Indiana Election Commission
Minutes
August 17, 2018

Members Present: Bryce H. Bennett, Jr., Chairman of the Indiana Election Commission ("Commission"); Trent Deckard, Proxy for S. Anthony Long, Vice Chairman of the Commission; Suzannah Wilson Overholt, member; Zachary E. Klutz, member.

Members Absent: S. Anthony Long, Vice-Chairman of the Commission.

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Secretary of State (Election Division); Angela M. Nussmeyer, Co-Director of the Election Division; Matthew R. Kochvar, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division.

Others Attending: Mr. Andrew Horning; Mr. Daniel Layden.

1. Call to Order:

The Chair called the August 17, 2018 meeting of the Commission to order at 11:00 a.m. EDT in offices of the Election Division, 302 West Washington Street Room E-204, Indianapolis, Indiana.

2. Transaction of Commission Business:

The Commission proceeded to transact the business set forth in the Transcript of Proceedings for this meeting prepared by Susan L. Plunkett of Associated Reporting, which is incorporated by reference into these minutes.

The Commission corrects the following scrivener’s errors in these documents:

Page 3, line 13, replace “Suzanna” with “Suzannah”.
Page 15, line 15, replace “supercede” with “supersede”.
Page 20, line 12, replace “selection” with “election”.
Page 21, line 13, replace “three” with “four”.
Page 25, line 10, replace “KING” with “CLAYTOR”.

The Commission adjourned this meeting on August 17, 2018 at 11:30 a.m.

Respectfully submitted,

J. Bradley King
Co-Director

Angela M. Nussmeyer
Co-Director
APPROVED:

[Signature]

Bryce H. Bennett, Jr., Chairman
STATE OF INDIANA
BEFORE THE INDIANA ELECTION COMMISSION

TRANSCRIPT OF PROCEEDINGS
August 17, 2018
11:00 a.m.

Indiana Government Center
Indiana Election Division
302 West Washington Street, Room E204
Indianapolis, Indiana

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APPEARANCES

INDIANA ELECTION COMMISSION:
  Mr. Bryce Bennett, Chairman
  Suzannah Wilson-Overholt
  Zachary E. Klutz
  Trent Deckard, Proxy of Record For S. Anthony Long

INDIANA ELECTION DIVISION:
  J. Bradley King, Co-Director
  Matthew R. Kochevar, Co-Legal Counsel
  Angela M. Nussmeyer, Co-Director
  Michelle Thompson, Campaign Finance
CHAIRMAN BENNETT: We will now bring the Indiana Election Commission Public Session for Friday, August 17, 2018, to order.

At this time I would note that the following commission members are present: myself, Chairman Bryce Bennett; Trent Deckard, proxy for Vice Chairman Anthony Long; Member Suzanna Overholt; and Member Zachary Klutz. Indiana Election Division Staff Co-Director Brad King and Co-Director Angie Nussmeyer, General Counsel Matt Kochevar; and Co-General Counsel Dale Simmons is absent on vacation today.

Our court reporter today is Susan Plunkett from Associated Reporting. And before we begin, I want to remind everyone on behalf of the court reporter to identify yourself when beginning to speak, spell your name when identifying yourself, speak clearly, and do not speak at the same time as others.

At this time I'd request that the co-directors confirm that the commission meeting has been properly noticed as required under the open door law.

MR. KING: Mr. Chairman, members of the
commission, notice of this meeting was posted in accordance with the Indiana Open Door Law.

CHAIRMAN BENNETT: Thank you, Mr. King.

At this time we will ask that there be a presentation of the July 31, 2018, commission minutes.

MR. KING: Mr. Chairman, members of the commission, Co-Director Angela Nussmeyer and myself have reviewed the minutes of July 31st and recommend them to you for approval.

CHAIRMAN BENNETT: Thank you.

Is there a motion to approve the July 31, 2018, minutes?

MR. KLUTZ: So moved.

CHAIRMAN BENNETT: We have a motion. Is there a second?

MS. OVERHOLT: Second.

CHAIRMAN BENNETT: A motion and a second. Is there any discussion? Hearing none, all in favor say "aye."

THE COMMISSION: (Chorus of ayes.)

CHAIRMAN BENNETT: All opposed say "nay."
The "ayes" have it, and the motion to approve the minutes is adopted.

CHAIRMAN BENNETT: At this time we would
ask for a presentation by staff with regard to the
ratification of campaign finance settlement
agreements.

MS. THOMPSON: Mr. Chairman, members of the
commission, in your binder is a list of committees
to ratify that have agreed to pay the settlement
agreement and waive the hearing. Michelle Thompson,
T-H-O-M-P-S-O-N.

CHAIRMAN BENNETT: Thank you. Is there a
motion to ratify the Campaign Finance Settlement
Agreements as presented?

MR. KLUTZ: So moved.

CHAIRMAN BENNETT: Motion. Is there a
second?

MS. OVERHOLT: Second.

CHAIRMAN BENNETT: Is there any discussion?

Hearing none, all in favor say "aye."

THE COMMISSION: (Chorus of ayes.)

CHAIRMAN BENNETT: Opposed say "nay."
The "ayes" have it. The motion to ratify
the agreements is adopted.

CHAIRMAN BENNETT: At this time I would ask
everyone present who plans to testify at today's
meeting to, please, stand for the administration of
the oath.
Okay. And I would recognize Co-Director King to administer the oath.

MR. KING: Please, rise, raise your right hand, and respond "I do" at the conclusion.

I do solemnly swear or affirm that the testimony I give to the Indiana Election Commission today will be the truth, the whole truth, and nothing but the truth.

MR. HORNING: I do.

CHAIRMAN BENNETT: Thank you. In the past the commission has followed certain procedures for conducting candidate challenge hearings, and I move that the commission use the following procedures today. After the candidate challenge is called, the hearing will begin by recognizing Election Division staff to provide information about the documents provided to the commission members, including candidate challenge forms and the notice given to the candidate and challenger. Unless there is objection, the documents provided to the commission by the Election Division will be entered into the record of this meeting.

After the Election Division staff completes its presentation, the challenger will be recognized first. The challenger or the challenger's
representative may present their case for no more than ten minutes, unless the commission votes to allow additional time for the presenter.

Commission members may ask questions during a presentation, but the time spent answering those questions will not be counted against the presenter's time. The Election Division may signal the chair when the presenter's time is up.

If the presenter offers additional documents or other physical evidence not previously received by the commission, then the original must be provided to the Election Division staff, Mr. King, to preserve for the record.

The candidate or the candidate's authorized representative will be recognized following the last presentation by a challenger. The candidate may present their case for no more than ten minutes, unless the commission votes to allow additional time for the presenter.

Following presentation by a challenger, the candidate may cross-examine the challenger. Following the presentation by a candidate, a challenger may cross-examine the candidate. The cross-examination in all cases is limited to two minutes, unless the commission votes to allow
additional time. The cross-examination must be limited to questions regarding statements made by the presenter. Following presentation by a candidate, the challenger may present a rebuttal of no more than two minutes. The commission may dismiss the cause of any challenger who has failed to appear or testify before the commission.

Is there a second to my motion for the commission to adopt these procedures for today's candidate challenge hearings?

MR. KLUTZ: Second.

CHAIRMAN BENNETT: We have a second. Is there any discussion on these procedures? Hearing none, the question is on the adoption of the motion. All in favor say "aye."

THE COMMISSION: (Chorus of ayes.)

CHAIRMAN BENNETT: All opposed say "nay."

"Ayes" have it, and the motion is approved.

We will begin with a consideration of Cause No. 2018-124: In the Matter of the Challenge to Connie Lawson, Candidate For Indiana Secretary of State. The Election Division has provided a copy of the Candidate Filing Challenge Form, a copy of notice given to the candidate and challenger in this
matter. The challenge and related documents are found behind the yellow sticker in the member's --
commission member's binder.

An appearance has been entered in this matter by Mr. Bill Barrett and Mr. Dan Layden of
Williams Barrett & Wilkowski, LLP, on behalf of the candidate and is also included in your binder.

Before proceeding to consider the merits of this challenge, I note that the candidate has filed
a motion to dismiss in this matter alleging that the challenge is not within the jurisdiction of the
commission under Indiana Code 3-8-8-2. The motion to dismiss with Exhibits A through H are found
behind the blue sticker in the binder.

I recognize the candidate's counsel to speak for up to ten minutes regarding the motion to
dismiss.

MR. LAYDEN: Yes, sir. Thank you.
Daniel Layden, L-A-Y-D-E-N, on behalf of the candidate.

We have filed a motion to dismiss, as the chairman noted, with respect to this challenge; and
specifically the grounds that we assert are implicated are Indiana Code 3-8-8-2.

Many of us in this room were here in July,
specifically July 17 of 2018, with respect to a
challenge that was filed by Mr. Horning, who's also
here, with respect to the candidacy of
Connie Lawson. The bases for that challenge were to
assert that under Article 6, Section 1, Ms. Lawson
was ineligible to be on the ballot because she was
subject to the limitations of the term limits under
that article and section.

The challenge was heard on that date.
Mr. Horning did not appear, to my knowledge. He
sent an authorized representative, Mr. Horton, to
appear on July 17. The hearing was held. The
issues were considered and ultimately resolved in
favor of Ms. Lawson.

At that hearing as a part of that
proceeding the current challenger, Mr. Tackitt, was
identified through press reports or otherwise as an
authorized secondary representative for Mr. Horning.
He was a part of -- it's clear based on the reports
that he was a part of that July challenge. All of
these issues were considered at the July hearing and
ultimately rejected, meaning Article 6, Section 1,
was read in conjunction with Article 2, Section 11,
and those exceptions to find that Ms. Lawson was
eligible to be on the ballot.
With respect to the CAN-1 that was filed in this challenge, a perfect illustration of why Indiana Code 3-8-8-2 applies is the description of the challenge. It says, "Jerold A. Bonnet was the pro tempore secretary of state before Lawson was the permanent replacement." That's the characterization of the challenge.

The import of that is that this is essentially a rebuttal or a response to the commission's determination that because Ms. Lawson was a pro tempore appointment in March of 2012, she was not subject to the limitations of Article 6, Section 1.

So what we have here, Commission, is we have a challenge brought now in August of 2018 by Mr. Horning -- Mr. Horning's associate with Mr. Horning now appearing and now arguing essentially why the determination made by the commission in July was incorrect. That's not allowed under 3-8-8-2.

Specifically, I want to go through the elements just so it's clear. Under that -- under that code provision, a candidate may not be challenged -- may not be challenged if all of the following apply: 1, the candidate's qualification
was previously challenged under this chapter or other applicable law. That applies in the previous challenge. 2, this challenge would be based on substantially the same grounds as the previous challenge to the candidate.

What we have here is we have an argument in this challenge that now it wasn't a pro tempore appointment of Ms. Lawson in March of 2012. It was a, quote/unquote, "permanent appointment." And so they're saying that, nope, the Article 6, Section 1, provisions apply, thus making Ms. Lawson ineligible. We certainly disagree with the merits of that argument; but again, we're delving into the same argument that was made back in July with respect to Mr. Horning's petition.

Section 3, the commission conducted a hearing on the challenge and made a final determination in favor of the candidate. It's undisputed. We have attached as part of the exhibits of the motion the transcript of the July 17, 2018, hearing. That makes it abundantly clear and is part of the record of this commission that all of these issues were discussed and ultimately addressed at that July 2018 hearing and resolved in favor of the candidate.
The other important part I think -- and I'll stop because I want the commission to consider this -- is these are arguments that could have been made on July 17, 2018. And that's the very purpose of 3-8-8-2, to avoid repeated piecemeal arguments on issues that have already been resolved in favor of the challenge -- the candidate.

Mr. Horning or Mr. Horning's representative or Mr. Tackitt, for that matter, could have made the argument in July of 2018 that it was not a pro tempore appointment; that Section 2, Section -- Article 2, Section 11, did not apply because it was a, quote/unquote, "permanent appointment." They did not make that argument. They're now trying to make it in August of 2018, and we believe they're barred by virtue of this statutory provision. So we'd ask the commission not to consider the merits of this petition but rather dismiss it based on this authority.

CHAIRMAN BENNETT: Very good. Thank you.

At this time I would ask if the challenger or representative of the challenger wishes to speak to the motion to dismiss?

MR. HORNING: I do. Do I need to stand or?

CHAIRMAN BENNETT: It's up to you, whatever
you're comfortable with.

MR. HORNING: Okay. The ad hominem implications aside --

CHAIRMAN BENNETT: As long as you state your name.

MR. HORNING: I'm sorry, Andrew Horning, H-O-R-N-I-N-G, is my last name, A-N-D-R-E-W, first name.

The ad hominem implications aside, the fact is that these issues were not addressed in the original hearing. Jerold Bonnet -- is it Bonnet or Bonnet? -- his name did not appear in the original discussion, as far as I know. I was not here. And I do know, however, that the arguments that I actually had written down were not read, and they were not heard by the commission.

And so I'd like it to be understood that I'm here not representing so much any single person as I am representing the Constitution of the United States of America and Indiana, under which both say that we have equal provision for -- we should be treated equally under the law, no matter whether it's citizens or politicians. So there shouldn't be any special exceptions for anybody at any time.
And so what I'm doing here is I'm going to first have to assert that the Indiana Constitution itself kind of dismisses much of his argument insomuch as Article 1, Section 25, says that no law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution. So the constitution takes priority over Indiana Code.

And Indiana Code has over the years introduced an awful lot of stuff. For instance, the major political party provisions, which are clearly unconstitutional by state and federal constitution. So when I'm making this argument, I want to make it plain, first of all, that the whole idea of precedent and Indiana Code should not supersede the Indiana Constitution.

I'm going to be arguing from the Indiana Constitution that there are only two ways to appoint or fully qualify an Indiana Secretary of State. One is by election, and one is by the governor actually naming someone. And so in this -- in the argument -- and I don't know if I should be presenting it now or whether I'm just refuting his motion to dismiss.

CHAIRMAN BENNETT: Well, I'd like you to
stick to the merits of the motion to dismiss --

MR. HORNING: Okay.

CHAIRMAN BENNETT: -- rather than the merits of your underlying --

MR. HORNING: Right.

CHAIRMAN BENNETT: -- challenge.

MR. HORNING: So -- so in addressing his motion to dismiss, first of all, the argument was never made that I'm going to be making today. It just wasn't made. It just didn't happen. In fact, the person who represented me because I was out of the state at the time told me that he did not. He did not present everything that I even have on the blog today that I had already posted on wedeclare.wordpress.com. So that didn't make it into the -- into the record.

And when the second -- when the second CAN-1 was submitted, it was also kind of unfortunate that the person who submitted it, Ben Tackitt, couldn't make it here today. He's got significant personal issues, and I was the last-minute replacement.

I really did not expect to come here today. So the fact that he's trying to make this sound like this has been my -- I've been cooking up this whole
idea for some time is really not entirely true
either. I have been talking to Ben; but, you know,
we're not here to represent ourselves. We --
neither one of us has anything to gain by this case.
In fact, I'm not, you know, in any way associated
with a political party at present. I don't like
political parties. I made that plain many times.

And so the point of this is to represent the
Constitution of Indiana and to avoid the
entrenchment of power that I see taking place by the
Republican Party, and that is something that I think
is unfair. It's unconstitutional. And the fact
that we see a lineage of passing power from one to
the next by appointment as opposed by democratic
elections, it kind of inverts the whole idea of
having a constitution which is supposed to be a
leash on politicians and the whole idea of having
elections which is supposed to avoid entrenchment of
power as we see here.

So I'm here really fighting cronyism and
fighting, you know, unconstitutional provisions made
in Indiana Code and precedent. And I would also
like to dismiss the idea that precedent is even law
because, of course, it's not. The separation of
powers makes it very plain that only legislators can
write law. And there is no law. There is no constitutional provision for the passing of the throne from one to the next the way we've seen happen lately.

CHAIRMAN BENNETT: Very good. Thank you.

MR. HORNING: Thank you.

CHAIRMAN BENNETT: Any questions from the commission? I -- I have a question.

MR. HORNING: Um-hum. (Indicating Affirmatively)

CHAIRMAN BENNETT: Did I hear you correctly to say that Tackitt when he made his presentation did not present this argument, even though you had --

MR. HORNING: Well, Tackitt --

CHAIRMAN BENNETT: -- asked him to do it before the July hearing?

MR. HORNING: To be clear, Tackitt was not sworn in. So that part of his statement was also incorrect. So Tackitt was here, but he was not representing me. He was not sworn in to speak, and it was -- he did not speak at the hearing at all.

CHAIRMAN BENNETT: But you had told him or at least identified this issue as something that he should have made at his --
MR. HORNING: Well, not him.

CHAIRMAN BENNETT: -- presentation?

MR. HORNING: I did talk to Mr. Horton about that. And so whether it's a combination of nerves or whatever, the idea that we should have is not really even relevant to this because we should be talking about facts, should be talking about the rule of law, as opposed to procedure.

CHAIRMAN BENNETT: I understand that. But the point is this issue was known to you and whoever was behind the first challenge. It just didn't come to light as it was intended to at the July hearing; is that correct?

MR. HORNING: I -- I don't believe the name Bonnet was ever actually -- was ever actually passed between us. We did discuss the idea that she was not the pro tempore and that I -- well, actually, let me back up a minute.

I sent him a -- an email saying that I did want him to address the idea of pro tempore. He told me later that he did not even read that because I sent it, like, the night before the hearing. So even though I had that on my blog, he did not read it and he did not present it to this group.

CHAIRMAN BENNETT: And you agree that it
could have been and believed that it probably should have been discussed at the July hearing; is that correct?

MR. HORNING: Insomuch as I only gave it to him the night before, it's hard to actually say that for sure. And I understand that we're trying to get to a disqualification of the whole hearing; but, you know, I'm hoping you're not going to take priority of that argument over the constitution itself because that's what it was.

CHAIRMAN BENNETT: Okay. Do you have any authority that would indicate that the selection commission has the jurisdiction to determine the constitutionality of a state statute?

MR. HORNING: Well, insomuch as everybody who's in politics pretty much, all officeholders, have to swear an oath to uphold and defend the rule of law. And insomuch as all of the appointees of this group are under that same sort of stricture to follow the Constitution of Indiana, I would hope that that would be something that would be key on everybody's mind. I mean, all officeholders, all new citizens, all police officers, have to swear an oath to the constitution, not to Indiana code, not to procedure.
CHAIRMAN BENNETT: Okay. Are you challenging the constitutionality of IC 3-8-8-2?

MR. HORNING: Insomuch as I don't know what that actually says, I can't specifically say that I am. But I am saying that the constitution does take priority over Indiana code; and that is clear in Article 1, Section 25.

CHAIRMAN BENNETT: Any other questions?

MS. OVERHOLT: I'm going to go about this a different way. Am I correct in understanding that your challenge is based on the fact that Secretary of State Lawson has served in the capacity of secretary of state for more than a single three-year term?

MR. HORNING: Yes.

MS. OVERHOLT: Am I -- okay.

MR. HORNING: In fact, she said so herself. I mean, when she was sworn in --

MS. OVERHOLT: I didn't -- I didn't -- you answered my question. Thank you.

CHAIRMAN BENNETT: Any other questions from the commissioners? Any rebuttal from the candidate's counsel?

MR. LAYDEN: No, Chairman. We would rest on the argument and on the motion we filed.
CHAIRMAN BENNETT: Very good. Is there a motion by a commission member to grant or deny the motion to dismiss?

MR. KLUTZ: Well, Mr. Chairman, I'll -- I'll make a motion. The testimony today in my mind makes it clear that this challenge is at a minimum substantially similar, if not identical. We are splitting hairs. The testimony seemed to be splitting hairs as to whether certain testimony made it into the record or not, which tells me that the argument is substantially similar to the argument that was made at the July 17th hearing. I was at the hearing, although the record's here for the benefit of those who were not.

Each element in my mind of 3-8-8-2 has been satisfied. So I will make a motion -- that a motion to dismiss be granted or the candidate challenge be denied, however it should be worded.

CHAIRMAN BENNETT: Just for clarity, let's -- let's word it this way; that your motion would be to grant the motion to dismiss --

MR. KLUTZ: Correct.

CHAIRMAN BENNETT: -- and dismiss the appeal -- or dismiss --

MR. KING: The challenge.
CHAIRMAN BENNETT: -- the challenge, I'm sorry.

MR. KLUTZ: Correct. Yes.

CHAIRMAN BENNETT: We have a motion. Is there a second?

MS. OVERHOLT: I would second for purposes of discussion.

CHAIRMAN BENNETT: Any further discussion?

MS. OVERHOLT: I would -- I would concur with what Commissioner Klutz stated and point out that there is an avenue for appealing decisions from this commission that is set forth in 3-8-8-6. And it seems that the arguments being made today by Mr. Horning would be more appropriately put forth in that type of appeal, which is to the court of appeals, not to the commission.

MR. DECKARD: And, Mr. Chairman, I would add that having had some service in this agency and having seen this, we're talking about the process by which a person goes on the ballot. We're also talking about a candidate challenge by which a person is removed from a ballot. A person entering office has to be well-prepared and do their research and timely file.

There's some substan -- substantial
similarities between what we just did on July 17, which is a month ago, to now. And for me, people not necessarily reading things from the night before and not having that all together, this is serious business when this day comes together to adjudicate these things. This costs money. This costs resources. This is removing someone from our ballot. It is very serious. And I -- as I look through the transcript, I don't see things glaringly different than what is being challenged today. And I -- I wish the challenger who made the actual challenge was here because I'd like to hear from the challenger why they put this forth.

CHAIRMAN BENNETT: Very well. Anything further before we call for a vote? All those in favor of Commissioner Klutz's motion to deny the motion and --

MR. KING: No, to grant.

CHAIRMAN BENNETT: -- to grant the motion and deny the challenge say "aye."

THE COMMISSION: (Chorus of ayes.)

CHAIRMAN BENNETT: All opposed say "nay."

"Ayes" have it unanimously. The motion to dismiss is granted. The challenge is dismissed.

MR. HORNING: Can I ask a question?
Can I say that administrative remedies are then over?

MR. KING: It's not in order for you to --

CHAIRMAN BENNETT: Yeah, we're not in a position to answer any questions from you at this time. The question would not -- not be in order.

The Indiana Election Commission has finished its business for today. Is there a motion for the Indiana Election Commission to adjourn?

MR. KING: So moved.

MR. DECKARD: So moved.

CHAIRMAN BENNETT: Those in favor say "aye."

THE COMMISSION: (Chorus of ayes.)

CHAIRMAN BENNETT: Opposed say "nay."

"Ayes" have it. The Election Commission meeting is adjourned. Thank you all.

(11:30 a.m. EST)
STATE OF INDIANA 
COUNTY OF BOONE 

I, Susan L. Plunkett, RPR, RMR, Notary Public in and for Boone County, Indiana, do hereby certify that the foregoing hearing was taken on behalf of the Indiana Election Commission at the Indiana Election Division, 302 West Washington Street, Room E204, Marion County, Indianapolis, Indiana, on August 17, 2018, pursuant to the applicable rules;

That said hearing was taken down by me in stenotype notes and afterwards reduced to typewriting under my direction, and is a true record of the said hearing;

That the parties were represented by the counsel as aforementioned.

I do further certify that I am a disinterested person in this cause of action; that I am not a relative or attorney of any of the parties or otherwise interested in the events of this action, and am not in the employ of the attorneys for the respective parties.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this ____ day of August, 2018.

____________________
Susan L. Plunkett, RPR, RMR
Notary Public

County of residence: Boone
My commission expires: March 4, 2024