

**Butler County Board of Elections
Board Meeting Minutes
Protest Hearing
May 30, 2012**

The Butler County Board of Elections met on Wednesday, May 30, 2012, at 1:00 p.m. for a Protest Hearing. Chairman Frank Cloud called the Board into session and present were Member Bruce Carter, Member Judy Shelton, Member Tom Ellis, Director Lynn Edward Kinkaid, Deputy Director Jocelyn Bucaro, Administrative Coordinator Donna DeFazio, and Administrative Coordinator Tiffany Harmon. Also present were Assistant Prosecutor Roger Gates; Mr. Greg Jolivette; Mark Hardig, candidate for the 51st House District; Attorney David Langdon, Attorney Corey Colombo; political science student Alex Thomas; court reporter Jane Fitch; Sheila McLaughlin, Reporter for the *Cincinnati Enquirer*; and Lauren Pack, Reporter for Cox Newspapers.

Chairman Cloud stated that the purpose of the special meeting was to hold a hearing on the protest filed by David R. Langdon; Langdon Law LLC, representing Ralph Carruthers, Dan Wurst, and David Kern against the candidacy of Greg Jolivette to appear on the November 6, 2012, ballot as an independent candidate in the race for the 51st Ohio House District.

Chairman Cloud outlined the procedure which the Board would follow and began by summarizing what had taken place that led up to the Protest Hearing. On March 5, 2012, Greg Jolivette filed a nominating petition and declaration of candidacy for the office of State Representative as an Independent Candidate for the November 6, 2012 General Election. On April 19, 2012, Dan Wurst, Ralph Carruthers, and David Kern filed a protest pursuant to O.R.C. 3513.262 against Mr. Jolivette's candidacy for this office. On May 16, 2012, the Board of Elections approved the petitions and certified Mr. Jolivette to the ballot while also fixing the date to hear the protest. All parties were notified by telephone, email, and letter. Notice of the hearing was also sent to the press. Chairman Cloud introduced the Assistant Prosecuting Attorney and stated on the record that Mr. Gates will have

no part in the decision on the protest. Chairman Cloud introduced the court reporter and explained for the record that everything will be taken down by the court reporter. Chairman Cloud stated what documents the Board has reviewed, including the petitions, the protest letter and accompanying brief and evidence, relevant Ohio statutes, the brief submitted by Mr. Jolivette's attorney, and the Secretary of State Advisory 2007-05 and accompanying decision in Morrison v. Colley. Chairman Cloud stated that the Board has available to them the briefs, the petitions, the relevant O.R.C. 3513.257 and 3501.01 concerning independent candidate requirements, and SOS Advisory 2007-05 for their reference during the hearing. Chairman Cloud reminded all present that the Protester has the burden of proof and must show by a preponderance of the evidence that the candidate should not appear on the ballot. If the Protester fails to meet that burden, the candidate will appear on the ballot. Chairman Cloud asked the parties or their attorneys if they have any further questions before the hearing begins and they had none.

Mr. Jolivette, as the sole witness, was sworn in by the Court Reporter.

Chairman Cloud reminded the parties that the court rules of evidence will not be used, but that the Board will decide what witnesses and evidence they will allow in order to make a decision on the protest. He then reminded the parties of the order the hearing will be held.

David R. Langdon began his opening statement by saying he is appearing before the Board to represent the protesters against the candidacy of Mr. Jolivette. He explained that Mr. Jolivette has a very long and distinguished history as a Republican politician in Butler County and in large part his history as a Republican is not in dispute. He stated that Mr. Jolivette filed petitions for the Republican nomination for the 51st Ohio House District in November of 2011. In circulating and submitting those petitions, he declared under penalty of election falsification that he was a member of the Republican Party and further declared that if he was elected to the office he would support and abide by the principles

of the Republican Party. There were deficiencies with his petitions and on December 19, 2011, Mr. Jolivette withdrew his candidacy for the Republican nomination and also resigned from the Republican Central Committee. Only a few months later, Mr. Jolivette circulated and filed a petition for the same office as an independent candidate but continued to maintain a connection with the Republican Party, referring to Mr. Jolivette's website and Facebook page. He stated that it is their position that Mr. Jolivette based on his long standing history of voting, running for office, serving as a Republican Legislator, Republican County Commissioner, and Republican Central Committee Member and also attempting to run for the very same office as a Republican, and after filing independent candidate petitions, maintaining these various Republican affiliations, indicates the claim that he is now independent is not being made in good faith. It is a claim of political convenience only. He requested that the Board grant the protest and remove Mr. Jolivette's name from the ballot.

Corey Colombo then addressed the Board and stated Mr. Jolivette is a candidate for 51st House District in the upcoming General Election. He stated the Board must deny protest because the respondent is an independent candidate both in fact and in law. On November 29, 2011, Mr. Jolivette did file to run as a Republican candidate for State Representative and on December 19, 2011, he voluntarily withdrew his petition and resigned from the Butler County Republican Central Committee and began disaffiliating himself from the party. Mr. Jolivette then filed his independent candidate petition on March 5, 2012. It should also be noted that March 6, 2012, was the Primary Election and Mr. Jolivette chose not to vote in the Republican primary. Mr. Jolivette will testify that he left the party because he felt the Republican Party had already left him, and he does not deny that he has a long standing history of serving as a Republican elected official and a member of the Central Committee for the Butler County Republican Party. He further stated that Mr. Jolivette's history with the Republican Party has soured due to events in 2009, when Mr. Jolivette had to cast difficult votes as County Commissioner, upsetting the Party establishment. When he ran for County Commissioner in 2010, he sought the endorsement of the Republican Party but

did not receive it which is in part why he did not win the nomination. A similar situation occurred with Mr. Jolivette in 2011 when he also failed to receive the endorsement for the Republican nomination for State Representative. It was these events in recent years that helped him realize the Republican Party did not welcome him or his views. He stated that the website and Facebook page are outdated and dormant. To briefly highlight the law, it supports the person's ability to change parties even if the person has a long affiliation with a particular party. He pointed out that Mr. Jolivette has freedom of association and freedom of speech rights. He thanked them for their time and asked that Mr. Jolivette's name remain on the ballot.

David Langdon presented the Board with a packet of information consisting of:

- A. Nominating Petition and Statement of Candidacy (Independent) (March 5, 2012)
- B. Jolivette's Voter Registration and Voting History
- C. Jolivette's Transactions Regarding Republican Central Committee and Jolivette's Letter to Board of Elections Withdrawing Candidacy (Dec. 19, 2011)
- D. Statement of Candidacy (Republican) (Nov. 9, 2011)
- E. Designation of Treasurer for Friends of Greg Jolivette (June 16, 2008)
- F. Snapshot of campaign website of Friends of Greg Jolivette
- G. Facebook page of Greg Jolivette
- H. Certificate of Registration of Greg Jolivette
- I. Designation of Treasurer forms filed by Friends of Greg Jolivette, including Amended Designation of Treasurer for Friends of Greg Jolivette dated May 4, 2012
- J. Waiver of Declaration of Filing Day Finances filed by Greg Jolivette and Friends of Greg Jolivette (filed on March 5, 2012)
- K. Certificate of Registration of Ralph Carruthers, Dan Wurst, and David Kern
- L. Friends of Greg Jolivette 2011 Annual Campaign Finance Report

David Langdon and Mr. Colombo asked Mr. Jolivette several questions, which he answered for them. Mr. Jolivette explained his discontent with the Republican Party and said that he was aware that he could run again in two years for the candidacy as a Republican Candidate and even with the Party's support, he would not do so. He said he was interested in running in this election to help his

district by bringing his experience to the 51st District and believed he would serve them best.

Member Carter asked what were the principals of the Republican Party that Mr. Jolivette agreed to uphold, and Mr. Jolivette was unsure of the exact principles and values. He also questioned if the Republican Party approached him offering to support him as a candidate in the future if he would accept the offer and Mr. Jolivette said he would refuse.

Mr. Langdon gave his closing statement by explaining the Directive from the Secretary of State lists two automatic disqualifications and admitting that Mr. Jolivette does not fit into either of those categories. He stated that the Board must now determine if the claim of independence was made in good faith using additional factors, the Secretary of State suggestions may help make that determination. Mr. Langdon argued Mr. Jolivette showed clear party affiliation by pulling the initial petition as a Republican, withdrawing it and then submitting a petition as an independent. His website and Facebook page also show clear party affiliation.

Mr. Colombo gave his closing statement by saying he agrees with Mr. Langdon that neither the two automatic disqualifiers are applicable to Mr. Jolivette. He requested the Board look at December 19, 2011, as the point, and since that time determine if his disaffiliation has happened. He argued that Mr. Jolivette hasn't shown any affiliation with the Republican Party since that date. The only affiliation is an outdated, dormant website.

Mr. Langdon added that December 19, 2011, does not need to be the date where the independence is judged. It could be when Mr. Jolivette declared his candidacy for the Republican Party in this race.

Member Ellis then moved that the Board go into Executive Session for the purpose of private deliberation under O.R.C. 121.22 (G) (3). Member Shelton seconded the motion. Roll call:

Chairman Cloud	yea
Member Carter	yea
Member Ellis	yea
Member Shelton	yea

All in favor; motion carried.

Member Carter moved to return to Regular Session. Member Ellis seconded the motion. Roll call:

Chairman Cloud	yea
Member Carter	yea
Member Ellis	yea
Member Shelton	yea

All in favor; motion carried.

Member Shelton moved to grant the Protest on the Candidacy of Greg Jolivette.

Member Ellis seconded the motion. Roll call:

Chairman Cloud	nay
Member Carter	nay
Member Ellis	yea
Member Shelton	yea

There was a tie vote, and the motion, therefore, did not pass.

Chairman Cloud explained the procedure and the opposing positions would be stated in the filing to the Secretary of State. Deputy Director Bucaro stated the filing must be submitted within fourteen days.

Member Carter moved to have a transcript completed within fourteen days at the Board's expense. Member Shelton seconded the motion. Roll call:

Chairman Cloud	yea
Member Carter	yea
Member Ellis	yea
Member Shelton	yea

All in favor; motion carried.

Member Shelton moved to adjourn the meeting. Member Ellis seconded the motion. Roll call:

Chairman Cloud yea
Member Carter yea
Member Ellis yea
Member Shelton yea

All in favor; motion carried.

The meeting was adjourned at approximately 3:50 p.m.

Frank Cloud, Chairman

Lynn Edward Kinkaid, Director

Thomas W. Ellis, Member

Judith A. Shelton, Member

Bruce Carter, Member