

Wisconsin Elections Commission -
2016 Vote Recount - Presidential Election

Transcript of Proceedings

December 3, 2016



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2016 PRESIDENTIAL ELECTION RECOUNT
STATE OF WISCONSIN

RECOUNT HELD BEFORE MILWAUKEE COUNTY
ELECTION COMMISSION

Saturday, December 3rd, 2016

9:15 a.m.

at

City of Milwaukee Warehouse
1901 South Kinnickinnic Avenue
Milwaukee, Wisconsin

Reported by Kealoha A. Schupp, RPR

A P P E A R A N C E S:

COMMISSION MEMBERS:

Mr. Rick Baas, Election Commissioner

Ms. Nancy Penn, Election Commissioner

Mr. Tim Posnanski, Election Commissioner

ALSO PRESENT:

Mr. Joseph Czarnezki, County Clerk

Ms. Julietta Henry, Elections Director

Ms. Colleen Foley, Interim Corporation Counsel

TRANSCRIPT OF PROCEEDINGS

COMMISSIONER PENN: Good morning, everyone.

This meeting is officially reconvened. The record should so show that Commissioner Rick Baas is here and Commissioner Nancy Penn is here. And this is a quorum of the election commission. And the time is 9:15. Thank you.

(Off the record.)

COMMISSIONER PENN: Okay. We're going back on the record. So introduce yourself. Tell us --

SANDRA WESOLOWSKI: The City of Franklin. My name is Sandra L. Wesolowski, W-E-S-O-L-O-W-S-K-I.

I have a ballot from Aldermanic District 2, Ward 4, City of Franklin.

For the office of president/vice president, the circle is filled in for Hillary Clinton/Tim Kaine, and then the write-in circle is also filled in. And in the write-in space it says Hillary Clinton and Tim Kaine. So it is an overvote. The machine has kicked it out. And I would like direction on whether it's remade as a regular ballot -- I mean, as a regular vote or is it remade as a write-in.

DIRECTOR HENRY: Commissioners -- Julietta Henry, director of elections -- as you may know, the

1 state statute does read that the write-in should take
2 precedent, and in this case the write-in is identical
3 to the candidates listed on the ballot, therefore the
4 recommendation from the election commission office is
5 that the write-in for Kaine and Clinton should be --
6 it should be a write-in.

7 They would have to remake the ballot
8 in order for it to go into the machine because right
9 now it is listed as an overvoted ballot because they
10 marked both the -- both spots, but the intent of the
11 voter is clear.

12 COMMISSIONER BAAS: Couldn't agree with you
13 more. Move that we direct the ballot be redone in
14 accordance with the writing.

15 COMMISSIONER PENN: Any questions,
16 comments, concerns?

17 CLERK CZARNEZKI: Comments from the
18 political parties?

19 DIRECTOR HENRY: With the observers, you
20 should ask the observers if anyone wants to review
21 the ballot.

22 CLERK CZARNEZKI: Anyone want to review the
23 ballot?

24 JEFF PERZAN: No, we believe you.

25 CLERK CZARNEZKI: We're making progress.

1 On the question -- the motion was to
2 remake the ballot to -- as a write-in vote for
3 Clinton and Kaine.

4 On the question, Commissioner Baas?

5 COMMISSIONER BAAS: Aye.

6 CLERK CZARNEZKI: Commissioner Penn?

7 COMMISSIONER PENN: Aye.

8 CLERK CZARNEZKI: Madame Chairwoman, there
9 are two ayes, zero noes. The motion to remake the
10 ballot as a write-in for Clinton and Kaine prevails.

11 (Off the record.)

12 COMMISSIONER PENN: We need to go back on
13 the record.

14 Neil?

15 NEIL ALBRECHT: I'm Neil Albrecht from the
16 City of Milwaukee Election Commission here to report
17 that in three wards that we are currently working on,
18 we had ballots that are either missing one or both
19 sets of signatures.

20 Ward 16 there are two ballots. In
21 Ward 92, and I think this is previously reported,
22 there were 48 ballots, and in Ward 166 there is one
23 ballot.

24 CLERK CZARNEZKI: We have a comment from
25 one of the political parties.

1 BRENDAN QUINN: Thank you. Brendan Quinn
2 on behalf of the Trump campaign.

3 I just want to voice an objection that
4 those ballots should not count because they're
5 missing those signatures. Thank you.

6 JEFF PERZAN: Jeff Perzan representing the
7 Greens. I need a clarifying question.

8 Are these signatures that are missing
9 or inspector official initials that are missing?

10 NEIL ALBRECHT: The initials of the
11 inspectors.

12 JEFF PERZAN: Given that it's the initials
13 that are missing, I believe that that would be
14 clerical error, unless there's other reasons why we
15 should disallow the intent of the elector. I think
16 that they should be allowed, consistent with the
17 other rulings of the commission in the past.

18 COMMISSIONER BAAS: And just for the
19 record, I am sympathetic to parties who would like to
20 see that all procedures are followed. However,
21 clerical errors, in this commissioner's opinion, and
22 in all the advice that we have, does not appear to be
23 a reason to disenfranchise a vote.

24 CLERK CZARNEZKI: I would just remind the
25 members of the commission that in the past we have

1 ruled that a vote should not be disqualified as a
2 result of an error from an election official.

3 COMMISSIONER BAAS: I'll move that we
4 accept these ballots.

5 COMMISSIONER PENN: I concur.

6 CLERK CZARNEZKI: On the motion to accept
7 the ballots, Commissioner Baas?

8 COMMISSIONER BAAS: Aye.

9 CLERK CZARNEZKI: Commissioner Penn?

10 COMMISSIONER PENN: Aye.

11 CLERK CZARNEZKI: Madam Chairwoman, there
12 are two ayes, zero noes. The motion to accept the
13 ballots prevails.

14 (Off the record.)

15 COMMISSIONER PENN: Okay. We're going back
16 on the record.

17 What is your issue, Neil?

18 NEIL ALBRECHT: Neil Albrecht, City of
19 Milwaukee Election Commission, with a report on ten
20 wards that have one or more ballots missing one or
21 more or both set of election worker initials.

22 COMMISSIONER PENN: Okay. We consulted
23 with counsel, and what we would ask you to do is
24 collect the ballots individually by ward, you know,
25 make a pile of those with one signature and a pile of

1 those with no signatures and then bring those issues
2 to us.

3 You look confused.

4 NEIL ALBRECHT: I'm waiting to hear the
5 rest.

6 COMMISSIONER PENN: Okay. We will look at
7 those issues individually by ward and by issue. So
8 Ward 1 no signatures, Ward 1 missing one of the two
9 signatures, Ward 2, so that we're looking at them by
10 type and ward instead of gathering all the wards
11 together. That was the advice we were given. And
12 initials, not signatures.

13 NEIL ALBRECHT: So we have 16 teams going
14 in there at a time. Are you saying each time one
15 comes up bring the ballots out here?

16 COMMISSIONER BAAS: No.

17 COMMISSIONER PENN: No, not -- we don't
18 want one at a time.

19 NEIL ALBRECHT: Okay.

20 COMMISSIONER PENN: We want --

21 COMMISSIONER BAAS: -- to go ahead and
22 collect all similar ones in that ward and then come
23 up at one time.

24 NEIL ALBRECHT: Well, I'm coming out right
25 now with ten at a time.

1 CLERK CZARNEZKI: I think that's what he's
2 doing actually.

3 COMMISSIONER BAAS: But he asked did we
4 want one at a time, and I'm saying, no, we didn't
5 want one at a time.

6 COMMISSIONER PENN: So we want them by
7 type. So you're going to collect a stack of ballots
8 that are all in the same ward and, you know, one pile
9 with one signature, one -- and another pile with no
10 signatures.

11 COMMISSIONER POSNANSKI: Initials.

12 COMMISSIONER PENN: No initials. No
13 initials. And then we'll rule on each of those.

14 NEIL ALBRECHT: So you --

15 COMMISSIONER PENN: So what I'm asking you
16 to do is make a pile -- make two piles for each ward
17 and then we will rule.

18 NEIL ALBRECHT: So that's the process
19 that's occurring now. They are segregating those
20 ballots and then they're calling us over and then
21 we're creating a document of the number of ballots,
22 with the observers present, that don't meet the
23 initial requirement.

24 COMMISSIONER PENN: Okay. And so what we
25 want to be able to do is read into the record that

1 this is the -- that we're talking about an issue
2 with --

3 COMMISSIONER POSNANSKI: I think he has --

4 CLERK CZARNEZKI: He has that.

5 COMMISSIONER POSNANSKI: Do you have the
6 ward detail and how many ballots?

7 NEIL ALBRECHT: I do.

8 COMMISSIONER POSNANSKI: Can you provide
9 the detail for us?

10 CLERK CZARNEZKI: I think he's --
11 Commissioners, I think he's doing exactly what you're
12 asking.

13 COMMISSIONER PENN: Okay.

14 NEIL ALBRECHT: So what I have not done,
15 because this was not the previous instruction, is
16 segregated out missing one set of initials or both
17 set of initials. They're combined at this point.

18 COMMISSIONER PENN: Your advice?

19 NEIL ALBRECHT: We can do that moving
20 forward, but these -- I went with the instructions
21 that I had been provided.

22 Now, these ballots have already been
23 integrated with the other ballots and are being fed
24 through the tabulators.

25 ATTORNEY FOLEY: Okay. It's essentially

1 the same issue, so that's fine.

2 COMMISSIONER PENN: Okay. Then let's do it
3 by ward.

4 COMMISSIONER POSNANSKI: Let's have him
5 read the detail from the wards into the record.

6 NEIL ALBRECHT: So for -- and, again, this
7 is either missing one set of initials or both set of
8 initials. We're just -- I collected the numbers, but
9 I'm happy to segregate them out for the future.

10 But for Ward 218, 11 ballots. For
11 Ward 163, 14 ballots. For Ward 165, two ballots.
12 For Ward 206, one ballot. For Ward 17, two ballots.
13 For Ward 214, two ballots. For Ward 205, one ballot.
14 For Ward 3, five ballots. For Ward 6, 13 ballots.
15 And for Ward 7, eight ballots.

16 COMMISSIONER POSNANSKI: Any representative
17 from the parties wish to be heard?

18 BRENDAN QUINN: Thank you. Once again,
19 Brendan Quinn for the Trump campaign.

20 For the record, we just want to voice
21 our objection that they should not be counted. Thank
22 you.

23 COMMISSIONER POSNANSKI: The objection is
24 noted.

25 We have ruled on this issue before.

1 Consistent with our previous rulings, I move that
2 these ballots be counted, again, the underlying basis
3 being that ballots should not be rejected due to an
4 error or oversight by election staff.

5 COMMISSIONER PENN: Any discussion?

6 Joe, would you call a vote?

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

9 COMMISSIONER BAAS: Aye.

10 CLERK CZARNEZKI: Commissioner Posnanski?

11 COMMISSIONER POSNANSKI: Aye.

12 CLERK CZARNEZKI: Commissioner Penn?

13 COMMISSIONER PENN: Aye.

14 CLERK CZARNEZKI: Madam Chairwoman, there
15 are three ayes, zero noes. The motion to accept the
16 ballots and have the ballots counted prevails.

17 COMMISSIONER PENN: Thank you.

18 (Off the record.)

19 COMMISSIONER PENN: Okay. We're going back
20 on the record.

21 NEIL ALBRECHT: City of Milwaukee, Neil
22 Albrecht reporting on ballot wards missing one or
23 both set of election worker initials.

24 So for Ward 5 we had one ballot
25 missing one set of initials.

1 For Ward 210 we had eight ballots
2 missing one set of initials, one ballot missing both
3 set of initials.

4 For Ward 212, we had three ballots
5 missing one set of initials.

6 For Ward 207, we had four ballots
7 missing one set of initials, one ballot missing both
8 sets of initials.

9 For Ward 209, we had 47 ballots
10 missing one set of initials, two ballots missing both
11 sets of initials.

12 For Ward 164, we had one ballot
13 missing one set of initials.

14 For Ward 94, we had one ballot missing
15 one set of initials, one ballot missing both sets of
16 initials.

17 For Ward 202, we had three ballots
18 missing one set of initials, one ballot missing both
19 sets of initials.

20 COMMISSIONER PENN: Comments, concerns,
21 questions?

22 BRENDAN QUINN: Thank you. Brendan Quinn
23 for the Trump campaign.

24 Once, again, just want to state for
25 the record our objections to those ballots being

1 counted. Thank you.

2 COMMISSIONER POSNANSKI: Madam Chair, for
3 the reasons previously articulated on the record, I
4 move to accept those ballots.

5 COMMISSIONER PENN: Any discussion?

6 COMMISSIONER BAAS: I would also like it
7 noted on the record that of these ballots brought
8 forward, at least one initial was on all the ballots.

9 COMMISSIONER PENN: Point taken.

10 Call the roll.

11 CLERK CZARNEZKI: On the motion to accept
12 and count the ballots, Commissioner Baas?

13 COMMISSIONER BAAS: Aye.

14 CLERK CZARNEZKI: Commissioner Posnanski?

15 COMMISSIONER POSNANSKI: Aye.

16 CLERK CZARNEZKI: Commissioner Penn?

17 COMMISSIONER PENN: Aye.

18 CLERK CZARNEZKI: Madame Chairwoman, there
19 are three ayes, zero noes. The motion to accept the
20 ballots prevails.

21 COMMISSIONER PENN: Thank you.

22 COMMISSIONER BAAS: Yeah, I need
23 clarification.

24 Further review of my notes, I
25 misspoke. There is at least one, two, three, four --

1 five circumstances where there were no initials. The
2 rest of them had at least one initial. Thank you.

3 COMMISSIONER PENN: Thank you.

4 (Off the record.)

5 COMMISSIONER PENN: Okay. We're going back
6 on the record.

7 Go ahead. Tell us what you have.

8 NEIL ALBRECHT: Neil Albrecht with the City
9 of Milwaukee Election Commission. Six wards to
10 report on that had anomalies with the election worker
11 initials.

12 Ward 263 we had two ballots with only
13 one set of initials and five ballots with neither of
14 the initials.

15 Ward 268 we had 12 ballots with one
16 set of initials.

17 Ward 208, three ballots with one set
18 of initials, one ballot with no initials.

19 Ward 277, we had six ballots with one
20 set of initials.

21 Ward 228, we had 11 ballots with one
22 set of initials, two ballots with no initials.

23 And Ward 203, we had one ballot with
24 one set of initials.

25 COMMISSIONER PENN: Any questions,

1 comments?

2 COMMISSIONER POSNANSKI: For the reasons
3 previously articulated on the record, I move to
4 accept all of these ballots.

5 COMMISSIONER PENN: Oh, I'm sorry. We have
6 a motion. Can you call the vote, please.

7 CLERK CZARNEZKI: On the motion to accept
8 and count the ballots, Commissioner Baas?

9 COMMISSIONER BAAS: Aye.

10 CLERK CZARNEZKI: Commissioner Posnanski?

11 COMMISSIONER POSNANSKI: Aye.

12 CLERK CZARNEZKI: Chairwoman Penn?

13 COMMISSIONER PENN: Aye.

14 CLERK CZARNEZKI: Madam Chairwoman, there
15 are three ayes, zero noes. The motion prevails.

16 COMMISSIONER PENN: Thank you.

17 (Off the record.)

18 COMMISSIONER PENN: We're going back on the
19 record.

20 If any rep from each party would like
21 to join us, we're going to discuss -- further discuss
22 the issue of un-initialed ballots.

23 Okay. So representatives of each
24 political party are present.

25 So we're going to listen to legal

1 counsel.

2 ATTORNEY FOLEY: This is Colleen Foley,
3 interim corporation counsel for Milwaukee County.

4 I just got off the phone with Michael
5 Haas, who is the Wisconsin election commissioner
6 administrator, to discuss with him the issue of lack
7 of initials on some ballots.

8 And so since there is a blanket
9 objection from one party and one candidate in
10 particular, but because it's an ongoing blanket
11 objection, we're not going to go on the record as we
12 have been for each ward. There is going to be a
13 statement made on the canvass statement for each
14 ward, but we won't be going on the record and voting
15 each time like we have been by the board.

16 OBSERVER: Could you just repeat that one
17 more time, please?

18 ATTORNEY FOLEY: Sure. So, again, I spoke
19 with Michael Haas, who is the election commission
20 administrator for the state. And because there is a
21 blanket objection to the -- for some of the ballots
22 for the lack of initials -- there's required to be
23 two. Sometimes there's one, sometimes there's none,
24 but because the issue is the same throughout, it's no
25 longer necessary that we put each and every one on

1 the record and vote on it. It's an ongoing
2 objection, blanket objection, and the election
3 official will note that for each ward if those
4 ballots will be segregated, but we won't need to go
5 on the record every single time since it's the same
6 issue every single time.

7 OBSERVER: Will we still need to count them
8 and record them?

9 ATTORNEY FOLEY: Yes. Correct. It's just
10 we won't be going on the record each time and voting.

11 OBSERVER: They all get bumped in the same
12 as what we've been doing, correct?

13 CLERK CZARNEZKI: One spokesperson for each
14 political party can comment, and please do so on the
15 record if you're going to comment, and state your
16 name.

17 JEFF PERZAN: This is Jeff Perzan from the
18 Greens.

19 I want to -- I appreciate the effort
20 of making things more simple, but I would like there
21 to be a motion from a member of the commission with
22 how these ballots will actually be handled even if
23 they're not going to be done individually before
24 being able to comment one way or the other.

25 COMMISSIONER PENN: Yep. Very good.

1 Anyone else?

2 OBSERVER: Orville Seymer, Trump campaign.

3 I just want to make sure that I
4 understand that we're going to continue putting all
5 the ballots together as we have been since Thursday.
6 Just want to make sure the procedure's the same,
7 correct?

8 COMMISSIONER PENN: Right. I'm going to
9 let Neil explain the procedure.

10 NEIL ALBRECHT: So, as I understand it, the
11 only difference in the procedure is really what
12 evolved today, is inside there they're going to
13 continue to keep those tallies as they had been
14 doing, recording them on the tally sheet of the
15 number of ballots either missing one or both
16 signatures. The only difference is each time one of
17 those was identified, I had to come out here and
18 report that information to the board of canvassers.
19 I think that's the step that is being eliminated, if
20 you will.

21 COMMISSIONER POSNANSKI: The only issue
22 here is we had been dealing with these objections as
23 they came up and we were specifically informed about
24 which wards, how many ballots. We're not going to do
25 that anymore because the objection's the same, the

1 decision and the reasoning supporting our decision on
2 that is the same, and we do not have to -- given the
3 guidance from the election commission, we do not have
4 to go on the record for each and every one of those
5 objections because it is a blanket objection.

6 Those ballots, as counsel mentioned,
7 and as Mr. Albrecht mentioned, will still be noted on
8 the canvass statement.

9 And with that, in order to clarify our
10 procedure, I move that with respect to the issue on
11 where initials are not placed on the ballots by the
12 poll workers that all of those ballots be accepted
13 and that those ballots be noted on the canvass
14 statement.

15 COMMISSIONER PENN: Joe, would you call the
16 vote.

17 CLERK CZARNEZKI: On the motion,
18 Commissioner Baas?

19 COMMISSIONER BAAS: Aye.

20 CLERK CZARNEZKI: Commissioner Posnanski?

21 COMMISSIONER POSNANSKI: Aye.

22 CLERK CZARNEZKI: Commissioner Penn?

23 COMMISSIONER PENN: Aye.

24 CLERK CZARNEZKI: Madam Chairwoman, there
25 are three ayes, zero noes. The motion prevails.

1 COMMISSIONER PENN: Thank you.

2 (Off the record.)

3 COMMISSIONER PENN: Okay. We need to go
4 back on the record.

5 Go ahead with your issue.

6 NEIL ALBRECHT: Neil Albrecht with the City
7 of Milwaukee.

8 In Ward 323 we have 193 ballots that
9 were processed on election day. When we opened the
10 ballot bag, there were 194 ballots in the bag. Our
11 last voter number was also 193. So with the
12 exception of the one extra ballot in the ballot bag,
13 the ward did reconcile.

14 Included in the 194 ballots is a
15 ballot that would have had to have been reconstructed
16 in order to be processed. It's one where a voter
17 circled the ovals instead of completing the ovals.

18 So there's a question as to whether or
19 not this ballot should be counted in the recount or
20 whether or not there's a sense that the ballot was
21 already reconstructed and there is a duplicate ballot
22 for this ballot within the 193.

23 We have no notations of a
24 reconstructed ballot on this ballot or on any of the
25 other 193 ballots in the ballot bag.

1 DIRECTOR HENRY: (Inaudible.)

2 (Reporter clarification.)

3 DIRECTOR HENRY: I just asked if those were
4 within the same ward.

5 NEIL ALBRECHT: Yes, they are.

6 COMMISSIONER PENN: So would the machine
7 have kicked this back?

8 NEIL ALBRECHT: At a minimum it would have
9 returned it as a blank ballot and it could have been
10 cast as a blank ballot, but the machine only cast 193
11 ballots as opposed to the 194 ballots in the bag.

12 COMMISSIONER PENN: That makes me think
13 this was not counted by the machine because this is
14 an extra --

15 NEIL ALBRECHT: I think that's what the --
16 the root of the challenge, as to whether or not --
17 without any reconstructed ballot notations, there's
18 no way for us to know with any certainty, so that's
19 why we're bringing it to the board.

20 UNIDENTIFIED SPEAKER: If a blank ballot is
21 cast, is there a record of that?

22 CLERK CZARNEZKI: The question is if a
23 blank ballot is cast, that would have been in your
24 count of 100-and --

25 NEIL ALBRECHT: There were at least --

1 there are at least three ballots in this ward where
2 voters did not vote in the presidential contest, but
3 there were zero blank ballots, so it was not counted.

4 COMMISSIONER PENN: So it was not counted
5 as a blank ballot.

6 NEIL ALBRECHT: Correct.

7 COMMISSIONER PENN: Does anyone want to
8 come up and look? Any questions, concerns? There
9 was an objection.

10 And it's just one representative from
11 each party.

12 COMMISSIONER BAAS: That was a good balk.

13 OBSERVER: Can I speak? Yes?

14 COMMISSIONER PENN: If you're --

15 OBSERVER: I'm a representative of the
16 Green party. I was an observer at the table counting
17 this ward. It was my challenge.

18 COMMISSIONER PENN: Yes, then we'd like to
19 hear from you.

20 OBSERVER: Okay. Well -- okay. So the one
21 point that didn't get mentioned is, is that -- I'm
22 sorry, my name is Mary DeVitt, D-E, V as in Victor,
23 I-T-T. I'm an observer for the Green party.

24 So there's a number on there that's
25 the last ballot issued, and it's 193. It's on the

1 envelope. It's on the tally sheet. And so there
2 can't be 194 ballots if they only gave out 193.

3 I've seen that be discrepant the other
4 way, but we have too many ballots in that bag. So to
5 me, it seems that that's the most logical argument,
6 that it was already reconstructed. And as we said,
7 there was no other way for it to have counted.

8 COMMISSIONER PENN: How do you know this
9 ballot is 193?

10 OBSERVER: No, no. On the envelope for
11 that ward, on the outside there's a pink ticket and
12 it says the last ballot issued was 193 for that ward
13 on that day.

14 COMMISSIONER PENN: Okay.

15 OBSERVER: So there can't be 194 valid
16 ballots, I would assume, unless there's some other
17 mistaken vote.

18 NEIL ALBRECHT: And I did report that the
19 last voter number is 193.

20 COMMISSIONER PENN: Any other --

21 BRENDAN QUINN: Brendan Quinn on behalf of
22 the Trump campaign.

23 I believe, without having any notation
24 from election night from the poll workers, we do not
25 know what happened that evening. You have a ballot

1 that is filled out, improperly or properly. It's a
2 ballot that's included in there, whether it's a
3 clerical error from election day, and we had other
4 questions earlier about different situations where
5 this board has voted in favor of ballots citing
6 clerical error, or potential clerical error. So you
7 have a potential clerical error, and if this board is
8 to be consistent, this ballot should be counted.

9 COMMISSIONER PENN: To clarify, the
10 clerical errors that he is referring to were failure
11 of one or both representative from the major
12 candidate parties from initialing the ballot. This
13 is a different situation.

14 CLERK CZARNEZKI: Commissioners, just for
15 your information, if you do decide to accept and
16 count this ballot -- or include this ballot, you
17 would most likely have to do a drawdown from that
18 ballot bag since the last voter number was 193 and
19 you have 194 ballots in that bag. Just for your
20 information.

21 COMMISSIONER PENN: Okay.

22 COMMISSIONER BAAS: Working under the
23 principle of voter intent, that's a ballot I can
24 clearly identify their intent. So I'm inclined.

25 COMMISSIONER PENN: To?

1 COMMISSIONER BAAS: To accept.

2 COMMISSIONER PENN: But --

3 COMMISSIONER BAAS: I'm just sharing my
4 thoughts.

5 COMMISSIONER PENN: Okay. Any input?

6 Any --

7 COMMISSIONER BAAS: Move to accept the
8 ballot.

9 COMMISSIONER PENN: Discussion?

10 UNIDENTIFIED SPEAKER: We can't see your
11 name, please.

12 COMMISSIONER BAAS: Same one that's been
13 there for three days.

14 DIRECTOR HENRY: Commissioners -- Julietta
15 Henry, director of elections -- just following the
16 recount procedures, please note if the number of
17 ballots still exceeds the number of voters, the board
18 of canvassers or the tabulators shall place all the
19 ballots face up to check for blank ballots. Any
20 blank ballots that -- which have not been marked for
21 any office shall be marked as to the reason for their
22 removal, set aside, and possibly preserved.

23 So we just want to make sure we
24 understand that if there are more ballots cast in
25 that bag than votes counted, we must remove a ballot.

1 Those numbers cannot --

2 COMMISSIONER PENN: Correct.

3 DIRECTOR HENRY: Okay.

4 COMMISSIONER PENN: And the first choice is
5 to remove a blank ballot.

6 DIRECTOR HENRY: That is correct.

7 COMMISSIONER BAAS: It's not a blank
8 ballot.

9 COMMISSIONER PENN: It's not?

10 COMMISSIONER BAAS: No.

11 COMMISSIONER PENN: Then I think we need --

12 DIRECTOR HENRY: If you remove your
13 blank -- in front of you you should have the recount
14 procedures. I'm reading from page 9. And you would
15 follow the steps here. Remove from your blank
16 ballots first, then you remove from ballots that have
17 one -- less than two initials.

18 So that's the procedure that we would
19 follow. Remove blank ballots, ones with not the
20 right number of initials, and then the last step, if
21 the number of ballots still exceeds the number of
22 voters, the board of the canvassers places the
23 remaining ballots in the ballot bag and randomly
24 draws without inspection.

25 COMMISSIONER PENN: My question would be,

1 can this ballot be recreated, because you can judge
2 the intent of this ballot by the -- who they circled,
3 and then randomly draw it down because you only need
4 193 votes.

5 DIRECTOR HENRY: Correct. But,
6 Commissioner, you have 194 votes currently, correct?

7 COMMISSIONER PENN: Right.

8 DIRECTOR HENRY: So right now we have one
9 more vote. So if there are no other blank ballots in
10 the machine, this ballot would be considered the
11 blank ballot, if I'm not mistaken, correct?

12 NEIL ALBRECHT: Well, can I ask a question
13 that I'm not -- is a ballot that is considered --
14 that has an undervote, so it's not a blank ballot but
15 does not have a vote in the contest of president/vice
16 president, is that considered as a blank ballot for
17 recount purposes?

18 COMMISSIONER PENN: I think it would be.
19 That's all we're recounting. No?

20 COMMISSIONER BAAS: No. That --

21 DIRECTOR HENRY: Corporation Counsel, could
22 you verify that?

23 I believe it's the entire blank
24 ballot, not just a blank ballot for that particular
25 office. That's my --

1 ATTORNEY FOLEY: Yes, I would agree with
2 that.

3 DIRECTOR HENRY: -- recollection.

4 COMMISSIONER PENN: Okay. So then we need
5 Neil to look through his ballots to see if he has a
6 blank ballot.

7 NEIL ALBRECHT: Well, there were no blank
8 ballots cast for this.

9 COMMISSIONER PENN: There were none, okay.
10 So then we need to randomly remove ballots from --

11 COMMISSIONER BAAS: We still have a motion.

12 CLERK CZARNEZKI: You're discussing it.

13 COMMISSIONER PENN: Right.

14 COMMISSIONER BAAS: I'm just making sure we
15 don't -- nothing slips out today.

16 CLERK CZARNEZKI: Commissioners, if you
17 decide to accept this ballot, you will have to
18 randomly draw down from that ballot bag.

19 COMMISSIONER BAAS: I'm with you.

20 CLERK CZARNEZKI: Just want to make that
21 clear.

22 COMMISSIONER BAAS: I'm with you since the
23 first time it was said.

24 COMMISSIONER PENN: No need to be rude.

25 COMMISSIONER BAAS: Keep repeating.

1 COMMISSIONER PENN: Would you call the
2 vote.

3 COMMISSIONER BAAS: I moved.

4 CLERK CZARNEZKI: What was the motion
5 again, Commissioner? I'm sorry.

6 COMMISSIONER BAAS: To accept the ballot.

7 CLERK CZARNEZKI: Okay. The motion is to
8 accept this ballot, which will result in a drawdown.

9 Commissioner Baas on the motion.

10 COMMISSIONER BAAS: Aye.

11 CLERK CZARNEZKI: Commissioner Posnanski.

12 COMMISSIONER POSNANSKI: Can I ask a
13 question?

14 Do we also need to recreate this
15 ballot so that it would actually be counted, because,
16 I mean, there are circles rather than them being
17 filled in.

18 So in order to accept this, do we need
19 to have it reconstructed and filled out properly and
20 then draw it down?

21 NEIL ALBRECHT: Yes, we would need to
22 reconstruct that ballot.

23 COMMISSIONER PENN: Okay. So --

24 COMMISSIONER POSNANSKI: I would add that
25 amendment to Commissioner Baas's motion then.

1 CLERK CZARNEZKI: Accept that --
2 Commissioner, accept that as a friendly amendment?

3 COMMISSIONER BAAS: Yes.

4 COMMISSIONER PENN: Yes.

5 CLERK CZARNEZKI: Okay. Then we will
6 continue with your roll call.

7 Commissioner Posnanski.

8 COMMISSIONER POSNANSKI: Aye.

9 CLERK CZARNEZKI: Commissioner Penn.

10 COMMISSIONER PENN: Aye.

11 CLERK CZARNEZKI: Madam Chairwoman, there
12 are three ayes, zero noes. The motion to accept,
13 count -- to accept, reconstruct, and count the ballot
14 prevails.

15 COMMISSIONER PENN: Thank you.

16 So after this ballot is reconstructed,
17 then call us -- come back and we'll come out and
18 read --

19 NEIL ALBRECHT: For the draw.

20 COMMISSIONER PENN: For the draw.

21 (Off the record.)

22 COMMISSIONER PENN: Okay. We need to go
23 back on the record.

24 Now, the next step in our process is
25 to randomly pull a -- from the bag of ballots so that

1 we reduce the count from 194 to 193.

2 NEIL ALBRECHT: And the reconstructed
3 ballot was placed inside.

4 COMMISSIONER PENN: I guess it's my turn.
5 (Drawing ballot).

6 NEIL ALBRECHT: It's a vote -- oh, well --

7 CLERK CZARNEZKI: No.

8 COMMISSIONER PENN: Okay. It doesn't
9 matter who it's for.

10 CLERK CZARNEZKI: Doesn't matter who it's
11 for.

12 COMMISSIONER BAAS: Now, does it go in with
13 the absentee ballots?

14 COMMISSIONER PENN: This ballot will go in
15 a separate envelope and be noted.

16 CLERK CZARNEZKI: And then put in the
17 ballot bag.

18 COMMISSIONER PENN: A separate ballot bag
19 and be noted on your --

20 DIRECTOR HENRY: On the canvass statement.

21 NEIL ALBRECHT: If there's a request to see
22 the ballot, can people see the ballot?

23 DIRECTOR HENRY: They'll see the results
24 when you run the ballot back through.

25 NEIL ALBRECHT: I'm asking if people want

1 to see the ballot, they can see the ballot?

2 CLERK CZARNEZKI: All ballots are public.

3 NEIL ALBRECHT: Okay.

4 CLERK CZARNEZKI: But they can't touch it.

5 COMMISSIONER PENN: Well, he can.

6 CLERK CZARNEZKI: Yeah, he can, but
7 observers cannot touch it.

8 NEIL ALBRECHT: Anything else?

9 COMMISSIONER PENN: Well, so it's going to
10 go in a separate --

11 CLERK CZARNEZKI: Separate ballot --

12 COMMISSIONER PENN: -- ballot bag, and it's
13 going to be noted on their final inspection report.

14 CLERK CZARNEZKI: I have a question for
15 corporation counsel.

16 Should that -- once that ballot is
17 placed in a separate ballot bag and then reinserted
18 in that ballot bag, should it be marked as an
19 exhibit?

20 ATTORNEY FOLEY: Marked as the reason for
21 removal. So, yes, set aside, properly preserved.

22 CLERK CZARNEZKI: So should we mark that as
23 an exhibit?

24 ATTORNEY FOLEY: Yes.

25 DIRECTOR HENRY: Can you give me the ward

1 number? The ward number?

2 NEIL ALBRECHT: It's 323.

3 CLERK CZARNEZKI: It will be Exhibit 1,
4 Ward 323, City of Milwaukee.

5 COMMISSIONER PENN: Thank you. We can go
6 back off the record.

7 (Off the record.)

8 COMMISSIONER PENN: Okay. So we are back
9 on the record.

10 NEIL ALBRECHT: Neil Albrecht from the City
11 of Milwaukee.

12 We have a ballot that during
13 processing it was identified that rather than fill in
14 the oval -- or I should say, there is no filled-in
15 oval for any candidate on the ballot in the office of
16 president/vice president but there is an arrow next
17 to a candidate. There's an objection to voter
18 intent.

19 COMMISSIONER POSNANSKI: Neil, would this
20 ballot have to be reconstructed in order to, I guess,
21 make it consistent with the voter's intent in order
22 to be counted?

23 NEIL ALBRECHT: It would have been read as
24 an undervote on election day, so we would have to
25 reconstruct it if there was a determination on the

1 voter's intent.

2 COMMISSIONER POSNANSKI: In prior years the
3 ballots that were used in Wisconsin elections
4 included -- or the voters cast their election by
5 completing an arrow; is that right?

6 NEIL ALBRECHT: Pardon?

7 COMMISSIONER POSNANSKI: They cast their
8 vote by completing an arrow on the ballot.

9 NEIL ALBRECHT: Right. Prior to the
10 phasing in of the newest voting equipment, which was
11 2015 -- no, for this year's. We're disputing that
12 now. Prior to when that occurred, which was the --
13 wasn't it --

14 DIRECTOR HENRY: February of 2016.

15 NEIL ALBRECHT: February of 2016 primary,
16 voters completed arrows, at least in the City of
17 Milwaukee, instead of filling in ovals.

18 COMMISSIONER PENN: Any comments, concerns?
19 Anybody want to look at this after Rick gets done?

20 Only one person from a political party
21 can --

22 BRETT MECUM: I'll be representing the
23 Trump campaign on this one.

24 COMMISSIONER PENN: Okay. Come on up.

25 BRETT MECUM: Thank you. Thank you for

1 hearing this challenge, lady and gentlemen of the
2 commission.

3 COMMISSIONER POSNANSKI: Can you identify
4 yourself, please.

5 BRETT MECUM: My name is Brett Mecum, and I
6 am representing the Trump/Pence campaign in this
7 matter.

8 I think this commission -- when we
9 talk about voter intent, we need to look at what the
10 voter did in the ballot as a whole. When you look at
11 the rest of this ballot, this voter clearly
12 understood on the other offices that you needed to
13 fill in a bubble to have your vote counted for this
14 particular office. They chose not to fill in the
15 bubble for the office of president of the United
16 States.

17 Many voters were torn on this race,
18 and I think it's very clear that this voter may have
19 been torn as well and chose not to cast a ballot for
20 president of the United States.

21 Again, Commissioners, when you look at
22 the rest of the ballot, this voter clearly understood
23 that they needed to fill in the bubble for the
24 offices that they wanted to vote for. Thank you.

25 JEFF PERZAN: This is Jeff Perzan. I work

1 with the presidential recount. I'm representing the
2 Green party.

3 And to my observation, it's unclear
4 what the voter intent was in this case. And I do
5 just on a casual glance notice other races in which
6 arrows were used.

7 COMMISSIONER PENN: Can you restate your
8 last name for -- you have it, okay.

9 COMMISSIONER POSNANSKI: I would note that
10 Wisconsin Statute 5.01 states that, except as
11 otherwise provided in the chapters, they shall be
12 construed to give effect to the will of the electors,
13 if that can be ascertained from the proceedings,
14 notwithstanding informality or failure to fully
15 comply with some of their provisions.

16 I'd also note for the record that
17 Wisconsin Statute 7.50(2) provides the considerations
18 when determining or trying to determine the intent of
19 the voter. And it does provide some guidance with
20 respect to where an elector -- remarks about across
21 or other marks that would indicate an intent to vote
22 for a specific candidate, it is a vote for the
23 candidate whose name it appears opposite.

24 In reviewing this ballot, I think it
25 is clear this voter intended to vote for Hillary

1 Clinton. I would move that this ballot be
2 reconstructed to reflect that intent and then be
3 accepted.

4 And, frankly, I think any argument
5 that the intent is not clear on this ballot is
6 frivolous.

7 COMMISSIONER PENN: Is there a motion on
8 that?

9 COMMISSIONER POSNANSKI: Yes.

10 COMMISSIONER BAAS: I'd like to go into
11 executive session to discuss this and other relevant
12 matters to this particular battle.

13 CLERK CZARNEZKI: I would ask corporation
14 counsel. I think that's permissible, right, to --

15 ATTORNEY FOLEY: Yes.

16 CLERK CZARNEZKI: Okay. We have a motion
17 to go into closed session. Under the Open Meetings
18 Law, requires a roll call vote to go into closed
19 session on -- it is debatable, though.

20 COMMISSIONER PENN: I'm not going to debate
21 it.

22 Please call the vote.

23 CLERK CZARNEZKI: Okay. On the motion to
24 go into closed session, Commissioner Baas?

25 COMMISSIONER BAAS: Aye.

1 CLERK CZARNEZKI: Commissioner Posnanski?

2 COMMISSIONER POSNANSKI: Aye.

3 CLERK CZARNEZKI: Commissioner Penn?

4 COMMISSIONER PENN: Aye.

5 CLERK CZARNEZKI: The board will go into
6 closed session to confer with legal counsel.

7 UNIDENTIFIED SPEAKER: Sorry, may I
8 photograph the ballot?

9 COMMISSIONER PENN: Pardon?

10 UNIDENTIFIED SPEAKER: May I photograph the
11 ballot?

12 COMMISSIONER PENN: When we come back.

13 UNIDENTIFIED SPEAKER: Okay. Thank you.

14 (Off the record.)

15 COMMISSIONER PENN: Okay. So we're back on
16 the record. And Rick would like to address his
17 request.

18 COMMISSIONER BAAS: The request was a
19 clarification from counsel and body relative to a
20 separate issue that did not have anything to do with
21 you, Neil, and we did not want you to think that we
22 did not trust you or anything else. It's just a
23 piece of information I needed to get squared in my
24 head before we went forward and, frankly, didn't want
25 to show my ignorance in front of God and everybody,

1 so I just kept it in-house. Everything else is fine.

2 COMMISSIONER PENN: Unrelated to this vote.

3 COMMISSIONER BAAS: Unrelated to this
4 particular issue.

5 NEIL ALBRECHT: I shed a lot of tears, but
6 thank you. Thank you.

7 COMMISSIONER BAAS: Thank you.

8 COMMISSIONER PENN: Okay. So there was --
9 we had a motion to accept this ballot or to recreate
10 this ballot?

11 COMMISSIONER POSNANSKI: Motion to
12 reconstruct the ballot consistent with the voter's
13 intent and accept the ballot.

14 COMMISSIONER PENN: Clerk, would you please
15 call the vote.

16 CLERK CZARNEZKI: You have to determine
17 what you believe the voter intent was as part of that
18 motion as well.

19 COMMISSIONER PENN: Okay.

20 COMMISSIONER POSNANSKI: For purposes of
21 the presidential recount, I believe the voter's
22 intent was to vote for Hillary Clinton and Tim Kaine,
23 so the ballot should be reconstructed to comply with
24 that voter's intent and then reconstruct the ballot
25 and accept the ballot.

1 COMMISSIONER PENN: Please call the vote.

2 CLERK CZARNEZKI: On the motion,

3 Commissioner Baas.

4 COMMISSIONER BAAS: Aye.

5 CLERK CZARNEZKI: Commissioner Posnanski.

6 COMMISSIONER POSNANSKI: Aye.

7 CLERK CZARNEZKI: Commissioner Penn.

8 COMMISSIONER PENN: Aye.

9 CLERK CZARNEZKI: Madam Chairwoman, there
10 are three ayes, zero noes. Motion prevails.

11 COMMISSIONER PENN: Thank you.

12 NEIL ALBRECHT: One more?

13 COMMISSIONER BAAS: You had to push it,
14 huh?

15 CLERK CZARNEZKI: He's on a roll.

16 NEIL ALBRECHT: This is a ballot where
17 there is a mark on the ballot that is equally distant
18 between two candidate ovals for the president/vice
19 president contest, and it is a ballot for Ward --
20 this one is for Ward 236.

21 COMMISSIONER PENN: Do you know if the
22 machine read this or not?

23 UNIDENTIFIED SPEAKER: It read it as a
24 blank -- undervote.

25 NEIL ALBRECHT: It read it as an undervote

1 for the office of president/vice president.

2 COMMISSIONER PENN: Anyone else, comments,
3 concerns, questions?

4 UNIDENTIFIED SPEAKER: Could I just --

5 COMMISSIONER PENN: Yeah, you can look at
6 it.

7 BRETT MECUM: I'll speak for the
8 Trump/Pence campaign whenever you're ready.

9 COMMISSIONER PENN: I'm ready.

10 BRETT MECUM: Okay. Good afternoon again,
11 ladies and gentlemen of the commission. For the
12 record, Brett Mecum with the Trump/Pence campaign.

13 What I'd like to say on this
14 particular ballot, given the commission's view of
15 previous challenged ballots, this vote should be
16 counted for Trump/Pence.

17 It's a circular mark just below the
18 circle for Trump/Pence inside of the Trump/Pence box.
19 And let me be honest, I sometimes have trouble
20 coloring in the lines as well. We would ask that
21 this ballot be -- this ballot be reconstructed and
22 the vote be given to the Trump -- to Donald Trump and
23 Mike Pence. Thank you.

24 COMMISSIONER PENN: Thank you.

25 COMMISSIONER BAAS: I move -- oh, we've got

1 more.

2 JEFF PERZAN: Jeff Perzan with the Green
3 party.

4 To my recollection, a similar sort of
5 situation has not yet come before the commission. So
6 I just want to make that on the record.

7 COMMISSIONER BAAS: I move that we
8 reconstruct this ballot in such a manner that the
9 vote be cast for Trump/Pence.

10 COMMISSIONER POSNANSKI: The only other
11 discussion I would add is under Wisconsin Statute
12 7.50(2)(c), it does indicate that if an elector marks
13 a ballot within the square to the right of the
14 candidate's name or any place within the space in
15 which the name appears, indicating an intent to vote
16 for that candidate, it is a vote for the candidate
17 whose name is opposite.

18 And I would agree with
19 Commissioner Baas, and I -- though I don't think it's
20 necessary, I would second your motion.

21 COMMISSIONER BAAS: Call for the vote.

22 COMMISSIONER PENN: Please call for the
23 vote.

24 CLERK CZARNEZKI: On the motion to accept
25 this ballot as a vote for Trump/Pence and reconstruct

1 it, Commissioner Baas.

2 COMMISSIONER BAAS: Aye.

3 CLERK CZARNEZKI: Commissioner Posnanski.

4 COMMISSIONER POSNANSKI: Aye.

5 CLERK CZARNEZKI: Chairwoman Penn.

6 COMMISSIONER PENN: Aye.

7 CLERK CZARNEZKI: Madam Chairwoman, there
8 are three ayes, zero noes. The motion prevails.

9 COMMISSIONER PENN: Thank you.

10 (Off the record.)

11 COMMISSIONER PENN: Okay. We're going back
12 on the record for another issue.

13 THERESA GABRIEL: Good afternoon. My name
14 is Theresa Gabriel. I'm with the City of Milwaukee
15 Election Commission. I'm here to discuss one ballot
16 for City of Milwaukee Ward 291.

17 There was a ballot that was cast where
18 the voter placed an X in the box indicating a
19 candidate but did not fill in the oval. It was
20 reported as a blank ballot and an undervote. And
21 there is a party who wishes to challenge this.

22 COMMISSIONER BAAS: And they are not
23 present.

24 THERESA GABRIEL: The tabulators reviewed
25 all the ballots in the ballot bag. This was the only

1 blank ballot.

2 COMMISSIONER PENN: And the count of
3 ballots in the bag was consistent with --

4 THERESA GABRIEL: Yes.

5 COMMISSIONER PENN: -- the number on the
6 bag?

7 THERESA GABRIEL: Yes.

8 COMMISSIONER PENN: Any comments,
9 questions, concerns? I need a motion.

10 COMMISSIONER BAAS: Move to reconstruct and
11 cast the ballot for Hillary/Kaine -- Hillary Clinton
12 and Tim Kaine, I'm sorry.

13 COMMISSIONER PENN: Any discussion?

14 Please call the vote.

15 CLERK CZARNEZKI: On the motion,
16 Commissioner Baas?

17 COMMISSIONER BAAS: Aye.

18 CLERK CZARNEZKI: Commissioner Posnanski?

19 COMMISSIONER POSNANSKI: Aye.

20 CLERK CZARNEZKI: Chairwoman Penn?

21 COMMISSIONER PENN: Aye.

22 CLERK CZARNEZKI: Madam Chairwoman, there
23 are three ayes, zero noes. The motion prevails.

24 COMMISSIONER PENN: Thank you.

25 (Off the record.)

1 COMMISSIONER PENN: Okay. This meeting is
2 now in recess. We will reconvene Monday morning at
3 8 a.m.

4 * * * *

5 (Proceedings concluded at 5:46 p.m.)
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STATE OF WISCONSIN)
) SS:
MILWAUKEE COUNTY)

I, Kealoha A. Schupp, RPR and Notary Public in and for the State of Wisconsin, do hereby certify that the preceding transcript of proceedings was recorded by me and reduced to writing under my personal direction.

I further certify that said transcript of proceedings was taken at City of Milwaukee Warehouse, 1901 South Kinnickinnic Avenue, Milwaukee, Wisconsin, on the 3rd day of December, 2016, commencing at 9:15 a.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
20th day of December, 2016.

Kealoha A. Schupp, RPR
Notary Public

My commission expires January 19th, 2020.

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