

INGHAM COUNTY ELECTION COMMISSION
MINUTES
December 1, 2017

The regular meeting of the Ingham County Election Commission was called to order at 1:03 p.m. by Judge Garcia. The meeting was held in the Board of Commissioners Room at the Grady Porter Building in Lansing, MI.

MEMBERS PRESENT: Barb Byrum, Ingham County Clerk
Richard Garcia, Chief Probate Judge
Eric Schertzing, Ingham County Treasurer

MEMBERS ABSENT: None.

OTHERS PRESENT: Jen Shuster, Chief Deputy County Clerk
Alan Fox, Chief Deputy Treasurer
Liz Noel, Election/Clerk Coordinator
Dave Stoker, Corporate Counsel
Greg Talberg, Williamston School Board member
Sarah Belanger, Williamston School Board member
Nancy Deal, Williamston School Board member
Christopher Lewis, Williamston School Board member
Jonathan Brandt, petitioner
Chris Patterson
Monica Schafer
Jenniffer Smith

Approval of Minutes:

Moved by Treasurer Schertzing, supported by Clerk Byrum, to approve the minutes of the November 3, 2017 Election Commission Meeting.

MOTION CARRIED UNANIMOUSLY.

Approval of the invoices for the November 7, 2017 Election – \$7,000.00

Clerk Byrum stated explained the invoices presented to the Election Commission.

Moved by Treasurer Schertzing, supported by Clerk Byrum, to approve the invoices for the November 7, 2017 Election.

MOTION CARRIED UNANIMOUSLY.

Consideration of Recall Petition Language

Clerk Byrum stated the same language was used for all four individuals being petitioned.

Judge Garcia asked Jonathan Brandt, petitioner, to come forward and explain the petition language.

Mr. Brandt approached the Election Commission and explained the petition language proposed. He stated that at the November 3, 2017 Election Commission meeting, Greg Talberg, Williamston School Board member, had admitted to voting in approval of the policies listed.

Mr. Brandt stated that more than 80% of the written statements presented to the Williamston School Board were in opposition of the policy. He further stated that Mr. Talberg had made a public statement that the school district would get sued if they approved the policy.

Mr. Brandt stated that the newspaper article regarding the School Board's vote misstated that the school district would get sued either way the vote went, as the community had made it known that failure to pass the policy would not have ended in a lawsuit. He further stated that the School Board President had told them that there were no transgender students in the school district currently, so the policy would not apply to anyone.

Mr. Brandt stated that the policy cited Title IX and the Michigan Civil Rights Act as legal references, and neither one included gender identity or gender expression. He further stated that the community believed that this was a legislative matter that the local government should not have the right to expand that.

Mr. Brandt stated that the policy would allow students to self-diagnose, and there were numerous communications between the community and the School Board specifically surrounding the use of "and/or" in the policy. He further stated that the School Board had noted that use of phrase was to take into account those students above the age of 18 years-old, however the dictionary definition of "and/or" referred to either-or, or a combination of the two options.

Mr. Brandt stated that the policy as written would allow students to come to school grounds and self-diagnose without the parents' awareness.

Greg Talberg, Williamston School Board member, presented Policy 8011 to the Election Commission, as it had been passed and approved by the Williamston School Board. He further stated that he believed this recall petition language was neither factual, nor clear.

Mr. Talberg stated that the way Policy 8011 was referenced in the petition language, a potential signer would not know what the policy was when presented with the petition. He further stated that although the Obama-era protections for transgender individuals had been rescinded, the "Dear Colleague" letter from February 22, 2017 filed jointly by the current U.S. Departments of Justice and Education, stressed the protection of all students at all schools, including LGBT students.

Mr. Talberg stated in the context of that "Dear Colleague" letter, the School Board had facilitated and complied with what the federal government had expected them to do in terms of transgender students and gender identity.

Mr. Talberg stated that there was a newspaper article published with his thoughts on whether or not the district would be sued, which he challenged was a fact that he stated it publicly. He

further stated that he had not stated it at a public meeting, and there was no quote from him directly in the recall petition, but he did have a recording of the conversation with the reporter and in context, he did not indicate that his expectation was that the school district would just be sued.

Mr. Talberg stated he did mention the potential for lawsuits, but he believed any board member had to be conscientious of lawsuits, especially when dealing with something controversial.

Judge Garcia pointed out that the recall petition language did not say that Mr. Talberg said the school district would be sued and would lose. He asked if Mr. Talberg publicly stated if the school district would get sued.

Discussion.

Mr. Talberg stated he had a conversation with a newspaper reporter who printed that he had said the school district may be sued because of this policy.

Discussion.

Mr. Talberg stated that the Elliott-Larsen Civil Rights Act was a minimum threshold for civil rights, and did not mean that the School Board could not recognize rights. He further stated that the School Board was not making law, as it was implied that rights were being created in the recall petition language.

Mr. Talberg stated that case law regarding the Elliott-Larsen Civil Rights Act made it clear that transgender protections were expected within the law. He further stated that the recall petition language was not clear because it implied the School Board created rights that did not exist, and they disagreed with that and believed those rights did exist despite the Elliott-Larsen Civil Rights Act not explicitly stating that.

Judge Garcia stated that in Policy 8011, there were legal references. He asked if the policy referenced those two statutes.

Mr. Talberg stated that was correct.

Discussion.

Mr. Talberg stated that in the petition, it mentioned "self-diagnosis," which he argued was not clear because he was not sure what was implied anyone was being self-diagnosed with. He further stated that it did not mention anything about diagnosing in the policy, and therefore he argued that it was not factual.

Mr. Brandt asked if he could submit something as a rebuttal to Mr. Talberg's statement.

Judge Garcia stated Mr. Brandt could not submit something in rebuttal.

Nancy Deal, Williamston School Board member, stated that the language on the recall petition stated that she had voted on Policy 8011, despite the School Board President stating publicly that the school district would be sued. She further stated that the only time she was with Mr. Talberg

in a public meeting was in a School Board meeting, and she had not heard him state that the school district would be sued regarding the passage of the policy.

Ms. Deal stated she had not read any social media or newspaper articles surrounding this issue, so to state on the petition that she voted despite the fact that he publicly said the school district would be sued, was not factual.

Judge Garcia asked if Mr. Talberg had stated that the school district would be sued before or after a public meeting.

Ms. Deal stated she had never heard Mr. Talberg say that in any environment.

Judge Garcia asked if Mr. Talberg's comment had been stated at the meeting in which the vote had occurred.

Discussion.

Judge Garcia asked if the comment had been said by the Board President at the meeting on the record, before the School Board voted on the policy.

Ms. Deal stated she did not believe Mr. Talberg's comment was stated at the meeting.

Treasurer Schertzing asked if Mr. Talberg's statement to the newspaper had occurred before or after the meeting in which the vote took place.

Mr. Talberg stated he did not recall the timing, as it was a phone conversation with the reporter and was not in a public meeting.

Chris Patterson, Williamston resident, stated the article with Mr. Talberg's comment had been published before the School Board meeting on November 6, 2017, as it was in his public comment to the School Board during that meeting. He further stated his quote of the article was on the record for that School Board meeting.

Monica Schafer, Williamston resident, submitted the article published October 26, 2017 with Mr. Talberg's comments in it, to the Election Commission. She further stated she knew that the comment was brought up during public comment of the November 6, 2017 School Board meeting.

Jennifer Smith, parent of a Williamston Community Schools student, stated she had attended board meetings and did not read newspaper articles regarding the issue, and she did recall that a comment was made at meeting by Mr. Talberg about being sued. She further stated she was concerned about her daughter's safety and sexual abuse, and she did not believe that this policy protected all students and there would be lawsuits surrounding the passage of this policy.

Clerk Byrum stated that she had a factual concern, as she did not know if being transgender was a diagnosis. She further stated that the recall petition language stated the policy allowed students to self-diagnose themselves without parental consent, however there was mention of parents and guardians in the policy and there was no mention of a diagnosis.

Treasurer Schertzing stated he evaluated the petition language, and the mention of the policy enabling students rather than accepting students in the petition language, as well as the implication that transgender individuals being diagnosed was a medical issue. He further stated he believed that the third section of the recall petition language was where the factual nature of the petition fell apart.

Moved by Treasurer Schertzing, supported by Clerk Byrum, to deny the four recall petitions.

Treasurer Schertzing stated that the petitioners could bring forth new recall petition language, as the verbiage needed to be tightened up in order for it to be approved by the Election Commission.

Judge Garcia stated it was the Election Commission's job was to decide whether or not the recall petition language was clear and factual. He further stated that there was no question that the officers voted yes on Policy 8011.

Judge Garcia stated that the first time the recall petition language had come before the Election Commission, the mention of the policy numbers was unclear, and this petition's mention of the policies was much more appropriate and clear. He further stated that he believed the language stating that the School Board members voted to approve the policy despite Mr. Talberg stating the school district would get sued was clear and factual, as the newspaper article had been published before the meeting, the statement was commented on by people at the meeting, and it had been acknowledged that was what had been said.

Judge Garcia stated that the petition language referring to the Elliott-Larsen Civil Rights Act and Title IX was clear and was noted as the legal references in the published version of Policy 8011. He further stated he did not believe either pieces of legislation addressed gender identity or gender expression explicitly, but he was not sure whether either had been interpreted to include them.

Judge Garcia stated the language regarding allowing children to self-diagnose themselves without parent participation or consent was not clear. He further stated the language in the policy specifically said "asserting a gender identity" and said nothing about diagnosis.

Judge Garcia stated that the language implied that this was somehow a mental disturbance or illness, and he was not a medical professional that would be able to make that determination. He further stated that the language regarding self-diagnosis without parent participation or consent was not clear or particularly accurate as it related to the policy, and therefore he would join in voting to deny the petition language.

Judge Garcia stated it was not factual that the gender identity policy said children could self-diagnose themselves.

Judge Garcia stated the petitioners had the right to appeal the Election Commission's determination to the Court.

MOTION CARRIED UNANIMOUSLY.

Clerk Byrum stated that the draft minutes would be available and would serve as notice of the denial of petition language.

Discussion.

Public Comment:

None.

Adjournment:

Moved by Judge Garcia, supported by Clerk Byrum, to adjourn the meeting.

MOTION CARRIED UNANIMOUSLY.

The meeting was adjourned at 1:32 p.m.



BARB BYRUM, CLERK OF THE BOARD