

State Election Commission
Thursday, February 4, 2016 – 4:00 p.m.
Secretary of State’s Conference Room
Minutes

Attendees:

Members

Secretary of State Natalie E. Tennant
Gary A. Collias, by teleconference
Vince Cardi, by teleconference

Guests

Joe Reidy
Kent Gates
Brian Messer
Anne Charnock
Julie Archer
Darrell Shull
Lyle Sattes
Maryl Sattler
Pat Maroney
Ashley Summitt
Tim Leach
Missi Kinder
Justin Williams
Dave Nichols
Layna Brown
Brianna Wilson
Phil Kabler

The State Election Commission met on Thursday, February 4, 2016 in the Secretary of State’s Conference Room at the State Capitol Complex. The emergency meeting was called to order and chaired by Secretary of State Natalie Tennant at 4:20 p.m. A quorum of members was established.

Secretary Tennant stated that the purpose of the meeting is to address the additional challenges that have been received from Beth Walker to the Benjamin campaign. She asked Tim Leach to explain further. He stated that Taylor Downs has recused himself and will not be attending the meeting. He continued that the agenda item for the meeting is 365 challenges to individual contributions as invalid filed by the challengers. Mr. Leach stated there were some preliminary matters to discuss. The Commission is required to rule on each challenge. However, they are not bound by parliamentary procedure. The Commission agreed to call for question and then a yay or nay vote. The next procedural issue that Mr. Leach wanted to discuss involved the number of challenges. The Secretary of State’s staff has categorized them in to 23 various combinations of different types of issues. He suggested voting on them by issue unless there was an objection or question about a specific one in a category. That one could then be looked at individually. Gary Collias asked when the challenges were received. Mr. Leach responded yesterday. Mr. Collias asked if that made the challenges untimely. Mr. Leach replied that the regulation stated that they have to be filed in two business days after the end of the filing period. However, there is no such restriction or time limit in the Code. He recommended going by the statute instead of the regulation. Mr. Collias asked for the code reference. It

is W. Va. Code §3-12-9(g). Mr. Collias stated the Commission needed to decide how to proceed and whether or not the challenges should be deemed untimely. There was discussion about this issue. The Commission agreed to move forward and consider the challenges.

Secretary Tennant asked if there were any more issues to be discussed prior to considering the challenges. Anne Charnock with the Benjamin campaign asked that the Commission go back to one of the challenges yesterday as to whether Delores Jean Davis was registered to vote. She stated that she has a certified copy of her voter registration card. Ms. Charnock asked if that challenge could be reconsidered. The Commission decided to address the issue at the end of the meeting. Ms. Charnock then asked where the contribution money goes from the challenges that were sustained at yesterday's meeting. Mr. Leach responded that the money is not documented by proper receipt approved by the State Election Commission and has to be paid to the State Election Public Campaign Financing Fund. Ms. Charnock's next question was regarding the people whose objection got sustained. Can they donate again? Mr. Leach responded that the issue is on the agenda for discussion later in the meeting. Ms. Charnock stated that based on discussion yesterday regarding the electronic signature act, she wanted to bring forth the state and federal act for discussion. She continued that she also wanted to make a request for a hardship under 146CSR5-11.3.b., a filing that they have not been able to make electronically. There was discussion about this issue. The next discussion was concerning the procedure of notifying those contributors whose donation objection was sustained.

Secretary Tennant stated the Commission would start with the first section. Group 1 contained 25 contributions that are challenged because they did not use the SEC form. She asked if the Commission preferred to take all 25 at once. Vince Cardi responded that he would like to take them all at once. The names were read for the record: Bridget Tester, Rosalind Welsh, Mark Swartz, Mary Swartz, Jane Swibb, Ann Forbes Reed, Holly Planiskich, Tom Newcomber, James Masereff, Ericka Lord, Mark Kelley, David Dividian, R. Edison Hill, Earl L. Foreman II, Leslie R. Forbes, Ellen Clark Forbes, William Jessie Forbes, William C. Forbes, Mary Ann Forbes, Terry E. Courtwright, Mark Schermenko, W. Kent Carper, Thomas Bergoin, Ray Brunning, Penny L. Bice. Secretary Tennant called to question denying the challenge for these 25 that don't have an SEC form. With a unanimous vote, all 25 challenges were denied.

Group 2 were challenged because the electronic receipt had no signature. There was discussion concerning how to proceed with deciding on these challenges. The discussion referenced 146CSR5-7.3. Vince Cardi made a motion that unless there is some evidence accompanying the challenge, then it's not a challenge that the Commission needs to consider. There was discussion about the motion. Mr. Cardi reiterated his motion. There was further discussion. Vince Cardi made a motion that the group 2 objections be denied. Gary Collias seconded the motion. The motion passed with a unanimous vote.

Gary Collias stated that he thinks all of the other challenges fit in to the same category. Secretary Tennant added unless they have evidence. She suggested that the Commission go through each group and ask if there is evidence. The Commission agreed that instead of reading each name, they would submit an attachment to the transcript of the proceedings containing all of the names.

Secretary Tennant that group 3 contains 46 challenges because the electronic receipt had no signature and the contributor was not a registered voter at the given address. Gary Collias asked if there was any evidence to support it. Joe Rejedy responded just what was filed yesterday. Secretary Tennant asked the Walker campaign if they had any evidence for any of the remaining groups. Joe Rejedy responded nothing more than what they have submitted. Gary Collias made a motion to deny the 212 remaining challenges with Vince Cardi seconding. The motion passed with a unanimous vote. There was discussion concerning amending the regulation to make things clearer.

Anne Charnock addressed the Commission. She requested that all of the challenges that were sustained at yesterday's meeting be reconsidered based on the discussion and voting at today's meeting. There was discussion

concerning the request. Gary Collias made a motion that the Commission reconsider the Delores Davis objection with Vince Cardi seconding. The motion passed with a unanimous vote.

There was discussion concerning the contribution of Delores Davis. Gary Collias made a motion to reject the challenge to Delores Jean Davis with Vince Cardi seconding. There was discussion about the motion. The motion passed with a unanimous vote.

Gary Collias asked what the basis was for reconsidering the remaining challenges that were sustained at yesterday's meeting. Anne Charnock responded it was because the Walker campaign had just as little evidence yesterday as it had today. All of the evidence yesterday was provided by the Secretary of State's Office, and it was decided today that wasn't the proper forum. Vince Cardi made a motion not to reconsider the remaining challenges that were sustained at yesterday's meeting based on those grounds with Gary Collias seconding. The motion passed with a unanimous vote.

Vince Cardi stated that when reading the statute, he remembered some electronic contributions that were not signed, but within 2 days of January 30th satisfactory, qualifying receipts were delivered to the Secretary of State's Office. It was decided those receipts came in too late. He continued that he now thinks that if they were delivered by February 2nd, they were timely. The Commission recessed for 10 minutes. Upon returning, Tim Leach stated that Mr. Cardi was referencing a packet of 6 that were identified as electronic and not on an SEC form, Mr. Shull was among those in that packet. The Benjamin campaign submitted copies of receipts with signatures on them on February 2nd. The Commission voted not to accept those as timely filed. Mr. Leach read the names of the contributors in that packet: Reed, Dellegatti, Harrington, Charnock and Bell. Mr. Cardi stated that per the provision of W. Va. Code §3-12-13(c)(2), he thinks late receipts can be submitted. That issue was not addressed yesterday. He wanted discussion on this. The discussion referenced W. Va. Code §3-12-3(14).

After discussion, Vince Cardi made a motion to reconsider the 5 challenges with Gary Collias seconding. The motion passed with a unanimous vote.

Vince Cardi made a motion to deny the objections to the 5 with Gary Collias seconding. The motion passed with a unanimous vote.

Tim Leach stated there is an agenda item asking for discussion on the Commission's interpretation of what is meant by the 5 days to file replacement contributions for any challenged contributions. He referenced W. Va. Code §3-12-10(g). There was discussion about this agenda item.

After completing the agenda items, Tim Leach stated there has been a request for certification from both candidates seeking public finance. One of them involves the Benjamin campaign. Per code, the other campaign requires a SEC meeting within 3 working days of receipt of the request for certification. The request was received Wednesday, so the meeting must be on Monday. That requires a determination by the SEC if the candidate, Bill Wooten, qualified for payment of public finance money. The meeting will be on Monday, February 8, 2016 at 10:00 a.m.

With no further business, Gary Collias made a motion that the meeting be adjourned with Vince Cardi seconding. The motion carried. The meeting was adjourned at 7:05 p.m.