 44654-1235  Phone: (330) 674-4841  <a href="mailto:sknowling@co.holmes.oh.us">sknowling@co.holmes.oh.us</a></p> <p><i>Counsel for Respondent Holmes County  Board of Elections</i></p>

On November 29, 2012, Contestor, pursuant to R.C. 3513.13 and, in the alternative, R.C. 3513.12, filed a Motion with this Court for an Order naming two master commissioners of opposite political parties and directing them to conduct a hand recount of the paper ballots cast at the November 6, 2012, general election in Tuscarawas County precincts 21, 26, 28, 30, 32, 34, 39, 52, 58, 60, 62, 66, and 69. In the alternative, Contestor seeks an Order that the parties be permitted to inspect, without touching, the paper ballots cast at the November 6, 2012, general election in these thirteen precincts.

Yesterday, January 2, 2013, Respondent Tuscarawas County Board of Elections permitted an inspection of the provisional ballots in three of the thirteen precincts pursuant to Contestor's Civ. R. 34 Request for Production of Documents. The precincts were 30, 34 and 58. The undersigned counsel for Contestor kept a hand tally of the votes on those ballots for Contestor and Contestee as he inspected the ballots. He then compared the totals for each of the two candidates in each precinct with the results reported by the Board of Elections for provisional ballots counted in each of those precincts. The results were confirmed in precincts 30 and 34. However, there was a discrepancy of one vote in precinct 58. The Board's machine scanned results were 26 votes for O'Farrell, 8 votes for Landis and 3 undervotes (no vote for either candidate). The hand count, however, revealed that one of the machine scanned undervotes actually contains a mark by the voter for O'Farrell that was not picked up as such. This is the exact same ballot that Contestor had

requested the board to remake during the recount, but which the board declined to do. It is the one of the ballots addressed in the first count of Contestor's Contest of Election Petition, which sets forth as an irregularity the failure of the board to remake certain ballots to insure that such ballots, where the voter had not darkened the oval, but where the voter's choice was clear, would be properly counted by the electronic scanning equipment. The board did not permit inspection of more than three precincts yesterday, choosing to wait for the Court's ruling on the pending motion.

The above demonstrates the need for Contestor's pending motion. Granting the relief requested will resolve the claimed irregularity with respect to the ten ballots in the remaining ten precincts and permitting visual inspection by the parties in the first instance may reduce the number of precincts/ballots at issue. Where the inspection confirms the electronic scanning results, such as with 2 of the 3 precincts discussed above, there would no need to have special masters conduct a hand count of the provisional and absentee ballots in those precincts.

The board also explained yesterday that in order to confirm the electronic results of absentee votes in a precinct it may be necessary to inspect both the paper absentee ballots mailed to the board and the votes recorded on paper rolls by voting machines used by absentee voters who voted in person at the board's office during the early voting period. However, because the single ballot in each of the remaining precincts is either a

provisional or absentee ballot and the board has electronic results by ballot type, it may not be necessary to inspect both absentee and provisional ballots in each of the remaining precincts. Given these developments, Contestor is filing the present Amended Motion and Notice in order to proceed in the most efficient manner.

As such, Contestor amends his motion to request an Order that the Tuscarawas County Board of Elections forthwith permit a visual inspection of the board accepted provisional and/or absentee ballots in the remaining 10 precincts, namely, 21, 26, 28, 32, 39, 52, 60, 62, 66 and 69 and appoint two special masters to conduct a hand recount of the board accepted provisional ballots in precinct 58 and the board accepted absentee and/or provisional ballots in precincts 21, 26, 28, 32, 39, 52, 60, 62, 66 and 69 where the visual inspection does not confirm the board's electronic results. The preceding relief is stated in the alternative based on what Contestor believes would be the most efficient manner of proceeding. However, if the Court is not in agreement, Contestor's requested relief in his original motion for appointment of two special masters to supervise a hand recount remains, except that such hand count is no longer sought with respect to precincts 30 and 34 for the reasons stated above and in the case of hand counting absentee ballots in the remaining eleven precincts the count should include both the paper absentee ballots and absentee votes by voters of such precincts who voted early in person at the board office.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The foregoing has been transmitted via electronic mail, facsimile, and/or personal service to the following this 3 day of Jan, 2013:

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