

**Marion County Election Board Meeting Minutes**  
**Emergency Meeting 07/31/2006**

Members present: Chairman, Frank Otte, Jr.; Vice Chairman, Mark Sullivan; Secretary Doris Anne Sadler; Dan Ladendorf, Attorney

Others present: Jennifer Handlon, Election Board Administrator; Jennifer Snider, Chief Clerk; Kyle Walker, Republican Member Board of Voter Registration; John Riordan, Democratic Member Board of Voter Registration; Ed Treacy, Democratic Party Chairman; David Brooks, Attorney; Kareem Howell, representative from the Office of Corporation Counsel for the Board of Voter Registration

- I. **Call to Order.** Chairman Otte called the meeting to order. Chairman Otte welcomed Mark Sullivan as the new Vice Chairman of the Marion County Election Board replacing Steve Eichholz.
  
- II. **Voter Registration Issue.** Chairman Otte stated the Election Board received a Decree Order on June 27, 2006 in the Southern District Court approved by Judge Richard Young, entered into agreement by members of the U.S. Attorneys Office, Department of Justice, Indiana Election Division (IED), and the Indiana Attorney General. This decree requires certain obligations and deadlines to follow. Each county must identify duplicate and deceased voters and remove them from the voter registration roles by August 2, 2006. Two hundred ninety thousand registrations identified by the state as duplicates twenty-nine thousand registrants identified as deceased. Marion County is dealing with a pool of thirty-six thousand of those. Secretary Sadler noted the Election Board is getting involved in this situation according to IC 3-7-12-25, which states if the Board of Voter Registration (VR) needs interpretation of a law or help with settling a dispute, then the Election Board (EB) "shall" intervene.

Mr. Riordan stated on Friday, July 21, 2006, there was a procedural dispute between the counterparts in VR. Mr. Riordan took the matter to the Office of Corporation Counsel (OCC), which advised him to hold a public hearing to settle the matter. Mr. Riordan gave copies of the letter from OCC to the members of the EB. VR's representative from the OCC was present. Mr. Riordan suggested that it would be inappropriate to have the EB settle this matter before VR holds a public hearing. Vice Chairman Sullivan, asked if there had been a public hearing by VR to determine there is actually a gridlock and to refer the matter to the EB. Mr. Riordan stated that was not so, and the disagreement was made via a cell phone conversation on Friday.

Kyle Walker stated because of the time deadlines at hand, this forum would be an appropriate one to settle the dispute. Chairman Otte noted he did not recollect VR ever holding a public meeting to settle disputes. The VR representative from OCC, Mr. Howell, stated it was his office's opinion that the dispute should be

settled, or initially discussed, in a public meeting according to the state's Open Door Law. Secretary Sadler inquired of Mr. Howell whether he was aware of any VR public meeting in the past. Mr. Howell stated he was not, but due to the fact that there are two members making official action, this was the OCC's opinion that it should be discussed in a public forum. Secretary Sadler noted that VR had signed a contract earlier in the year with the OCC which was not done in a public meeting. Mr. Howell stated he was not aware of that action and was not a party to it.

Vice Chairman Sullivan, noted it was his opinion that the EB should step in when there has been an official finding by VR of a dispute and a request made to the EB for assistance. He stated he did not see such evidence, and VR should have a public meeting to determine these things. Mr. Ladendorf stated his opinion of the statute did allow the EB to resolve the dispute between the member of VR. Mr. Sullivan argued that VR has not referred it to the EB. Secretary Sadler moved the EB should intervene and settle this issue and clarify the law as to how to proceed with the removal of deceased and duplicate voters. Chairman Otte seconded the motion. Vice Chairman Sullivan opposed the motion. Motion passed by majority vote.

Chairman Otte proceeded with explaining the Consent Decree from the Department of Justice. Under the National Voter Registration Act, a voter may only be removed in one of two ways: confirmation in writing of a change of address, or failure to respond to a notice after two general elections have occurred. Confidence factors in percentages have been placed to decide whether a person should be removed according to these two methods. The IED decides confidence factors based on some of the following indications: last four digits of Social Security number, full Social Security number, driver's license number, date of birth, first name, last name, middle initial, suffix, previous and current addresses. Only if all those factors match, is a voter given a 100% confidence factor to be removed from the rolls. The IED also requires individual counties to decide for themselves whether they indeed have the correct person and have a sufficient confidence factor. Chairman Otte asked the members of VR to state what steps have been taken in addition to the 100% confidence factor to decide if a person is eligible to be removed from the list.

Mr. Walker stated they have taken a subset of the 36,000 names given to them by the IED. Secretary Sadler confirmed that of the 290,000 duplicate names determined by the state, 36,000 of them are from Marion County. Mr. Walker stated he wanted to approach this project (duplicate voters) in the same way they previously approached the deceased voter project by taking only those voters who had 100% confidence factor to make sure everything in the duplicate fields were the same. In cases where everything was the same, they cancelled the voters and placed a flag on the record to note they were cancelled per the 2006 duplicate list. Mr. Walker also noted they took an extra step in sending a cancellation

notification to the voter to ensure they did have the right person and give them an opportunity to correct any mistakes made.

Chairman Otte inquired if a voter was, in fact, removed from the rolls due to this process and showed up at the polls on Election Day and desired to vote, they would be issued a certificate of error and allowed to vote. Mr. Walker confirmed that was the case. Secretary Sadler noted this was allowed if the person presented the proper identification, and the inspector at the precinct called the VR office to make sure this person was purged due to the duplicate list. Mr. Walker stated his employees were following the same guidelines as they did for deceased voters and were trying to comply with this Consent Decree. He also stated his counterpart had not offered any other solutions.

Mr. Riordan noted that Marion County was not served the Consent Decree but simply told to take “appropriate action.” His first concern was the comparing of signatures and what does “absolutely certain” involve. His second concern was not having the correct documentation with a signature to deem a person eligible for removal. Secretary Sadler inquired as to whether the deceased voter purge had already taken place and what confidence factors were used. Mr. Riordan answered he was not sure because he was not a VR member at that time. Mr. Walker stated they used an 85% confidence factor for the subset of names on the deceased list.

Chairman Otte responded to Mr. Riordan by stating Marion County would be sued if they did not comply with the Consent Decree. Mr. Riordan’s question remained whether it was legal to cancel a voter without a signed authorization from the voter. Secretary Sadler noted the state is responsible to make sure a signature has been submitted on any registration form, new or old. Mr. Ladendorf noted the two counterparts from VR are in complete agreement on removing those under the 100% confidence factor. Mr. Riordan reiterated his question lies in whether he is legally allowed to remove someone without a signed affidavit.

Vice Chairman Sullivan asked whether any cards sent to those purged duplicate voter have been returned or if any responses have been made stating the voter still lived at the address and was incorrectly purged. According to Mr. Walker, no cards had been mailed out yet. Chairman Otte confirmed that voters would be given a chance with the mailed post cards to correct a mistake in purging, and if all else failed, a voter would still be able to vote on Election Day with a certificate of error.

Chairman Otte submitted the following resolution for adoption:

## **Resolution 2006-02**

WHEREAS, a Consent Decree was entered into the Federal District Court between the U.S. Department of Justice, U.S. Attorneys Office, the State of Indiana, and the Indiana Election Division on June 27, 2006. In this Decree, it is required by each county to make a determination consistent with all notice requirements mandated by law and to comply with it by August 2, 2006. This requirement includes the removal of a voter that has been positively identified as a deceased or a duplicate voter.

AND, WHEREAS, under the enforcement provisions as discussed in today's meeting, it is up to each county's Voter Registration Board or Election Board to make a determination whether an individual is positively identified as a duplicate or deceased voter.

WHEREAS, the state Indiana Election Division and the U.S. Department of Justice have laid out the acceptable process for identifying a potential voter including the 100% confidence factor, discussed today created by using the state's database, individual evaluation of personal information by the Voter Registration Board, and authorizing to remove those duplicate voter registrations by virtue of the voter registration forms discussed.

WHEREAS, the Marion County Voter Registration Board will evaluate the potential duplicates by independent analysis discussed by Mr. Walker this afternoon including complete name, date of birth, VIN numbers (which is Voter Identification Number), Social Security Number, and, if necessary, delve further into the personal information that the Board of Voter Registration has before removing any duplicate. And in the case of non-matching Social Security Numbers or VIN numbers, further review will be taken if not 100% certain those names and those voters will not be removed.

WHEREAS, each when each voter registration is cancelled, a post card is mailed to confirm that a duplicate has occurred and can be corrected upon returned and notification by the voter, and/or a voter who is incorrectly removed from the list can vote at the appropriate polling place with the proper identification under a Certificate of Error form. And, whereas, it is the responsibility of this board to comply with the federal court order and Consent Decree as ordered by Judge Richard Young, Southern District of Indiana Federal Court.

NOW, THEREFORE, BE IT RESOLVED that the Marion County Election Board hereby approves the process, method, and analysis outlined above that has been undertaken to evaluate duplicates and/or deceased voters, and authorizes the Voter Registration Board to continue to conduct such review of the voter list to allow a review of all duplicates and deceased voters previously removed, if necessary, and to comply with all aspects of the Consent Decree including the time response required under that decree.

Secretary Sadler moved to pass the resolution. Vice Chairman Sullivan opposed. Resolution passed by majority vote. Chairman Otte noted to Mr. Riordan that the Resolution allows for Mr. Riordan to review all the voters that Mr. Walker and his staff have already purged from the 100% confidence factor.

Chairman Otte stated there was no other business and adjourned the meeting.

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Chairman, Frank Otte, Jr.

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Vice Chairman, Mark Sullivan

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Secretary, Doris Anne Sadler