

State Election Commission
Wednesday, February 3, 2016 – 10:30 a.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
Taylor Downs, by teleconference

Guests

Joe Reidy
Kent Gates
Brian Messer
Anne Charnock
Lyle Sattes
Ted Hapney
Darrell Shull
Kenny Perdue
Julie Archer
Ashley Summitt
Tim Leach
Justin Williams
Dave Nichols
Layna Brown
Sheryl Webb
Missi Kinder
Phil Kabler

The State Election Commission met on Wednesday, February 3, 2016 in the Secretary of State's Conference Room at the State Capitol Complex. The meeting was called to order and chaired by Secretary of State Natalie Tennant at 10:35 a.m. A quorum of members was established.

Secretary Tennant stated that the purpose of the meeting is to hear the challenges for some of the submissions for the public financing participation for the Supreme Court. Taylor Downs stated that there has been a request from Ms. Walker that he recuse himself. He continued that he doesn't believe that a recusal from the certification, simply on the basis that he contributed to Mr. Wooten or Mr. Benjamin, is necessary. However, given the nature of the issues that are going to be discussed he is going to recuse himself from voting on any of the issues. Secretary Tennant responded that with the three remaining members, they have maintained a quorum and can continue. Mr. Downs left the call at 10:40.

Secretary Tennant asked Tim Leach to explain the process. He stated that the meeting was called under the provision of W. Va. Code §3-12-10(g). The Commission received 155 challenges yesterday evening. That is why there is an emergency meeting today. All of the challenges received related to the candidacy of Brent Benjamin. He continued that many more challenges had been received today. Mr. Leach stated that the Commission is here to

address individual challenges, reasons why the challenge was made and make a determination on each challenge of whether it is accepted or rejected. Based on the time requirements in code, the only issue to be discussed today are the challenges to the Benjamin campaign. Any other discussion will be delayed until the appropriate meeting of the State Election Commission. He continued that the challenges have been broken up in to categories. He explained the issues involved.

The first category consisted of challenges to receipts on forms other than the form provided by the SEC. Mr. Leach stated he would be stepping out of the discussion. Ashley Summitt addressed the Commission and referred to W. Va. Code §3-12-9 and 146CSR5 (5.4) in reference to data that is required on receipts for contributions. She recommended that the Commission does not disqualify based on a use of a different form as long as it meets all of the requirement standards that are laid out in 3-12-9. There was discussion about this issue. Gary Collias made a motion that the Commission overrule the objection to the contributions based upon the failure to use the form provided by the SEC. Secretary Tennant seconded and added that this includes the 67 objections that are being referred to. Vince Cardi amended the motion by adding as long as the contributions are accompanied by the information required by statute. Mr. Collias amended his motion to include the additions. The motion passed with a unanimous vote.

Secretary Tennant stated that there are 155 challenges to be considered. Mr. Leach addressed the Commission to explain the next issue to be discussed. He stated there are 38 stand-alone objections as not timely submitted to the Secretary of State. There are 13 others that not timely combined with another issue. There are 4 that the objection is not timely and missing information required by the statute. This discussion will deal with another 55 of the objections. The issue is the code requires that the receipts be submitted to the Secretary of State on the first or the beginning of the month after they are received. Mr. Cardi stated he would rather address just the 38 that the only issue is timely submission. Ashley Summitt explained that this is in reference to W. Va. Code §§3-12-9 and 3-12-13. There was discussion about this issue. Vince Cardi made a motion to deny the objection on the 38 which only involve the timing of the report with Gary Collias seconding. The motion passed with a unanimous vote.

Tim Leach explained the next issue. There are 13 contributions which have a dual challenge. The Commission has discussed the legal arguments behind both of those challenges. The dual challenges of these 13 were not on a SEC form and not timely filed. There was discussion regarding the challenges. Gary Collias made a motion that the Commission overrule the objection with regard to these 13 contributions with Secretary Tennant seconding. The motion passed with a unanimous vote.

Tim Leach stated that it had been brought to his attention that the timing issue discussed in the last vote affected 12 of the 38 contributions that were voted on previously. Ashley Summitt continued that she thought the Commission should re-consider the vote on the 38 based on that issue. It would mean re-voting on 26, then re-considering the remaining 12 in a separate vote. There was discussion concerning this issue. Secretary Tennant made a motion to re-consider the vote on the 38 previously voted on with Gary Collias seconding. The motion passed with a unanimous vote. Vince Cardi made a motion that the Commission deny the objections on the 26 based on the timeliness of the report with Gary Collias seconding. The motion carried with a unanimous vote. Vince Cardi made a motion that the objection based upon the fact that contributions delivered by the contributor in one month but not received until the following month were not timely reported be denied with Gary Collias seconding. The motion passed with a unanimous vote.

Tim Leach stated that there are 4 identified as objections for not timely filing and missing some statutorily required information. These contributions were discussed individually. With regards to the first one discussed, Ferron, Vince Cardi made a motion to sustain the objection to this contribution based on the fact that the printed name was left blank with Gary Collias seconding. Mr. Cardi and Mr. Collias voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

The Commission continued with the second of the 4 objections, Bowyer contribution date 10/16/2015. The issue is that the last 2 lines on the form were cut off on the Xerox copy submitted. There was discussion about this issue. Vince Cardi made a motion to deny the objection with Gary Collias seconding. The motion passed with a unanimous vote.

The Commission continued with the third objection, Charnock. Mr. Leach stated that this submission is missing a telephone number. Vince Cardi made a motion that the objection be sustained with Secretary Tennant seconding. Mr. Cardi and Secretary Tennant voted yes. Gary Collias voted no. The motion passed with a 2-1 vote.

The final objection in this category is a contribution dated 10/16/2015, Danford. The missing information is the contributor's name. This issue was discussed. Gary Collias made a motion to sustain the objection with Secretary Tennant seconding. The motion passed with a unanimous vote.

Mr. Leach stated there is one contribution challenged because the solicitor and the contributor are the same person. He continued that he did not know of anything in code that prohibits you from collecting your own signature. This was discussed. Vince Cardi made a motion that the objection be denied with Gary Collias seconding. The motion passed with a unanimous vote.

Mr. Leach stated that the next category to be discussed is marked Voter Registration-1. There are 4 objections. The first one to be discussed is Gellner. The objection is did not use SEC form and address of WV voter does not match address provided. This issue was discussed. Vince Cardi made a motion to deny the objection with Gary Collias seconding. Mr. Cardi and Mr. Collias voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

The next contribution objection discussed was from Bob Kiblinger. The challenged issue was address provided does not match address of registered WV voter. After discussion, Vince Cardi made a motion to deny the objection with Gary Collias seconding. Mr. Cardi and Mr. Collias voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

The next discussion concerned a contribution by Gary Esker. The objections are the contribution was not reported in a timely manner and Gary Esker is not a registered voter. Vince Cardi made a motion to deny the objection with Gary Collias seconding. Mr. Cardi and Mr. Collias voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

The last challenge in this category was a contribution by Michael J. Farrell. The objection is the address of WV voter does not match the address provided. Vince Cardi made a motion to deny the objection with Gary Collias seconding. The motion passed with a unanimous vote.

The Commission moved on to the next category which contained 2 contributions. The first discussion concerned Royce Caldwell. The objection is that the address provided does not match the address of WV registered voter. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The second discussion concerned Sheriba Hunter. The objection is that Sheriba Hunter is not a registered WV voter. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The Commission moved to the next category to be discussed, voter registration packet 3. This included 10 challenges. The issue is the same for all, that the reports were not filed in a timely manner and the contributors are

not properly registered voters. The first discussion referred to Travis Day. Vince Cardi made a motion to overrule the objection with Gary Collias seconding. The motion passed with a unanimous vote.

The next discussion referred to Dennis Meorer. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The next discussion referred to Ricky Cleary. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The next discussion referred to Lula Bell Legg. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The next discussion referred to Bailey Ashton Hinzman. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The next discussion referred to Kathleen O'Hanlon. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The next discussion referred to Terry L. Sanders. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The next discussion referred to John McGhee. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The next discussion referred to Joanna Day. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The last discussion in this category referred to Susan Apgar. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The Commission took a ten minute break. The next category for discussion was marked voter registration 4. It contains two challenges to be considered. The first discussion referred to Josephine Ruland. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The second discussion in this packet referred to Erin Shaver. There was a document missing from the packet. The Commission moved forward. Upon returning to this issue, Gary Collias made a motion to deny the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The Commission moved on to packet 5. The first discussion referred to Laura Chapman. Gary Collias made a motion to overrule the objection with Secretary Tennant seconding. The motion passed with a unanimous vote.

The next discussion referred to Rhonda Scarbro. Vince Cardi made a motion to overrule the objection with Gary Collias seconding. The motion passed with a unanimous vote.

The next discussion referred to Clayton Fitzsimmons. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. Mr. Collias and Mr. Cardi voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

The next discussion referred to Robert Fitzsimmons. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. Mr. Collias and Mr. Cardi voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

The next discussion referred to Alec Coinan. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The next discussion referred to Shari Pennington. Vince Cardi made a motion to overrule the objection with Gary Collias seconding. The motion passed with a unanimous vote.

The next discussion referred to James Ruland. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The next discussion referred to Darby Poole. Vince Cardi made a motion to overrule the objection with Gary Collias. The motion passed with a unanimous vote.

The next discussion referred to Brent Weir. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. Mr. Cardi and Mr. Collias voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

The next discussion referred to Justin Wiater. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The next discussion referred to Melissa Knott. Vince Cardi made a motion to deny the objection with Gary Collias seconding. The motion passed with a unanimous vote.

The next discussion referred to Dolphe Santorine. Vince Cardi made a motion to deny the objection with Gary Collias seconding. Mr. Cardi and Mr. Collias voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

Tim Leach introduced voter registration packet 6. He suggested that the Commission may want to vote on all of the objections in a group, because Secretary of State's Office staff could not find any record of voter registrations for any of the 12 individuals listed:

Julie Williams
John A. Farley
Leslie A. Spears
Wayne Davis
Melissa Lyons
William H. Salisbury
Delores Jean Davis
Marsha Snyder
Carol J. Shafer
Brenda Quesenberry
Jeff Parker
Sara S. Sampson

Gary Collias made a motion to sustain the objection to all 12 with Vince Cardi seconding. The motion passed with a unanimous vote.

The Commission returned to an item in packet 5. This discussion referred to Michelle Redden. Gary Collias made a motion to overrule the objection with Vince Cardi seconding. The motion passed with a unanimous vote.

The final discussion in packet 5 referred to Robin Capehart. Dave Nichols explained that there are multiple issues with this challenge. He recommended that the Commission members look at it, but wait until all of the issues have been discussed before voting on it.

Tim Leach stated there is another issue to be discussed, the legality of accepting contributions online or electronically. The next packet includes 6 voter contributions. The issue is a receipt must have a signature of both the individuals who collected the contribution and who is making the contribution. Electronic filing provides for an electronic signature, in some types of programming. An electric signature is an acceptable, legal verification in most law cases. However, the statute is very particular to contributions and it states it must have a signature. The challengers object to the Benjamin campaign using electronic contributions. The code allows for payment by cash, check, credit card or electronic means. The code also requires a signature. There was discussion about this issue and each circumstance for the 6 challenged contributions from:

Catherine Dellegatti
Darrell Shull
Mary Harrington
Kenneth Reed
Eric Bell
Jane Charnock

After discussion, Secretary Tennant made a motion to deny the objection to Darrell Shull's contribution with Vince Cardi seconding. Secretary Tennant and Mr. Cardi voted aye. Gary Collias voted no. The motion passed with a 2-1 vote.

Secretary Tennant made a motion to deny the objection to Catherine Dellegatti's contribution. There was no second. Gary Collias made a motion to sustain the objection to Catherine Dellegatti's contribution with Secretary Tennant seconding. Mr. Collias and Mr. Cardi vote aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

With regards to the contribution of Mary Harrington, Secretary Tennant made a motion to deny the objection to this contribution. There was no second. Gary Collias made a motion that the objection be sustained with Vince Cardi seconding. Mr. Collias and Mr. Cardi vote aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

Gary Collias made a motion to sustain the objection to Kenneth Reed's contribution with Vince Cardi seconding. Mr. Collias and Mr. Cardi voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

Vince Cardi made a motion to sustain the objection to Jane Charnock's contribution with Gary Collias seconding. Mr. Collias and Mr. Cardi voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

Gary Collias made a motion to sustain the objection to Eric Bell's contribution with Vince Cardi seconding. Mr. Collias and Mr. Cardi voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

The Commission returned to discussion concerning Robin Capehart. Gary Collias made a motion to sustain the objection with Vince Cardi seconding. Mr. Collias and Mr. Cardi voted aye. Secretary Tennant voted no. The motion passed with a 2-1 vote.

Tim Leach stated that concluded the subject matter for today's meeting. He continued that the SEC has received more objections that require a meeting for tomorrow. There have been 365 new objections to contributions to the Benjamin campaign by the Walker campaign. There was discussion regarding the procedure to be used to review and decide on the new objections and how to respond to the decisions made today.

With no further business, Gary Collias made a motion that the meeting be adjourned with Vince Cardi seconding. The motion passed. The meeting was adjourned at 5:30 p.m.