

Memorandum

To: Interested Parties regarding the appointment to County Council District 3

From: Eben O. (Sandy) McNair, IV, Counsel and Parliamentarian—Cuyahoga County Democratic Party (“CCDP”)

Date: December 15, 2020

c: Shontel Brown, Chair, CCDP
Ryan Puente, Executive Director, CCDP

Re: Filling of Central Committee Vacancies in County Council District 3 and the appointment of a successor to Dan Brady

On Thursday, December 17, 2020, a meeting is being held of the Cuyahoga County Democratic Party Executive Committee to approve the vacancies for CCDP Central Committee positions. Excluded from this meeting are those precincts encompassed by County Council District 3. The question has been raised as to this exclusion, especially given the fact that the current occupant of that elected office, Dan Brady, has submitted his resignation/retirement effective the end of this year.

The Cuyahoga County Charter provides in relevant part:

SECTION 3.05 COUNCIL VACANCIES. When a vacancy occurs in a Council position, precinct committee members of the same political party and from the same district as the vacating member shall choose a replacement within thirty days of the occurrence of the vacancy. If the precinct committee members fail to make the appointment in the allotted time, the Council shall have thirty days to make the appointment. If the Council fails to make the appointment, the County Executive shall make the appointment. [Effective January 1, 2010]

The Party Chair intends to have the CCDP Central Committee members make the appointment and intends to have as many of the vacancies filled as possible prior to the vote. That vote is scheduled to take place within the 30 days referenced above, on January 16, 2021.

Pursuant to our By-laws, Article III, the Executive Committee appoints the individuals to fill the vacancies of the Central Committee:

Section 15. Powers of the Executive Committee

- a. The Executive Committee shall have all the powers and shall exercise all authority for the Democratic Party in Cuyahoga County, as provided by statute for all County Central Committees, and shall have complete management and control of all matters and business of the Central Committee and the Democratic Party in relation to all matters which by law or custom devolve upon the Central Committee or the County Executive Committee provided that the Central Committee shall reserve unto itself the power to fill all vacancies in public offices other than such vacancies as may occur in the membership of the Central Committee and the Executive Committee.

A separate meeting will be called of all those Executive Committee members who reside within the precincts encompassed by County Council District 3, to be held on January 9, 2021. That meeting is not being combined with the general meeting on December 17, 2020 for practical reasons. As those who have participated in the CCDP know, the appointment by the Executive Committee of Central Committee members is pro forma, that is a long list of individuals is read off from communities all over Cuyahoga County and then by voice acclamation, they are all approved. This efficient process gets us to the right result, but strictly speaking should be done on a community by community basis, because, strictly speaking, only the Executive Committee members from, say Westlake or from Cleveland Ward 1, can vote to appoint the vacant positions from their respective jurisdictions. Typically, we do not operate this way because it would take too long and not change the result because there are never multiple candidates for a single vacancy.

However, the Party has a concern that such may not be the case with vacancies within County Council District 3 because those individuals will have the power to make a very important decision—deciding who will be Dan Brady’s successor. Because of this unique situation, we will be having separate meetings for each jurisdiction within District 3 on January 9th to fill those Central Committee vacancies. Another practical reason for separating the District 3 vacancies from all the other vacancies is that while the Party does vet the nominations of Central Committee candidates to make sure they are eligible (Democrats living in the precinct for which they are nominated), we never do the same for voting Executive Committee members to make sure they are eligible to vote, again because it does not matter given that the appointments are by voice acclamation. However, because of the importance of the Central Committee appointments within District 3, we are checking the qualifications of those Executive Committee members because of the

importance of these appointments. We have found a number of Central Committee members within District 3 who appear not to be qualified, and we want to give notice to those individuals before disqualifying, all of which takes additional time.

Pursuant to the Party's By-laws, Article VI, Section 3.c., City and Ward Leaders are to make recommendations to the Chair regarding vacancies of Central Committee positions, and the Chair also shall take nominations from the floor:

Recommendations for filling of vacancies for Central Committee members. The Leader of the community in which there is a vacancy for the Central Committee shall make a recommendation to the Party regarding the filling of that vacancy. Such recommendation shall, in the normal course, be made to the Executive Committee for approval. Upon receiving any such recommendation from the Leader, the Party shall make sure that such recommended individual meets the necessary party affiliation and residence requirements such that the individual is qualified to serve. Where a Central Committee vacancy occurs such that the Leader is unable to find a suitable candidate, the Chair may assist the Leader in finding such a candidate. If the Chair finds a candidate, the Chair shall provide that name in writing to the Leader, and that candidate shall be deemed acceptable unless the Leader objects within fourteen (14) days of the date of the Chair's communication to the Leader. Where the Chair and Leader are unable to agree, the Executive Committee can take nominations from the floor of its meeting. The Executive Committee shall fill Central Committee vacancies by a majority vote. Where a meeting is called for the purpose of filling Central Committee positions, the Chair shall also allow nominations from the floor.

The Party is in the process of sending out a notice to all City and Ward Leaders within County Council District 3 for them to provide their recommendations to fill vacant Central Committee positions by December 31, 2020. Those names and any other names nominated from the floor will be put to a vote at the January 9th meetings.

There is one final legal issue to address. Pursuant to our By-laws, Article II, Section 6.c.: "Appointed Central Committee Members shall be entitled to vote only after sixty (60) days from the date of their appointment." (There is an identical 60-day waiting period between appointment and voting for Executive Committee members (Article III, Section 13.f.)) The Ohio Democratic Party has specifically advised us that the 60-day waiting period is unenforceable. Because we are bound by the ODP's determination, we must follow its dictates, notwithstanding the fact that the ODP had previously approved our by-laws, including the 60-day waiting period. The ODP has advised us that they missed

this issue when performing their review. We have requested and are awaiting the ODP's written directive regarding this issue and will share it once received. For those interested, the reason the waiting period was put into place was because candidates complained that who could vote, be it a matter properly before the Central Committee or Executive Committee, could change just before the vote by holding a meeting to fill applicable vacancies and that a 60 day period was reasonable. Whether or not reasonable, it is not enforceable. We are trying to address fair notice to all concerned by issuing this memo sufficiently in advance of the vote on January 16 and by giving potential candidates at least a week's notice between the filling of the vacancies and the vote. Ideally, it would be more time, but given where we are, this is the best we can do.

Finally, it is the Party's intent to have a meeting the last week of this year of all interested individuals and/or their surrogates to review and seek input regarding the rules that will apply to those January 9th meetings. In the meantime, if any interested individual has a question which they would like me to address, please put it in writing and I will respond in writing, and provide a copy of the question and response to all other interested individuals of whom I am aware.

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