

**State Election Commission**  
**Wednesday, February 10, 2016 – 10:00 a.m.**  
**Secretary of State's Conference Room**  
**Minutes**

**Attendees:**

Members

Gary A. Collias

Vince Cardi, by teleconference

Natalie E. Tennant, by teleconference

Guests

Joe Reidy

Kent Gates

Anne Charnock

Maryl Sattler

Ashley Summitt

Tim Leach

Julie Archer

Phil Kabler

The State Election Commission met on Wednesday, February 10, 2016 at 10:00 a.m. in the Secretary of State's Conference Room at the State Capitol Complex. The meeting was called to order and chaired by Gary Collias. A quorum of members was established.

Gary Collias asked Tim Leach what matters have been brought before the Commission for the meeting. Mr. Leach responded that the Commission was in the process of evaluating the candidacy for certification under W. Va. Code §3-12-10 for Brent Benjamin. He continued that there were 5 specific requirements that must be met. As of the meeting last Friday, the first 4 requirements had been met. The question remains about the 5<sup>th</sup> requirement. Mr. Leach explained that the missing exploratory reports have now been filed. The question is are the reports now timely under the exemption granted to the statute. The reports were due the beginning or the first of the month after the receipt is received, but according to W. Va. Code § 3-12-13 paragraph (c) there is a "safety net" of paragraphs 1 and 2; 1 applying to exploratory contributions and 2 applying to qualifying contributions. This allows for the filing by the second business day after the close of the qualifying period, for reference that would be February 2<sup>nd</sup>, of any receipts not previously submitted. In regards to exploratory issues, the SEC determined that "catch all" applied and the receipts were timely. Mr. Leach continued that the reports were due February 2. The campaign had presented to the SEC a request for an exemption from filing on February 2. The exemption was granted. The question remains whether or not that exemption also extended the time period to file from February 2 until a reasonable amount of time determined by the SEC after the exemption from electronic filing was granted. Mr. Leach stated that issue has to be decided before the SEC can determine whether the fifth requirement for certification has been met. Gary Collias asked if that had been discussed and agreed upon during Friday's meeting to give the Benjamin campaign until the meeting today to file the needed document. Mr. Leach confirmed that was his recollection. Kent Gates asked if the Commission could provide a fact based basis for the hardship exemption granted to the Benjamin campaign to file exploratory reports as much as 4 months later from the time they were due. Mr. Leach responded by explaining the software issue for candidates that also have the need to file exploratory reports. He stated that he can confirm that according to staff, the issue remained on February 2<sup>nd</sup> and as of the meeting on February 5<sup>th</sup>. Mr. Collias asked when the report was due. Mr. Leach responded that some of the receipts go back several months. The

law says that you have to file it at the beginning of the month after receipt. Some reports may have been due as early as May, but that leads back to W. Va. Code §3-12-13(c)(1) exception to the monthly report requirements. Anne Charnock with the Benjamin campaign addressed the Commission. She explained that in April the candidate was not seeking public financing. Mr. Leach responded that the law does not require to candidate to notify anybody when he is seeking public financing. All it requires him to do is notify when he is going to file a declaration. Mr. Leach continued that once a candidate files the required declaration it becomes electronically impossible to back the pre-declaration contributions and put them in the system electronically. Mr. Gates asked if that now makes the report 4 months late. Mr. Leach responded under one interpretation of the statute, the one adopted by the SEC last week, the report is 4 days late. Mr. Gates asked when the SEC first learned of the candidate's inability to file electronically. Mr. Leach responded that he was informed Wednesday of last week. Ms. Charnock responded that she has emails from employees of the Secretary of State's Office dated October 1<sup>st</sup> acknowledging the problem. There was discussion concerning the emails. Secretary Tennant requested a 5 minute recess. The Commission recessed.

Upon returning from the recess, Gary Collias stated he received a copy of the emails which will be submitted to the record as exhibit 1. He asked for further comments or discussion. Ms. Charnock stated that the point of the emails was to establish a time frame of when the Benjamin campaign was making inquiries about what to file and when to file. That was in response to the Walker campaign contention that anything filed within the last couple days was late. Mr. Gates stated that illustrates the point that the Benjamin campaign should have known that the exploratory contributions should have been filed on October 2<sup>nd</sup>. Ms. Charnock responded by referring to the content emails. She continued that every report that has been asked for has been filed. Mr. Collias stated that the question today is the timeliness issue, whether or not implicit of our ruling last week was an extension until today to file the necessary documents in a non-electronic format. He continued they have been filed, they meet all of the requirements. The only issue is whether or not the Commission is going to consider them timely. Mr. Collias stated he thinks the case turns on the language in W. Va. Code §3-12-13, specifically stating the reporting for both qualifying contributions and exploratory contributions being due, but also provides for the filing of any receipts not previously submitted. Mr. Leach stated it is his understanding that is what the SEC determined last week in discussion dealing with the timeliness of certain qualifying contributions, receipts and reports. Today the discussion is exploratory contributions. The SEC has considered arguments and ruled one way. Mr. Gates stated the reason there should be a reconsideration is that there has been new evidence presented to the Commission showing that the Benjamin campaign and the solicitor for the SEC knew on October 1<sup>st</sup> that there was going to be a problem with filing in a timely manner. Mr. Collias responded that the argument against that is the language in 3-12-13 subsection (c) is a saving clause that says that you can still file those documents not previously filed. Secretary Tennant added that in addition, the emails pertained to qualifying contributions, then the point is covered with exploratory contributions in 3-12-13. There are two different distinctions. She continued that there are interpretations and that is the interpretation that the Commission took last week on 3-12-13. Mr. Collias stated that it was his belief last week when the Commission agreed to give the exemption to the electronic filing that we intended to extend the time in which to file although it was not implicitly granted. Mr. Gates stated the hardship exemption only applies to the form of filing but does not provide any relief for the timing of the filing. He continued that the Benjamin campaign could have filed a hard copy on February 2<sup>nd</sup>. Ms. Charnock responded that they couldn't because they did not have an exemption on February 2<sup>nd</sup>. The statute requires electronic filing. There was further discussion concerning this issue. Vince Cardi made a motion to deem the filings by the Benjamin campaign made in a timely manner with Secretary Tennant seconding. There was discussion about the motion. The motion carried with a unanimous vote.

Mr. Collias stated that the next question is whether or not to certify the Benjamin campaign. He deferred to Tim Leach for any discussion. Mr. Leach stated that based on the vote all of the requirements for certification had been met. Mr. Collias asked the Walker campaign if based on all of the decision made so far if they could think of any reason that the Benjamin campaign should not be certified. Mr. Gates responded that their attorney, Thomas Ryan, had sent an email to Ashley Summitt. He requested that it be printed out and presented as part of the record. The

letter from Mr. Ryan dated February 10, 2016 was submitted to the record as exhibit 2. There was discussion concerning certifying the Benjamin campaign. Vince Cardi made a motion to certify the Benjamin campaign with Secretary Tennant seconding. The motion carried with a unanimous vote.

Mr. Collias asked if there was any further business to come before the Commission. Mr. Gates asked if a list of qualifying contributions could be provided, specifically the 71 that were rejected by the Secretary of State's Office. Mr. Leach responded that the Secretary of State's Office will comply. Ms. Charnock read a statement from Justice Brent Benjamin dated February 10, 2016. The statement was submitted to record as exhibit 3.

With no further business, Vince Cardi made a motion that the meeting be adjourned with Secretary Tennant seconding. The motion carried. The meeting was adjourned.