

INGHAM COUNTY ELECTION COMMISSION
MINUTES
January 9, 2018

The regular meeting of the Ingham County Election Commission was called to order at 1:27 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: Liz Noel, Election/Clerk Coordinator
Jen Shuster, Chief Deputy County Clerk
Ryan Buck, Chief Deputy Court Clerk
Sarah Belanger, Williamston School Board member
Christopher Lewis, Williamston School Board member
Jonathan Brandt, petitioner
Lori Johncheck, Williamston community member

Approval of Minutes:

Moved by Clerk Byrum, supported by Treasurer Schertzing, to approve the minutes of the December 20, 2017 Election Commission Meeting.

MOTION CARRIED UNANIMOUSLY.

Remarks from Clerk Byrum

Clerk Byrum stated that the Election Commission had previously approved the County's invoices for the November 7, 2017 Election. She further stated there was a memo and resolution before the County Services and Finance Committees of the Ingham County Board of Commissioners, as municipalities were requesting reimbursement for their expenses for the Election.

Consideration of Recall Petition Language

Jonathan Brandt, petitioner, introduced the petition language presented to the Election Commission and explained the edits that had been made in response to the December 20, 2017 Election Commission hearing. He stated on behalf of the community, they remained steadfast in the pursuit of the removal of School Board members Greg Talberg, Sarah Belanger, Nancy Deal, and Christopher Lewis from office.

Mr. Brandt stated that they stood firm that the legislature alone bore the responsibility of remanding Title IX and the Elliot-Larsen Civil Rights Act. He further stated the Election Commission was not there to debate School Board intent, as it was up to the community to decide once this first hurdle was cleared.

Mr. Brandt stated regardless of guidance the School Board was given, he believed the petition language was factual and of sufficient clarity for a favorable vote today. He thanked the Election Commission for their time and stated he would answer any questions they might have.

Clerk Byrum asked why so much was included in the petition language. She stated she would think it would be clear and factual if less words were included.

Discussion.

Clerk Byrum asked why the sentence beginning with “Board cites...” was still included in the petition language, and why they did not just stop the petition language after the first sentence, as that was clear.

Mr. Brandt stated that option had been considered, and he recalled Treasurer Schertzing had asked a similar question at the December 20, 2017 Election Commission meeting. He further stated he believed that the second sentence reinforced the first sentence.

Mr. Brandt stated at the November 3, 2017 Election Commission hearing, the proposed recall petition language had included policy numbers that had been confusing. He further stated as a community, they decided that the second sentence in the current language added context, and at the end of the day, the community was well-versed on the issue as it had been in a regional, if not national, spotlight.

Mr. Brandt stated if legislation supported the policy, the community would not have a leg to stand on, but the reality was that a lower level of government was adding protected classes. He further stated he could not answer to School Board intent, but he had researched other policies regarding the issue.

Clerk Byrum stated the first recall petition language that had been submitted had not been determined to be clear because it listed a bunch of policies, and it did not refer to the Elliot-Larsen Civil Rights Act or Title IX. She further stated her struggle was that if the second sentence referencing the Elliot-Larsen Civil Rights Act and Title IX were not included, then the language would be clear and factual.

Clerk Byrum stated when the recall petition language referenced Title IX and the Elliot-Larsen Civil Rights Act, it was confusing because the U.S. Court of Appeals for the Sixth Circuit had decisions in regards to Title IX.

Mr. Brandt stated they were not discussing whether the Elliot-Larsen Civil Rights Act or Title IX were right or wrong for the policy, the separate facts were that the School Board members had passed the policy, and that neither Title IX nor Elliott-Larsen had those specific words in them. He further stated there were currently mixed rulings on Title IX.

Clerk Byrum stated there were the cases of *Smith v City of Salem* and *Highland v U.S. Dep't of Ed* in the U.S. Court of Appeals for the Sixth Circuit.

Mr. Brandt stated there was also the case of *Gloucester v G.G.*

Discussion.

Judge Garcia stated the Election Commission had discussed the issue at the previous hearing, and he had said then that the argument for the recall petition was that gender identity did not appear in the text of either of the legal references that were cited by the School Board in Policy 8011.

Discussion.

Judge Garcia stated it was not for the Election Commission to decide whether the law, as interpreted, should be extended to this identity issue. He further stated the statement before them was that neither the Elliot-Larsen Civil Rights Act nor Title IX addressed the issue, which he did not believe they did.

Discussion.

Christopher Lewis, Williamston School Board member, read a statement into the minutes. The statement is attached as Attachment A.

Sarah Belanger, Williamston School Board member, stated she sat on the Williamston School Board Policy Subcommittee. She further stated during the creation of Policy 8011, the subcommittee was in communication with their legal counsel, where it was explained, "schools have many policies and rules that aren't based on law, they are based on maintaining order in school." She further stated that was exactly what having both the Elliot-Larsen Civil Rights Act and Title IX did.

Ms. Belanger read the final sentence of Policy 8011, in which Title IX was used as a legal reference as it applied. She further stated the proposed recall petition language was misleading in the intent, that it suggested that in citing legal references that include, but are not limited to, Title IX and the Elliot-Larsen Civil Rights Act, that the Williamston Board of Education had done something improper, which it had not.

Lori Johnecheck, Williamston community member, stated it was her understanding the Election Commission's role was not to discuss the School Board's intent, but look at the face value of the language that was presented. She further stated according to previous Election Commission meeting minutes, it appeared that the first part of the petition language in reference to the passage of Gender Identity Policy 8011 had not been of issue and had been established as clear and factual.

Ms. Johnecheck stated the second part of the petition language regarding legal references was also straightforward. She further stated the legal references had been added in subsequent drafts

of the policy in response to questions from the community on whether a group of students was missed by the bullying policy or the Equal Education Opportunity policy.

Ms. Johnecheck stated the hearing was not to investigate intentions or history, but rather if an average person got the petition, if it would be clear or factual. She referenced previous Election Commission minutes and members' concerns regarding the petition language.

Discussion.

Clerk Byrum stated as a member of the Election Commission, they were limited in the guidance they could give in the process. She further stated she thought she gave a lot of guidance, when her first statement of this meeting was to stop after the first sentence of the language.

Moved by Judge Garcia, supported by Treasurer Schertzing, to approve the recall petition language.

Judge Garcia stated that the role of the Election Commission was very narrow, and any votes made today should not be interpreted as supporting or not supporting the petition or cause. He further stated the Election Commission was there to monitor those things that were put in front of the electorate to make sure they were clear and factually accurate.

Judge Garcia stated he had supported the language during the last hearing, and the proposed recall language addressed the previous concerns. He further stated it was just as clear as it was to him last time, so he would vote in favor of the recall petition language.

Treasurer Schertzing stated he was in favor of the recall petition language.

Clerk Byrum stated she would vote against the recall petition language, as she did not believe it was clear.

Judge Garcia stated the draft minutes of the Election Commission meeting would be issued to reflect the 2-1 decision approving the recall petition language.

Clerk Byrum stated the language did pass.

Public Comment:

None.

Adjournment:

Judge Garcia stated the meeting was adjourned.

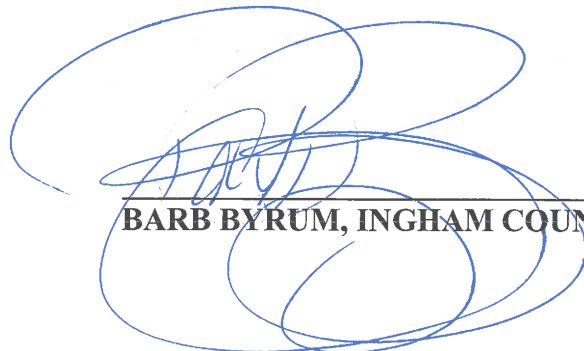
The meeting was adjourned at approximately 1:49 p.m.

In reading the language that was shared by Mr. Brandt I find two issues that are both unclear and/or not factual. First, when he states that we cited both Elliot Larson and Title IX as legal references. In reviewing this language it is unclear as it infers that merely citing a statute as a "legal reference" to a policy is the same as saying that it is the legal "authority" providing the board with the right to make such a policy.

The language that Mr. Brandt is suggesting implies that, somehow, by citing Title IX and Elliott Larsen as "references" when neither expressly covers transgender students is somehow improper. It's not. Policies make reference to the "spirit and general intent" of statutes all the time, despite the fact that the statute, itself, doesn't explicitly cover the matter at issue, or doesn't go as far as the policy might go. There's nothing inherently "improper" about such.

The language in this recall petition is misleading as it implies that policies cannot cite legal precedent unless they fit within the "four corners" of the precedent they cite, thus implying that the board action was improper legally, which it wasn't.

Second, the premise that we passed policy 8011 is true, however, what is unclear is what policy 8011 is to the person that would be signing the petition. Not everyone in our community know what 8011 is or what it represents and the language on this petition surmises that all do have an understanding of the policy language. This leaves it up to the person sharing the petition to explain the policy to people. This practice will lead to a subjective explanation from the petition holder to the signer and ultimately will lead people to trust the words of the people passing around the petition instead of actually understanding what the policy is and what it is not and being able to sign based on the facts.



A handwritten signature in blue ink, consisting of several overlapping loops and curves, positioned above a horizontal line.

BARB BYRUM, INGHAM COUNTY CLERK

