



**JENNIFER BRUNNER**  
**OHIO SECRETARY OF STATE**

180 East Broad Street, 15<sup>th</sup> floor  
Columbus, Ohio 43215-3726 USA  
Tel.: 1-614-466-2655  
Fax: 1-614-644-0649  
[www.sos.state.oh.us](http://www.sos.state.oh.us)

**ADVISORY NO. 2007-12**

October 31, 2007

To: Highland County Board of Elections

Re: *State ex rel. Ernst v. Brunner*

As you are aware, Franklin County Common Pleas Judge Richard Frye has issued his decision in the lawsuit filed on behalf of three of the ten candidates affected by the Highland County Board of Elections' vote that was broken by my October 5, 2007, tie-vote decision. The three candidates at issue in the lawsuit are Amie Ernst, Bob Bergstrom, and Eugene Kropfelder. Judge Frye granted a writ of mandamus against the Highland County Board of Elections ("the Board") and the Secretary of State, and ordered the Board to certify the nominating petitions of Ms. Ernst, Mr. Bergstrom, and Mr. Kropfelder, making official their candidacies for the new Greenfield City Council. Additionally, Judge Frye ordered the Board to cease advising potential voters that votes for Ms. Ernst, Mr. Bergstrom, and Mr. Kropfelder may not count. The ultimate result of Judge Frye's decision enlarges the field of candidates for Greenfield City Council.

In his decision, Judge Frye discusses at great length both why the statute at issue, R.C. 3513.04, is ambiguous, and the construction the statute should be given considering the unique facts of the situation at hand. Ultimately, Judge Frye concluded that established Ohio Supreme Court case law construing the plain language of R.C. 3513.04 is inapplicable to the "remarkably unusual facts presented here" and that prior legal precedent is not binding. Although Judge Frye and I disagree on this issue, and his decision appears to be based on principles of equity that are normally not applicable when the remedy sought comes from law (mandates), I believe it to be in the best interest of the voters of Highland County to consider this settled law and refrain from further appeals and court rulings.

Therefore, I am advising the Board to follow Judge Frye's decision, treat it as settled law and apply it to all ten of the candidates disqualified by my October 5, 2007 tie-vote decision. The board should certify the nominating petitions of all ten of those candidates at its November 1, 2007, meeting.<sup>1</sup>

The names of the following individuals should appear on the ballot for Greenfield City Council at the November 6, 2007 general election, and all votes for them should count:

Bob Bergstrom;  
Amy J. Ernst;  
Bernard W. Hester;  
Bob Howland;

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<sup>1</sup> While the nominating petition of one candidate, Ms. Katherine Clawson, was invalidated under a different statute, 3513.261, under Judge Frye's analysis, the same result occurs.

Eugene Kropfelder;  
Paul H. Narcross, Jr.;  
Bill Redenbaugh;  
John N. Wagoner; and  
Katherine Clawson.

Additionally, the name of Jacalyn Emerick should appear on the ballot for Madison Township Fiscal Officer at the November 2007 general election.

Finally, the Board should immediately cease issuing notices to potential voters that votes for any of the above named candidates may not count.

If you have additional questions or concerns please feel free to contact your assigned Elections Counsel at (614) 466-2585 or by e-mail.

Sincerely,



Jennifer Brunner