

Wisconsin Elections Commission -
2016 Vote Recount - Presidential Election

Transcript of Proceedings

December 2, 2016



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RECOUNT OF 2016 PRESIDENTIAL ELECTION

STATE OF WISCONSIN

Recount held before the Milwaukee County Election
Commission

Friday, December 2nd, 2016

8:09 a.m.

at

CITY OF MILWAUKEE WAREHOUSE
1901 South Kinnickinnic Avenue
Milwaukee, Wisconsin

Reported by Elisabeth K. Matusewic, RPR/RMR

A P P E A R A N C E S

BOARD OF ELECTION COMMISSIONERS:

Ms. Nancy Penn, Chairwoman
Mr. Rick Baas, Commissioner
Mr. Tim Posnanski, Commissioner

ALSO PRESENT:

Mr. Joseph J. Czarnezki, County Clerk
Mr. George Christenson, Deputy County Clerk
Ms. Julietta Henry, Elections Director
Mr. Timothy A. Karaskiewicz, Corporation Counsel

TRANSCRIPT OF PROCEEDINGS

MR. CZARNEZKI: I would ask that all the election inspectors could take your seats. I'm Joe Czarnezki. I want to welcome you and thank you for your public service here today. Just give you a little rundown what we are going to do. This is an official meeting of the Milwaukee County Election Commission acting as the county board of canvassers. So we are going to call that meeting to order and then we are going to administer the oath of office to all of our election inspectors. After that we are going to have a brief training session which Julietta Henry, the Milwaukee County Elections Director, will lead, and then we are going to proceed with the recount.

So at this time we are going to turn things over to Nancy Penn, the chair of the Milwaukee County Election Commission.

MS. PENN: Thank you, Joe. I call the meeting to order at 8:09. All of the commissioners are present. And now the oath.

MR. CZARNEZKI: At this time I would like all the election inspectors to please stand. If you would be so kind as to raise your right hand and repeat after me. I, please state your name, do

1 solemnly swear that I will support the constitution
2 of the United States and the constitution of the
3 state of Wisconsin and will perform the duties of
4 election inspector according to law and will
5 faithfully and studiously endeavor to prevent all
6 fraud, deceit or abuse, in conducting the same
7 according to the best of my ability.

8 Congratulations and thank you very
9 much for your service.

10 (Ms. Henry is giving instructions to the election
11 inspectors.)

12 MS. PENN: We are going back on the record.

13 MS. SANDRA WESOLOWSKI: My name is Sandra
14 Wesolowski; I'm city clerk for Franklin,
15 W-E-S-O-L-O-W-S-K-I, first name Sandra, S-A-N-D-R-A,
16 middle initial L.

17 So we have a total currently of eight
18 questionable envelopes similarities. Four of them
19 were in-person absentee voters. The date is not
20 included next to the voter's signature but they were
21 conducted as in-person absentee ballots and they are
22 time stamped on the back so we know they were
23 received obviously before the deadline. So there are
24 four of those. Voter number 262 in Ward 6. Voter
25 number 277 in Ward 6. Voter number 249 in Ward 6.

1 And voter number 328 in Ward 6.

2 MR. CZARNEZKI: We have not dealt with
3 missing dates previously, but, again, all of these
4 envelopes are date stamped on the back.

5 MS. PENN: Is this occurrence addressed in
6 the regulation? No? I know repeatedly yesterday
7 we --

8 Okay. So looking at these four
9 ballots, the date is missing; however, it is date
10 stamped. I think consistent with yesterday's
11 rulings, we found that clerk error didn't disqualify
12 a ballot.

13 MR. POSNANSKI: Based on my review of those
14 ballots, they don't include the elector's -- the
15 elector did not include the date, but the clerk time
16 stamped those ballots upon receipt of the ballots, so
17 I move that they be accepted.

18 MS. PENN: Any discussion?

19 MR. JEFF PERZAN: Can I look at the
20 ballots?

21 MR. CZARNEZKI: Yes, they are absentee
22 ballot envelopes. This is City of Franklin.

23 MS. PENN: In person.

24 MR. CZARNEZKI: In-person absentee ballot
25 envelopes. For the record, please identify yourself

1 and who you are representing.

2 MR. JEFF PERZAN: Jeff Perzan representing
3 the Greens. I wanted to note for the record that the
4 date stamp does include both the time and the date.

5 MR. CZARNEZKI: Are there any other
6 comments from the representatives from the political
7 parties? Madam chair?

8 MS. PENN: Commissioners, any discussion?
9 Okay.

10 MR. CZARNEZKI: On the motion to accept the
11 ballots, Commissioner Baas?

12 MR. BAAS: Aye.

13 MR. CZARNEZKI: Commissioner Posnanski?

14 MR. POSNANSKI: Aye.

15 MR. CZARNEZKI: Chairwoman Penn?

16 MS. PENN: Aye.

17 MR. CZARNEZKI: Madam chairwoman, there are
18 three aye's, zero no's. The motion to accept the
19 ballots prevails.

20 MS. SANDRA WESOLOWSKI: Next we have two,
21 and this is still the City of Franklin. Next we have
22 two envelopes that do not contain the witness's
23 signature nor do they contain the witness's address.
24 These are both in-person absentee ballots that were
25 passed at city hall and inadvertently not signed by

1 the staff person, and this would be voter number 35
2 in Ward 22A and voter number 268 in Ward 8. And
3 again, they are time stamped and dated on the back
4 and there's no postage, so they are in-person
5 absentee.

6 MS. PENN: So we have two cases of ballots
7 not being witnessed by the city clerk for in-person
8 absentee ballots. Any questions, comments?

9 I will tell you that yesterday we
10 accepted ballots that did not have the witness
11 signature because it was a case of it could have been
12 repaired or fixed in-house when someone came to vote.
13 It's just an oversight. So I need a motion.

14 MR. POSNANSKI: I move to accept these two
15 ballots.

16 MR. CZARNEZKI: Any comments from the
17 political parties? The motion to accept the ballots,
18 Commissioner Baas?

19 MR. BAAS: Aye.

20 MR. CZARNEZKI: Commissioner Posnanski?

21 MR. POSNANSKI: Aye.

22 MR. CZARNEZKI: Chairwoman Penn?

23 MS. PENN: Aye.

24 MR. CZARNEZKI: Madam chairwoman, there are
25 there aye's, zero no's. Motion to accept the ballots

1 prevails.

2 MS. PENN: Thank you.

3 MS. SANDRA WESOLOWSKI: This is the City of
4 Franklin again. I should have included this one with
5 the last one. This was another case of in-person
6 city hall. This time the vote -- the vote was -- the
7 voter signed and was also witnessed but we did not
8 include city hall's address, and this is for voter
9 number 200 in Ward 17.

10 MS. PENN: Any comments, questions,
11 concerns?

12 MR. POSNANSKI: I would move to accept this
13 ballot.

14 MR. CZARNEZKI: On the question of whether
15 the ballot should be accepted, Commissioner Baas?

16 MR. BAAS: Aye.

17 MR. CZARNEZKI: Commissioner Posnanski?

18 MR. POSNANSKI: Aye.

19 MR. CZARNEZKI: Chairwoman Penn?

20 MS. PENN: Aye.

21 MR. CZARNEZKI: Madam chairwoman, there are
22 three aye's, zero no's. The motion to accept the
23 ballot prevails.

24 MS. SANDRA WESOLOWSKI: And the final one
25 is City of Franklin. It is a mailed-in ballot. The

1 voter put the month and the year but did not include
2 the date. I didn't include it with the other batch
3 because it was a little bit different. This one also
4 is date and time stamped and also postmarked on the
5 back. It is date and time stamped for October 31st,
6 2016 at 11:21 am.

7 MR. BAAS: Ward 6, 242 ballot.

8 MR. POSNANSKI: Based on the time stamp
9 received and the postmark, I move to accept this
10 ballot.

11 MS. PENN: Any discussion, comments,
12 questions from campaigns?

13 MR. CZARNEZKI: On the question of
14 accepting the ballot, Commissioner Baas?

15 MR. BAAS: Aye.

16 MR. CZARNEZKI: Commissioner Posnanski?

17 MR. POSNANSKI: Aye.

18 MR. CZARNEZKI: Chairwoman Penn?

19 MS. PENN: Aye.

20 MR. CZARNEZKI: Madam chairwoman, there are
21 three aye's, zero no's. The motion to accept the
22 ballot prevails.

23 MS. PENN: Thank you. Anything else? Back
24 off the record.

25 (Discussion off the record.)

1 MS. PENN: Back on the record. Okay. We
2 are back on the record. And introduce yourself, your
3 situation. Okay.

4 MS. KELLY MEYER: Commissioners, I'm Kelly
5 Meyer, the Village Clerk for the Village of Fox
6 Point. I have one absentee envelope voter number
7 417, in Ward 5 that did not -- the voter did not sign
8 the envelope on the certification envelope.

9 MS. PENN: This is a mail-in ballot or an
10 in person?

11 MS. KELLY MEYER: This is a mail-in ballot.

12 MS. PENN: Okay. Can we see it?

13 MR. POSNANSKI: We encountered the same
14 issue yesterday. The issue of course is this is
15 through the mail. There is no signature so there is
16 no certification that the contents are true and
17 correct. We had moved to reject these yesterday. I
18 would move again that we reject this ballot.

19 MS. PENN: Any comments, questions,
20 discussions? Seeing none.

21 MR. CZARNEZKI: On the question of the
22 rejection of the ballot, Commissioner Baas?

23 MR. BAAS: Aye.

24 MR. CZARNEZKI: Commissioner Posnanski?

25 MR. POSNANSKI: Aye.

1 MR. CZARNEZKI: Chairwoman Penn?

2 MS. PENN: Aye.

3 MR. CZARNEZKI: Madam chairwoman, there are
4 three aye's, zero no's, the motion to reject the
5 ballot prevails.

6 MS. PENN: Okay. Thank you.

7 MR. CZARNEZKI: And as a result of that
8 there will be one ballot drawn down from this ward.

9 (Discussion off the record.)

10 MS. PENN: State your name, what your ward
11 number, city and voter number.

12 MS. SANDRA WESOLOWSKI: The City of
13 Franklin, Sandra Wesolowski, W-E-S-O-L-O-W-S-K-I.
14 First name Sandra, middle initial L.

15 I have three envelopes from Ward 7,
16 City of Franklin. It is voter number 22, voter 255,
17 and voter number 546. All three of them were
18 in-person absentee ballots that were cast at city
19 hall and they are all three time and date stamped on
20 the back and all three are missing a witness
21 signature and an address.

22 MS. PENN: Okay. So these are three
23 in-person absentee ballots with no witness -- no
24 witness and that witness would have been the city
25 clerk or one of the staff members. I will tell you

1 that we accepted those ballots yesterday so ... and
2 earlier today.

3 MR. POSNANSKI: Consistent with that I move
4 to accept these three ballots.

5 MS. PENN: Any discussion, concerns,
6 questions?

7 MR. CZARNEZKI: On the motion to accept the
8 ballots, Commissioner Baas?

9 MR. BAAS: Aye.

10 MR. CZARNEZKI: Commissioner Posnanski?

11 MR. POSNANSKI: Aye.

12 MR. CZARNEZKI: Chairwoman Penn?

13 MS. PENN: Aye.

14 MR. CZARNEZKI: Madam chairwoman, there are
15 three aye's, zero no's. The motion to accept the
16 ballots prevails.

17 MS. PENN: And just as a reminder, you want
18 to note those on your inspection report.

19 MR. CZARNEZKI: We have more issues to come
20 before the board? Please state your name, title and
21 municipality for the record and spell your name for
22 the court reporter, please.

23 MS. TANYA O'MALLEY: Tanya O'Malley,
24 Village of Shorewood. Last name is spelled O'
25 M-A-L-L-E-Y.

1 We are dealing with Wards 9 through
2 12. We have verified all of the security seals on
3 the ballot bags but we have one that does not match.
4 There appears to be a nine written at the end of the
5 number on the inspector statement and there is an
6 eight on the security seal on the bag.

7 MS. HENRY: Madam chair, does the bag have
8 the signatures of the election's inspectors?

9 MS. PENN: Yes, it does.

10 MS. HENRY: Seeing that the bag has the
11 signature of the election inspector, is this dated
12 for the day of the election?

13 MS. PENN: Yes, it is.

14 MS. HENRY: I would then make a
15 recommendation that the bag -- the number was
16 inadvertently placed on the inspector statement
17 incorrectly.

18 MR. POSNANSKI: I would note for my review
19 that could possibly be an eight and therefore they
20 would be consistent, but it's difficult to read.

21 MS. PENN: The eight is -- I see what you
22 are saying.

23 MR. POSNANSKI: Do any of the
24 representatives from the political parties wish to be
25 heard?

1 MR. BAAS: Whatever you explained on there
2 explain to me, because I'm assuming we are talking
3 about these two numbers here compared to this number.

4 MS. TANYA O'MALLEY: All of the other bags
5 and the security seals match up with bags that we
6 have back at our station except for this one. This
7 one ends in eight. On here it appears that it might
8 end in a nine. So it's just the second number that
9 we are looking at on the inspector statement.

10 MR. POSNANSKI: Any further discussion,
11 Commissioner Baas?

12 MR. BAAS: I just wish there was another
13 one anywhere on here.

14 MR. POSNANSKI: I move to accept these
15 ballots.

16 MS. PENN: Any discussion?

17 MR. CZARNEZKI: On the question of
18 accepting the ballots, Commissioner Baas?

19 MR. BAAS: Aye.

20 MR. CZARNEZKI: Commissioner Posnanski?

21 MR. POSNANSKI: Aye.

22 MR. CZARNEZKI: Chairwoman Penn?

23 MS. PENN: Aye.

24 MR. CZARNEZKI: Madam chairwoman, there are
25 three aye's, zero no's. The motion to accept the

1 ballots prevails.

2 MS. PENN: Thank you. In the last case the
3 record should show that two commissioners saw the
4 number as an eight and one commissioner said it's
5 either an eight or it's a type -- a mistake, but all
6 the other numbers are consistent with those on the
7 ballot bags. Okay. Do we have more? That is it.

8 (Discussion off the record.)

9 MS. PENN: Please state your full name.

10 MS. JEAN DEMORES: Jean Demores, deputy
11 clerk for the City of St. Francis. There is five
12 ballots which are being questioned on the write-ins.
13 The candidates written in the write-in for president
14 were all on the ballot as the pre-printed names.
15 However, they have additonal names for the vice
16 president, none of them who are listed as -- I
17 apologize.

18 One of them is a candidate for vice
19 president but is not running with the person he was
20 mated with. The other ones have three people who are
21 not listed as registered write-ins at all. And one
22 is a registered write-in running as vice president
23 who was registered for president.

24 MS. PENN: Did the machine reject those at
25 the polls?

1 MR. CZARNEZKI: No, the machine counted
2 them as write-ins. And on the first ballot, again,
3 there is no one marked for president or vice
4 president, but under the write-in the voter wrote in
5 Donald Trump for president and Evan McMullin for vice
6 president.

7 And on the next ballot there was no
8 vote cast for the printed candidates for president
9 but the voter cast a vote for Bernie Sanders for
10 president and a vote for Tim Kaine for vice
11 president.

12 On the next write-in ballot, again,
13 which -- again, recommended would this be counted --
14 well, on that one there was a vote -- write-in vote
15 for Evan McMullin who was a registered write-in
16 candidate for president, but the candidate for vice
17 president was not a registered write-in.

18 And the same is true, I believe, on
19 the next two ballots where the candidate for
20 president was a registered write-in but the candidate
21 for vice president was not; is that correct?

22 MS. JEAN DEMORES: Correct.

23 MS. PENN: Did you want to look at these
24 ballots?

25 MR. CZARNEZKI: If the members of the

1 political parties want to look at the ballots, they
2 may do so. The media is also free to examine the
3 ballots.

4 If the members of the political
5 parties are going to make comments, which you are
6 allowed to do, please do so on the record with the
7 microphone and identify your name and only one
8 representative per political party may speak. So we
9 need a designated spokesperson -- who's going to
10 speak for the Green Party? One person. Please state
11 your full name for the record.

12 MR. PERRY BUCK: Perry Buck representing
13 the Green Party. In looking at these, first ballot,
14 Trump and McMullin, I would argue that neither one
15 should be counted. Ditto second one, Sanders and
16 Kaine. Again, I'm going to argue because Sanders was
17 not even on the ballot, he shouldn't be counted.
18 Kaine, on the other hand, was on the ballot with
19 Clinton as her vice-presidential candidate.

20 I contend that the vice president is
21 the equivalent of a presidential candidate especially
22 if there were to occur any incapacity of the
23 presidential nominee. Once the election had been
24 held on November 8, Mr. Kaine would then become the
25 presidential elect.

1 McMullin and McMullin are both written
2 in. I believe McMullin is an authorized write-in and
3 so his name could be counted as president but not as
4 vice president.

5 McMullin and Finn, I'm not sure if he
6 was the -- Finn was the write-in candidate on there.
7 I would allow that that be -- because it's not
8 indicated on the ballot I believe he's an authorized
9 write-in. And the same with the fifth ballot, it
10 says McMullin and Finn I'm seeing now. It is my
11 position that those last two should be allowed. For
12 the third ballot there again, McMullin should be
13 allowed as president. But it's in these other two
14 ballots I'm seeing Trump, McMullin is not on the
15 ballot as vice president but Kaine is, and so Kaine
16 should be allowed in, Sanders should not.

17 So I argue Trump and Sanders should
18 not be allowed on these first two ballots.

19 MR. CZARNEZKI: Other parties wish to be
20 heard? State your full name for the record.

21 MR. BRENDAN QUINN: Brendan Quinn on behalf
22 of the Trump campaign. Point of clarification, it
23 may be easier to address these five individually
24 because they have different names on each different
25 ballot, to make it a little bit easier.

1 If we could separately break them out
2 so we can address them individually so we could make
3 it easier so everybody can follow what is going on.
4 Thank you.

5 MS. PENN: So we are going to look at these
6 individually -- oh, you are done? Okay. So in the
7 ballot that has Bernie Sanders, a write-in for Bernie
8 Sanders with Tim Kaine as vice president, the first
9 thing we need to know, is Bernie Sanders registered
10 as a write-in candidate?

11 MR. CZARNEZKI: Bernie Sanders is not a
12 registered write-in and therefore that vote would
13 normally be counted as a scattering vote.

14 MS. PENN: Okay. So I guess I need a
15 motion.

16 MR. POSNANSKI: Does anyone else wish to be
17 heard on this ballot in particular?

18 MR. CZARNEZKI: We can only have one
19 spokesperson for a political party.

20 MS. PENN: State your name.

21 MS. PAM SHARPE: Pam Sharpe, Democratic
22 Party. And because Tim Kaine is a valid candidate, I
23 think it should be counted as a Hillary with the
24 intent, because it is two people.

25 MS. PENN: Can you tell us, Julietta, can

1 you tell us what the rule is?

2 MS. HENRY: There is no rule on that. That
3 is considered -- I don't know the rule on that.
4 However, we have a list of registered voters and you
5 also have the list of the candidates. So if the
6 candidate is listed on top -- the candidates. If the
7 candidates are listed on top and they write their
8 names in, then you count them.

9 But in this case it doesn't sound as
10 if the candidates are listed on top. The candidates
11 for the office that she is referring to --

12 MS. PENN: It's a write-in for Bernie
13 Sanders.

14 MS. HENRY: Is his name listed on top? Is
15 the name Bernie Sanders listed on top?

16 MS. PENN: No.

17 MS. HENRY: Is the name Bernie Sanders on
18 the list of registered write-in candidates?

19 MS. PENN: That would be our question and I
20 believe the answer is no.

21 MS. HENRY: Okay. So would you count that
22 as a scattered vote?

23 MS. PENN: I would.

24 MS. HENRY: Okay.

25 MR. POSNANSKI: I would move to accept this

1 ballot as a scattered vote. I don't think we can
2 accept it as a vote for Ms. Clinton when -- there is
3 no way to determine that the voter's intent was to
4 vote for Clinton when this voter wrote in Bernie
5 Sanders.

6 MS. PENN: You want to discuss it? Want to
7 call the vote?

8 MR. CZARNEZKI: The question is, shall the
9 ballot be counted as a scattering vote for president.
10 Commissioner Baas?

11 MR. BAAS: Scattered.

12 MR. CZARNEZKI: Is that an aye?

13 MR. BAAS: Aye.

14 MR. CZARNEZKI: Commissioner Posnanski?

15 MR. POSNANSKI: Aye.

16 MR. CZARNEZKI: Chairwoman Penn?

17 MS. PENN: Aye.

18 MR. CZARNEZKI: Madam Chairwoman, there are
19 three aye's, zero no's. The ballot will be counted
20 as a scattering vote for president.

21 MS. PENN: Including in the record an
22 explanation of why. It's because Bernie Sanders was
23 not a registered presidential candidate and so --
24 okay. Bernie Sanders and Tim Kaine are not
25 registered as candidates for write-in votes. So when

1 that's the case, we cannot count them.

2 Okay. The next ballot is for Evan
3 McMullin and he is listed for both a write-in
4 president and a write-in vice president. And Evan
5 McMullin is a write-in -- registered write-in
6 candidate?

7 MR. CZARNEZKI: Evan McMullin is a
8 registered write-in candidate for president.

9 MS. PENN: Is there any precedent setting
10 about when there is -- a name is duplicated for both
11 positions?

12 MR. CZARNEZKI: Evan McMullin is registered
13 as a candidate for president under the courage,
14 character and service party and his vice-presidential
15 running mate Nathan Johnson is registered as a
16 write-in candidate for vice president.

17 MS. PENN: Any discussion? You guys have
18 any comments?

19 MR. CZARNEZKI: It's a different issue,
20 madam chair. So if you wanted to, you could allow a
21 different person as long as there is just one person
22 speaking for each political party.

23 MS. PENN: Name?

24 MS. ANA DRAA: Ana Draa, A-N-A, D-R-A-A. I
25 represent the Green Party. My question is, are we

1 treating these as both candidates have to be on the
2 same -- from the same party?

3 MS. PENN: That is what we are going to
4 determine.

5 MS. ANA DRAA: So what I'm asking you,
6 across the board all of these, if you have a mix
7 where the vice president or president where you do
8 not have the proper ticket there or they are not a
9 proper write-in, that it be thrown out and that be
10 the same standard to apply.

11 MS. PENN: Anyone else? Mr. Posnanski,
12 your thoughts?

13 MR. POSNANSKI: Julietta, with respect to
14 the last ballot that we looked at, you communicated
15 that the names needed to be listed together in the
16 same manner as they were above in order to be counted
17 for the presidential vote. Is that -- am I
18 understanding that correctly?

19 MS. HENRY: That's correct.

20 MS. PENN: We are going to check in with
21 legal counsel for advice.

22 MR. CZARNEZKI: Madam Chairwoman, we are in
23 the process of contacting the Wisconsin Election
24 Commission to get their advice, since this is a
25 unique situation I think, as least as far as we have

1 faced so far. So I would recommend that we recess
2 until we can receive that advice from the Wisconsin
3 legislator commission.

4 MS. PENN: So we will stand in recess until
5 we get the advice of the election commission on the
6 proper way to handle this.

7 MS. ANA DRAA: Thank you.

8 MS. PENN: Thank you.

9 (Discussion off the record.)

10 MS. PENN: So we are looking at the
11 write-in vote for the ballot, we have in question is
12 a vote for Evan McMullin, a write-in vote for Evan
13 McMullin and he's listed as the president -- for the
14 president and vice president.

15 So we got some guidance from the
16 election commission, also from the statute, also from
17 a memo written by the election commission on how to
18 handle these cases.

19 MR. CZARNEZKI: Madam Chairwoman, how many
20 clerks received a clerk's communication from the
21 Wisconsin Election Commission on November 2nd, 2016
22 relating to County write-in votes for president and
23 vice president?

24 And the ballot before you that you are
25 discussing, this Evan McMullin for both the candidate

1 for president and for vice president, under the
2 communication that we received from the Wisconsin
3 Election Commission, a write-in vote for a registered
4 write-in candidate should be counted if the write-in
5 for vice president is anyone other than a candidate
6 who is named on the ballot.

7 So based on that guidance,
8 Mr. McMullin is a registered write-in candidate.
9 Mr. McMullin is not a named candidate on the ballot
10 for vice president, and so our recommendation would
11 be that that ballot be counted as a write-in vote for
12 registered write-in candidate McMullin.

13 MS. PENN: Any questions? I need a motion.

14 MR. POSNANSKI: I move to accept this
15 ballot as a write-in vote for Evan McMullin.

16 MS. PENN: Okay. Please poll the question.

17 MR. CZARNEZKI: On the motion to accept the
18 ballot, Commissioner Baas?

19 MR. BAAS: Aye.

20 MR. CZARNEZKI: Commissioner Posnanski?

21 MR. POSNANSKI: Aye.

22 MR. CZARNEZKI: Chairwoman Penn?

23 MS. PENN: Aye.

24 MR. CZARNEZKI: Madam Chairwoman, there are
25 three aye's, zero no's. The motion prevails. So

1 that will be counted as a vote for the registered
2 write-in candidate.

3 MS. PENN: The next ballot in question is a
4 vote for -- a write-in vote for Evan McMullin with a
5 vice-presidential candidate of Mindy Finn.

6 MR. POSNANSKI: Based upon the same
7 reasoning we just explained and the guidance that we
8 were given from the Wisconsin Election Commission and
9 interpretation of Wisconsin Statute 7.50, I would
10 move that this ballot also be counted as a write-in
11 for Evan McMullin.

12 MS. PENN: Any discussion?

13 MS. ANA DRAA: I have a question. Hi, Ana
14 Draa again. Is Mindy an official write-in candidate?

15 MR. CZARNEZKI: No, not according to the
16 information we have from the Wisconsin Election
17 Commission.

18 MS. ANA DRAA: Thank you, sir. So I would
19 ask the same measure be applied to this one as was
20 applied to the Sanders/Kaine challenge earlier when
21 you guys denied that one because one of the
22 candidates was not officially on the ballot.

23 MR. CZARNEZKI: Well, again, Madam Chair,
24 if I may.

25 MS. PENN: Yes.

1 MR. CZARNEZKI: According to the clerk's
2 communication that county clerks received from the
3 Wisconsin Election Commission dated November 2nd,
4 2016 relating to County write-in votes for president
5 and vice president, states that a write-in vote for a
6 registered write-in candidate should be counted for
7 president as long as the write-in for vice president
8 was not a named candidate on the ballot.

9 It specifically states that a write-in
10 vote for a registered write-in candidate for
11 president with a vice-presidential candidate who is a
12 write-in -- a registered write-in should be counted.

13 A write-in vote for a registered
14 write-in candidate for president who has written in a
15 vice-presidential candidate who is not registered,
16 that vote should be counted.

17 A write-in vote or a registered
18 write-in candidate for president which includes no
19 write-in candidate for vice president, should be
20 counted. And it says that a registered write-in -- a
21 write-in vote for a registered write-in candidate
22 that includes a vice-presidential candidate who is
23 listed on the ballot, should not be counted.

24 MS. ANA DRAB: Thank you very much. Does
25 it address the situation where you have a candidate

1 who is not an authorized write-in for president and
2 one who is an authorized candidate who is vice
3 president?

4 MR. CZARNEZKI: If the write-in candidate
5 for president is not a registered write-in candidate,
6 that ballot is counted as a scattering ballot.

7 MS. ANA DRAA: My question is that if you
8 have the presidential candidate is not a write-in, a
9 non-authorized write-in but the vice-presidential
10 candidate is -- somebody from the ballot is an
11 authorized candidate, what does the statute say
12 specifically about that situation? And if there
13 isn't anything, if we could please reach back out to
14 the state and get some clarification on that too.

15 MS. PENN: We do have two attorneys at the
16 table.

17 MR. POSNANSKI: The guide does provide us
18 an answer to these questions in two parts. Number
19 one, it informs us that a write-in for vice president
20 with the write-in line for president, does not count
21 as a vote for president. So under that
22 interpretation, our decision regarding the --
23 accepting the ballot for Bernie Sanders as a
24 scattering, where Tim Kaine's vote was filled in I
25 think is consistent with that guidance in that Bernie

1 Sanders was not a registered candidate for president
2 and the vote for vice president with Sanders as
3 president is akin to leaving that line blank and
4 cannot be counted as a vote for Ms. Clinton.

5 The guide further provides that any
6 write-in vote for president and vice president that
7 combines the name of a registered write-in candidate
8 with the name of a candidate on the ballot, is not
9 counted unless the exact ballot ticket is written in.

10 So again, here we have Bernie Sanders
11 and it does name Tim Kaine as his candidate, and that
12 should not be counted. The specific reference given
13 here is Roger Kushner, who is a registered
14 presidential candidate, along with Tim Kaine as vice
15 president and it says do not accept it.

16 So we accept it as a scattering, not
17 as a vote for any of the registered write-in
18 candidates for any of the candidates on the ballot.

19 MS. ANA DRAA: Thank you for your
20 consideration in this matter.

21 MS. PENN: So we need a motion to ...
22 Okay. So the next ballot is a write-in ballot for
23 Evan McMullin and the word Finn is on the
24 vice-presidential line.

25 MR. POSNANSKI: Based upon the discussion,

1 the guidance provided and again, consistent with our
2 previous decisions, I would move that this ballot be
3 counted as a write-in vote for Evan McMullin.

4 MS. PENN: Any comments, questions,
5 concerns? Seeing none, clerk, would you please call
6 the vote?

7 MR. CZARNEZKI: On the motion, Commissioner
8 Baas?

9 MR. BAAS: Aye.

10 MR. CZARNEZKI: Commissioner Posnanski?

11 MR. POSNANSKI: Aye.

12 MR. CZARNEZKI: Chairwoman Penn?

13 MS. PENN: Aye.

14 MR. CZARNEZKI: Madam Chairwoman, there are
15 three aye's, zero no's. The motion prevails. The
16 ballot will be counted as a write-in vote for
17 registered write-in candidate McMullin.

18 MS. PENN: Okay. So the next ballot has
19 Donald Trump listed as a write-in candidate and Evan
20 McMullin listed as a vice-presidential candidate.

21 MR. POSNANSKI: Madam Chair, I do not
22 believe we can accept this ballot under the guidance
23 provided on November 2nd from the Wisconsin Election
24 Commission wherein we were given the instruction that
25 unless the exact ballot ticket is written in, meaning

1 Donald Trump and Mike Pence, then that ballot cannot
2 be voted for a presidential vote for Donald Trump.

3 MR. BAAS: And my position is, given the
4 fact that we have already made determinations about
5 the slightest marks on the ballot as to someone's
6 intent, it is clearly their intent to vote for
7 somebody who is registered to run for president and I
8 am not going to take the advice of ...

9 MR. POSNANSKI: I would make a motion
10 consistent with my comments we cannot accept this
11 ballot as a vote for Donald Trump, and we should
12 accept the ballot as a scattering.

13 MS. PENN: Any comments, questions,
14 concerns?

15 MR. CZARNEZKI: On the motion, Commissioner
16 Baas?

17 MR. BAAS: Nay.

18 MR. CZARNEZKI: Commissioner Posnanski?

19 MR. POSNANSKI: Aye.

20 MR. CZARNEZKI: Chairwoman Penn?

21 MS. PENN: Aye.

22 MR. CZARNEZKI: There are two aye's, one
23 no. The motion to accept the ballot as a scattering
24 is -- prevails. Is that it from the City of St.
25 Francis?

1 MS. PENN: And for the last one, the --
2 because the guidance says if it's a write-in for a
3 registered person on the ballot, that they have to
4 use the same, the same vice-presidential candidate?

5 MR. POSNANSKI: It says the exact ballot,
6 that is the language used in the guidance provided by
7 the election commission. And I understand that and
8 frankly, had I not read this, I would have been
9 inclined to accept it because I think the intent
10 clearly was a Trump vote.

11 MS. ANA DRAG: Thank you.

12 (Discussion off the record.)

13 MR. CZARNEZKI: State your name,
14 municipality and title for the record, please, and
15 please spell your name for the court reporter.

16 MR. NEIL ALBRECHT: Neil Albrecht,
17 A-L-B-R-E-C-H-T, executive director for the City of
18 Milwaukee Election Commission. We have a ballot bag
19 that popped open during transport.

20 MS. PENN: Were there any witnesses to
21 that?

22 MR. NEIL ALBRECHT: No.

23 MS. PENN: Not even the person who packed
24 it on the cart and --

25 MR. NEIL ALBRECHT: No one was aware of it

1 until we were distributing them.

2 MS. PENN: Is it completely opened?

3 Partially opened?

4 MR. NEIL ALBRECHT: It popped completely
5 open.

6 MS. HENRY: My question to the Board, we
7 need to maybe ascertain if there are other ballots in
8 that ward. It says two of two, so I'm assuming there
9 is another bag of ballots. And we should probably
10 look at the number of ballots cast and then check the
11 number, have them do a hand count on these two bags
12 of ballots to determine if additional ballots were
13 added and/or removed.

14 MR. POSNANSKI: I think that is an
15 excellent suggestion.

16 MS. PENN: So you are going to take those
17 ballots back, hand count them, make sure that the
18 same number of ballots are in the bag as on the
19 report?

20 MR. NEIL ALBRECHT: Sure.

21 MS. PENN: And so once your people are
22 finished with that, if you could let us know and we
23 will go forward.

24 MR. POSNANSKI: Okay. Again, do you have
25 any reason to believe that the bag that was opened

1 was tampered with in any way?

2 MR. NEIL ALBRECHT: No. It came with bag
3 one. The bags came together. It came with bag one,
4 which was not opened.

5 MR. BAAS: Is there any advantage to using
6 the tabulator to speed that process up or is there a
7 disadvantage to it?

8 MR. NEIL ALBRECHT: No, they are going to
9 do a hand count anyway. So it should be 704, it's
10 definitely two bags to equal that 704.

11 (Discussion off the record.)

12 MS. PENN: Back on the record. And if
13 could state your name, city, board and issue, voter
14 number if it's on there.

15 MS. ANNE UECKER: Anne Uecker, City of St.
16 Francis. Uecker is spelled U-E-C-K-E-R. It is for
17 Wards 1 through 4. Voter number 96 is an absentee
18 ballot application certification envelope that was
19 issued in person in the city clerk's office. It was
20 signed by the voter but it was not witnessed. And it
21 was signed at the clerk's office. There was no
22 postmark on it.

23 MS. PENN: Okay. The signature is really a
24 stamp. The clerk didn't write their name; however,
25 we set a precedent yesterday with ballots like this

1 that, which we have continued today, that an
2 in-person absentee ballot still counts if the city
3 clerk or a person working in the election office
4 didn't sign it.

5 MR. BAAS: I have noticed that the
6 elector's signature is on a sticker. Did I miss this
7 on other ones? Why is there a sticker where the
8 signature for the elector is?

9 MS. ANNE UECKER: These were the old
10 envelopes that we could use in office with the wrong
11 dates but with the prior voting dates on them. So we
12 printed out the sticker and put them on so we could
13 save money and use those envelopes.

14 MR. BAAS: Thank you.

15 MS. PENN: Could you pass that down? Did
16 anyone want to look at this?

17 MS. ANA DRAA: I would like to comment.
18 Ana Draa again. I appreciate your intent to honor
19 this vote and not count because of a worker error.
20 This is a little bit different though than the ones
21 that are passed on election day where you are seeing
22 the person, you are checking them in, you are
23 checking their ID, which is important to you guys
24 there. None of that happened with this vote.

25 I would recommend that if it's

1 possible, you should check that signature against the
2 signature you have on record. And if those
3 signatures match, I would advocate accepting it.

4 MR. POSNANSKI: In order to get the ballot,
5 does this voter have to sign and is that witnessed
6 before the voter is given this ballot, to sign
7 absentee in person? Do you understand the question?

8 MS. ANNE UECKER: The process we use is
9 they come in, they show us their identification so we
10 can identify directly which district they are voting
11 in; we hand them all the information. They complete
12 their ballot and insert it, sign it, bring it back to
13 us so we can witness it.

14 My presumption is they brought it
15 back, they witnessed it. Somebody got busy and
16 didn't sign it.

17 MR. POSNANSKI: Then this is consistent
18 with all of the ballots we have seen and ruled on in
19 a similar vein, so I would move that we accept this
20 ballot.

21 MS. PENN: Comments? Questions?

22 MS. ANA DRAA: Hi. Thank you. I'd say the
23 chain of custody of those ballots was significantly
24 different than one that is in the voting place in the
25 person's hand and then the worker forgot to sign it.

1 Quite frankly, I think for the competence and
2 integrity of this election, which is why we are here
3 today, do you have a way to check that signature?

4 MS. PENN: In order for that person to have
5 gotten that absentee ballot they had to present their
6 driver's license or some other acceptable form of ID.
7 Am I right to assume that you checked it against your
8 registration records?

9 MS. ANNE UECKER: Yes.

10 MS. PENN: So the guidance from the
11 election -- the Wisconsin Election Commission is we
12 do not penalize that voter for an error on the part
13 of an employee. And so the same checks are made.
14 You know, we are checking the identity of the person,
15 checking to make sure they are registered, giving
16 them the ballot, making sure they sign it and then
17 putting it in an envelope and so it's consistent with
18 our rules.

19 MS. ANA DRAA: I have every confidence that
20 you handed this ballot out according to the rules.
21 My concern is there's a case in Illinois being
22 prosecuted right now of a man who got a ballot,
23 passed away. His widow completed the ballot, as she
24 felt she knew how he would vote, and turned it in,
25 and that's a felony.

1 Do we know this person didn't pass
2 away after they took possession of that ballot and
3 they actually completed it?

4 MS. PENN: They are completing this in
5 person, this ballot in the city clerk's office. It's
6 about, you go up to a counter, you check in with the
7 person, you show them your ID, they give you your
8 ballot. Then they turn around, fill it out and bring
9 it back.

10 So and we do have that process for
11 checking to see if anybody has died in --

12 MR. BAAS: In this case it would be
13 physically impossible for them to have died.

14 MS. PENN: Say they vote early and they
15 vote --

16 MS. ANA DRAA: If that ballot never left
17 the office, I'm fine with that.

18 MS. ANNE UECKER: No, they did not leave
19 the office.

20 MS. PENN: Any other questions, concerns?
21 Could you call a vote?

22 MR. CHRISTENSON: Okay. On the motion to
23 accept, Commissioner Baas?

24 MR. BAAS: Aye.

25 MR. CHRISTENSON: Commissioner Posnanski?

1 MR. POSNANSKI: Aye.

2 MR. CHRISTENSON: Commissioner Penn?

3 MS. PENN: Aye.

4 MR. CHRISTENSON: Three aye's, no no's,
5 it's acceptable.

6 (Discussion off the record.)

7 MS. PENN: Back on the record. We have a
8 case in the City of Milwaukee.

9 MS. THERESA GABRIEL: Good afternoon. My
10 name is Theresa Gabriel. I'm with the City of
11 Milwaukee Election Commission for City of Milwaukee
12 Ward 66. There are -- there were 513 ballots cast.
13 All ballots lacked the initials of the election
14 inspectors and there is an objection to accepting
15 these ballots of 513.

16 MS. PENN: Is that objector out here?

17 MR. BRENDAN QUINN: Brendan Quinn on behalf
18 of the Trump campaign. I would object because there
19 is no signature on all of those ballots.

20 MS. ANA DRAA: Ana Draa, behalf of the
21 Green Party. I ask you to apply the same rules to
22 these ballots as you did the other ones and accept
23 them. They should not be punished for coordinator
24 error.

25 MR. POSNANSKI: Under the guidance that

1 ballots are not to be rejected due to an error by
2 election staff or the clerk's office, I would move
3 that these ballots be accepted.

4 MS. PENN: Comments, questions, concerns?

5 MR. BRENDAN QUINN: I would like to know if
6 you would be able to hold off on this vote until you
7 can reconcile the tape from the machine, the rest of
8 the information from that precinct or ward to make
9 sure that all the numbers add up before you have that
10 vote.

11 MS. PENN: Theresa, has that been done, do
12 you know?

13 MS. THERESA GABRIEL: No, it has not.

14 MR. BAAS: I would make that friendly
15 amendment.

16 MS. ANA DRAA: Ana. Once that's been done
17 and verified I, again, urge you to accept these votes
18 so that these voters are not disenfranchised. They
19 took the time to come out and vote; they should be
20 counted.

21 MR. BAAS: We need to slow down for the
22 court reporter. First thing was, I move to make a
23 friendly amendment that we go through the process of
24 tabulating and make sure the numbers are correct.
25 Tim accepted that friendly amendment. She again

1 reiterated that after that process if everything
2 was -- your words ...

3 MS. ANA DRAA: I want to make sure the
4 voters are not disenfranchised, I would like that
5 word used in the record, please.

6 MR. BAAS: That is the sum and substance,
7 as I recall.

8 MS. ANA DRAA: Yes.

9 MR. CHRISTENSON: There's a motion to delay
10 this over for a moment, temporary layover.

11 MR. BAAS: Till the totals are provided us.

12 MR. CHRISTENSON: So I will call out a
13 temporary layover. Commissioner Baas?

14 MR. BAAS: Aye.

15 MR. CHRISTENSON: Commissioner Posnanski?

16 MR. POSNANSKI: Aye.

17 MR. CHRISTENSON: Commissioner Penn?

18 MS. PENN: Aye.

19 MR. CHRISTENSON: Three nominations that we
20 lay this matter over temporarily.

21 (Discussion off the record.)

22 MS. PENN: Back on the record for City of
23 Milwaukee. We are going back to the previous case
24 from the City of Milwaukee where we wanted a count of
25 ballots and -- for Ward 66. It's just a continuation

1 of where we left off.

2 There was a friendly amendment to --
3 Theresa explain or, you know, tell us the results.

4 MS. THERESA GABRIEL: Good afternoon.
5 Theresa Gabriel with the City of Milwaukee Election
6 Commission regarding City of Milwaukee Ward 66. I
7 have here for viewing the tape total for the election
8 date that states the number of ballots cast which
9 matches the hand tally from today which is 513 votes,
10 513 ballots, tape total 513 with signatures at the
11 bottom, which I'm providing to the commissioners.
12 And also a copy of the chief inspector statement, the
13 JAB 104 stating the same number of ballots cast, 513,
14 with signatures of all election inspectors present on
15 election day.

16 MR. BAAS: If you would like to come up.

17 MS. PENN: If you would like to come and
18 look at these documents, you are welcome to. And so
19 I would ask for a motion to accept these ballots
20 because in the guidance and consistent with our
21 rulings from yesterday, a poll worker -- when a poll
22 worker omits a signature or it's not witnessed by a
23 clerk, that we accept those ballots as valid.

24 MR. POSNANSKI: I renew the motion to
25 accept these ballots.

1 MR. BAAS: Discussion?

2 MS. PENN: Discussion?

3 MR. BAAS: Yeah, wait till they are done.
4 Is this the tally from today?

5 MS. THERESA GABRIEL: I will get that.

6 MR. BAAS: Thank you.

7 MS. PENN: Because we have precedent set
8 I'm going to ask the county clerk -- he was waiting
9 to present -- I mean, he was waiting for them to
10 review.

11 MR. BAAS: I'm prepared to vote.

12 MS. PENN: What?

13 MR. CHRISTENSON: On the question of
14 accepting those ballots, Commissioner Baas?

15 MR. BAAS: Aye.

16 MR. CHRISTENSON: Commissioner Posnanski?

17 MR. POSNANSKI: Aye.

18 MR. CHRISTENSON: Commissioner Penn?

19 MS. PENN: Aye.

20 MR. CHRISTENSON: Votes three to nothing.
21 The ballots will be accepted.

22 MS. PENN: Thank you.

23 (Discussion off the record.)

24 MR. CZARNEZKI: St. Francis, let's
25 congratulate the City of St. Francis. Have a good

1 evening election inspectors from St. Francis. Now
2 you may leave.

3 (Discussion off the record.)

4 MS. PENN: Back on the record. State your
5 name.

6 MS. SANDRA WESOLOWSKI: City of Franklin.
7 Wesolowski, W-E-S-O-L-O-W-S-K-I, first name Sandra.

8 And I am the city clerk, director of
9 clerk services for the City of Franklin. So I have
10 one District 4, Ward 15A ballot and it -- for the
11 office of president/vice president has the write-in
12 circle completed. The president is Hillary Clinton
13 and the vice president is Bernie Sanders.

14 MS. PENN: Okay. So this ballot shows
15 Hillary Clinton as a write-in and Bernie Sanders as
16 the vice president and as a write-in and so as we
17 ruled just earlier today, that if it's a write-in for
18 a candidate who is already on the ballot, then it
19 must match exactly, it must match that registered
20 campaign. So it would have to say Hillary Clinton,
21 Tim Kaine. So ...

22 MR. POSNANSKI: Correct. And with the
23 guidance given to us by the election commission and
24 consistent with our ruling earlier today, I would
25 move that this ballot be accepted as a scattering and

1 not as a vote for Hillary Clinton.

2 MS. PENN: Any questions, concerns? Joe
3 would you call a vote?

4 MR. CZARNEZKI: On the motion that this
5 ballot be counted as a scattering, Commissioner Baas?

6 MR. BAAS: Nay.

7 MR. CZARNEZKI: Commissioner Posnanski?

8 MR. POSNANSKI: Aye.

9 MR. CZARNEZKI: Commissioner Penn?

10 MS. PENN: Aye.

11 MR. CZARNEZKI: Madam chairwoman, we have
12 two aye's, one no. The motion prevails.

13 (Discussion off the record.)

14 MS. PENN: Back on the record. Neil is
15 back with his open-ballot-bag count.

16 MR. NEIL ALBRECHT: There was an open
17 ballot bag. Neil Albrecht with the City of Milwaukee
18 Election Commission.

19 There was an open ballot bag that we
20 believe had opened during transport. It was for City
21 of Milwaukee Ward 68. They processed 704 ballots in
22 the tabulator for that ward. On election day when we
23 did the count of the ballots it equaled 704 and there
24 were no variances in the voting when the ballots were
25 fed in the tabulator.

1 MS. PENN: So it was supposed to be 704 and
2 it was 704?

3 MR. NEIL ALBRECHT: Correct.

4 MS. PENN: And the issue is the open ballot
5 bag.

6 MR. POSNANSKI: Based upon the verification
7 of the number of ballots and the fact that none of
8 the votes changed, I move to accept these ballots in
9 spite of the ballot bag opening.

10 MS. PENN: Any questions, concerns? Would
11 you call a vote?

12 MR. CZARNEZKI: On the motion, Commissioner
13 Baas?

14 MR. BAAS: Emphatically aye.

15 MR. CZARNEZKI: Commissioner Posnanski?

16 MR. POSNANSKI: Aye.

17 MR. CZARNEZKI: Chairwoman Penn?

18 MS. PENN: Aye.

19 MR. CZARNEZKI: Madam chair, there are
20 three aye's, zero no's. The motion prevails.

21 MS. PENN: Thank you.

22 MR. NEIL ALBRECHT: Thank you.

23 MS. PENN: A note for the record that that
24 decision is consistent with what we ruled yesterday
25 that -- with even more detail. Yeah, we ruled

1 yesterday to allow it. It doesn't seem fair that --
2 to disqualify all those votes. We stand in recess.

3 (Discussion off the record.)

4 MS. PENN: So we are back on the record.
5 We are in Fox Point and we are doing a drawdown for
6 an absentee ballot that did not have a signature.
7 This is Ward 5 absentee ballot number 417 that we are
8 drawing down. So he's going to randomly pull a
9 ballot. So there it is. So you are going to take
10 that ballot and put it in a separate ballot bag.
11 Seal it up and then it goes -- you want to note it on
12 the reports?

13 (Discussion off the record.)

14 MR. CZARNEZKI: We would like to
15 congratulate the Village of Shorewood. They are
16 complete.

17 (Discussion off the record.)

18 MS. PENN: We would like to congratulate
19 the Village of Fox Point.

20 (Discussion off the record.)

21 MR. CZARNEZKI: Madam chairwoman, the
22 ballots are secured in the room.

23 MS. PENN: The meeting is in recess until 9
24 a.m. tomorrow morning. So all you observers, you
25 can't stay here but you don't have to go home.

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(Adjourned at 8:09 p.m.)

(Whereupon, the proceedings adjourned at 8:09 p.m.)

STATE OF WISCONSIN)
) SS:
MILWAUKEE COUNTY)

I, Elisabeth K. Matusewicz, RPR, RMR
and Notary Public in and for the State of Wisconsin,
do hereby certify that the preceding recount was
recorded by me and reduced to writing under my
personal direction.

I further certify that said recount was taken at CITY OF MILWAUKEE WAREHOUSE, 1901 South Kinnickinnic Avenue, Milwaukee, Wisconsin, on the 2nd day of December, 2016, commencing at 8:09 a.m. and concluding at 8:09 p.m.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

In witness whereof, I have hereunto
set my hand and affixed my seal of office on this
22nd day of December, 2016.

ELISABETH K. MATUSEWIC, RPR, RMR
Notary Public

My commission expires October 30, 2020

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