



South Dakota Secretary of State

SHANTEL KREBS

State Board of Elections
Wednesday, November 16, 2016
Draft Minutes

SD Association of County Officials Office Building
215 East Prospect
Pierre, South Dakota

Conference Call Dial-in Information:
Dial-in Number is 866.410.8397
Conference Code is 2178377981

Secretary Krebs called the meeting to order at 10:05 am (Central Time).

Present via conference call: Cindy Brugman (Board of Elections member), Linda Lea Viken (Board of Elections member), Margaret Gillespie (Board of Elections member), and Mitch LaFleur (Board of Elections member), Cory Heidelberger (press) and C.J. Moit (South Dakota Advocacy Services).

Present in person: Secretary Shantel Krebs (Chair, Board of Elections), Kea Warne (Deputy Secretary of State, Election Services), Kristin Gabriel (HAVA Coordinator), Rachel Schmidt (Election Coordinator), Christine Lehrkamp (State Election Coordinator), Tom Deadrick (Deputy Secretary of State, Business Services), and Jason Williams (Public Information Officer).

Quorum present

A *motion* was made to approve the minutes of the October 13, 2016 Board of Elections meeting by Linda Lea Viken, second by Margaret Gillespie. Roll call vote: Cindy Brugman– Aye; Margaret Gillespie– Aye; Drew Duncan– Excused; Pam Lynde– Excused; Mitch LaFleur– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained that the board had reconvened to go over three items from the previous meeting that needed more interpretation. Secretary Krebs explained item #4. Rewrote subsection 3 to say “Circulator listed a residence address in South Dakota but is not a South Dakota resident.”, and added the new language, “Multiple challenges by the same person or party in interest are not allowed.” We kept in that these may be appealed to the Hughes County circuit court. Judge Barnett suggested adding this language.

Linda Lea Viken asked if this need more clarification. She asked if they can have multiple challenges.

Deputy Kea Warne gave the example of the medical marijuana. The sponsor challenged the rejection and then sponsor challenged the rejection of the petitions.

Linda Lea Viken explained that she was reading as though they could only challenge one thing and not multiple challenge items to it. She stated she knew what the intent was but thought it could be read more restrictively.

Margaret Gillespie stated that the section needs clean up and that it could be read differently.

Deputy Tom Deadrick stated adding the language, “All challenges by the same person or party in interest must be included in the one affidavit.”

Linda Lea Viken asked if the Secretary of State’s office waits to validate until all of the petitions are turned in.

Secretary Krebs stated that the petitions must come in all at the same time.

Linda Lea Viken stated that she had another issue and was wondering if we need to clarify in the second sentence that only the “line challenged” will be rejected.

Secretary Krebs clarified items that are not allowed to be challenged that are being proposed.

Mitch LaFleur stated that he is fundamentally confused by the purpose of this section. He stated that with this language, there is no way to challenge petitions.

Deputy Kea Warne explained there is a challenge process within 5 days for a candidate, 30 days if a statewide ballot measure. After the lawsuits from this past year, Judge Barnett advised the Secretary of State’s office to add this language and the Attorney General suggested putting the language in this section.

Mitch LaFleur asked why this language was needed under Title 2.

Deputy Kea Warne stated that Title 2 covers the statewide ballot measures.

Secretary Krebs stated that makes it clear in Title 2 what can be challenged and what cannot.

Mitch LaFleur asked what is the basis for challenging petitions right now.

Secretary Krebs stated that everything can be challenged right now and that's the problem. She stated that it doesn't say that they can or cannot challenge certain items. There are items our office cannot determine.

Linda Lea Viken stated that SDCL 12-1-13 currently says that you can file an affidavit and that's what you can currently challenge.

Secretary Krebs stated that they submit an affidavit with those deficiencies but there are only certain deficiencies we can determine.

Mitch LaFleur asked if there is anywhere in statute that defines what an eligible signer is.

Deputy Kea Warne stated that is in administrative rule is where that is outlined.

Mitch LaFleur stated that we are trying to define this in the negative and doesn't make sense to him. He asked how a member of the public would know what is challengeable.

Linda Lea Viken asked if it helps adding in SDCL 12-1-13 into this section.

Deputy Kea Warne stated that in administrative rule, it outlines what can be counted and what can't be counted. She listed off what can be approved and what the Secretary of State's office looks for. She stated that administrative rules guide the process. The items that we can determine are the items that can be challenged with us.

Mitch LaFleur stated that you need this to know what can be challenged.

Secretary Krebs stated that the Secretary of State's office had 11 petitions turned in, one did not have enough signatures and three were challenged. Stated that her staff went through all of these petitions and determined what should be checked by following what is listed in administrative rule. She stated that challengers were submitting challenge items to our office that we were not able to determine. Stated that they can challenge those items that we can't determine by going to court.

Linda Lea Viken stated that we have to look at the new sections and these are items that the Secretary of State is not going to look at to determine if it is a valid signature or petition. She asked if the Secretary of State's office wants to repeal SDL 12-1-13.

Secretary Krebs stated no but we are rewording the language in the next section.

Secretary Krebs stated that our challenge was reviewing these items and then going through them again in court. Stated that her staff couldn't make those determinations.

Margaret Gillespie asked what is number 6.

Secretary Krebs explained that challengers can't challenge a rejection in our office because we would have to go through the whole process again.

Linda Lea Viken asked if she were to go to court with a challenge, what would happen.

Secretary Krebs stated that she would be able to challenge anything in court.

Linda Lea Viken stated that the Secretary of State's office could still be required by the court to go through the petition.

Secretary Krebs stated yes.

Linda Lea Viken stated that wording should be fixed and that it doesn't read very well.

Mitch LaFleur stated that if he were to support the changes, the language brought fourth would need to be clear in both chapters.

Linda Lea Viken stated she agreed with that Mitch's consensus. She stated that these are not exclusive remedies. You don't have to exhaust your administrative remedies before going to court. She recommended the Legislative Research Council fixing the language just so long as they understand the intent. Wants to make sure it is clear that the items not challengeable in the Secretary of State's office doesn't prohibit a person from taking those items to court. Again she clarified that all changes by the same party and interest must be included in the same affidavit.

Deputy Tom Deadrick suggested adding SDCL 12-1-16 to be added to Title 2.

Linda Lea Viken stated that maybe that is in another place.

Secretary Krebs stated to add to Title 2.

Linda Lea Viken asked if the language was clearer in SDCL 2-1-18. She stated that she thinks they need to be the same but doesn't know which one is better. Says if it is different it makes it look like there are two ways to challenge.

Cindy Brugman left the meeting at 10:35 am.

Deputy Tom Deadrick said that he can write this in the strictest and most broad of ways.

Linda Lea Viken stated that SDCL 2-1-18 seems to have stronger language.

Mitch LaFleur stated that at the end of SDCL 2-1-18 it makes it clear the items you can't challenge in the Secretary of State's office but that it can be challenged in court.

Secretary Krebs stated that it is already included.

Mitch LaFleur stated that he thinks this needs to be added and wants to make it clear. He clarified that challengers can't make objections on the items listed in these sections with the Secretary of State's office but they can make the argument in court if they wish.

Linda Lea Viken stated that she sees what Secretary Krebs wants to accomplish. She thinks they may be double stating the language but thinks doing so makes the intent clear.

Mitch LaFleur stated he wants to add a sentence in SDCL 2-1-8 that such challenges may include those items not allowed in SDCL 2-1-21.

Secretary Krebs overviewed what is being changed in this section.

Linda Lea Viken stated she wants to make sure we have the non-exclusive remedy. She asked if we need to take language from SDCL 12-1-16 and add before "prohibit any person." She said while it appears to say that, she is hesitant to approve if it doesn't exactly say that.

Secretary Krebs asked for a motion to approve the changes that have been suggested.

A *motion* was made to approve item #4, as amended by Linda Lea Viken, second by Margaret Gillespie. Roll call vote: Cindy Brugman– Excused; Margaret Gillespie– Aye; Drew Duncan– Excused; Pam Lynde– Excused; Mitch LaFleur– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Linda Lea Viken asked if they needed more language to clarify that if someone fails to file under chapter 2, they can still take to court. She stated it probably could be put it at the beginning of the section.

Deputy Tom Deadrick suggested adding language that “If a person fails to challenge a petition pursuant to 2-1-(21?) it does not deny that person any other legal remedy to challenge the filing of an initiative or referendum petition in circuit court.”

Mitch LaFleur suggested adding a stand-alone statute to cover everything or add it at the end of the section.

Linda Lea Viken thinks that SDCL 2-1-18 seems a little redundant.

Mitch LaFleur stated that it is needed.

Deputy Kea Warne stated that we can’t add to nominating petitions since this section is for statewide ballot measures.

Secretary Krebs clarified that any person can still go to court.

A *motion* was made to approve item #4, as amended by Mitch LaFleur, second by Linda Lea Viken. Roll call vote: Cindy Brugman– Excused; Margaret Gillespie– Aye; Drew Duncan– Excused; Pam Lynde– Excused; Mitch LaFleur– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary of Krebs explained item #5 and that the intent is to add the same language in to Title 12 to clarify. She stated that this covers everything but statewide ballot question petitions and makes it so there is no confusion. Says that there are still 5 days for candidates and local ballot questions to submit challenges. She stated that this is the same proposal that was just made in Title II and that we can take the changes that were just made to this section. She clarified all of the changes and added that this type of court case would take precedence over all other court cases.

Linda Lea Viken asked for an example of what this section addresses.

Secretary Krebs stated that this covers legislative candidates, statewide candidates, county candidates, and initiative and referendum petitions, excluding statewide. Said she is asking the board to consider the same language that the Secretary of State’s office would not be able to determine in this section.

Mitch LaFleur asked if the Secretary of State's office is trying to include the language within 5 days.

Secretary Krebs stated that it is already in current language.

Mitch LaFleur asked if this is only for local and does that need to be added.

Secretary Krebs stated that we can add local to clarify. Stated that some of the current language is confusing and needs to be clarified.

Linda Lea Viken stated that as it is currently written, it covers statewide.

Secretary Krebs stated that SDCL 12-1-13 includes statewide, legislative, county and local. Can add the word "local" to initiative and referendum.

Linda Lea Viken stated that she is concerned with the timeframe.

Secretary Krebs explained the current process and explained that the timeframe is in current state law.

Linda Lea Viken stated that she is concerned with statewide candidate's timeframe for challenging. She stated that it doesn't bother her on the local level for challenging, but she has concerns for statewide candidates.

Secretary Krebs stated this is the current timeframe in statute.

Linda Lea Viken asked if there have been any recent statewide challenges.

Secretary Krebs stated that there had been one in 2014.

Secretary Krebs reviewed the numbers for the statewide candidates.

Mitch LaFleur stated he thinks we have a disparity between local and statewide. He suggested excluding statewide initiatives, referendum and constitutional amendments and thinks that would keep this section consistent.

Deputy Kea Warne stated that nominating language is for candidate petitions.

Linda Lea Viken stated that she thinks what Mitch LaFleur is suggesting clarifies the statute.

Secretary Krebs gave an overview of the proposed changes. Stated that we will add language to exclude petitions for statewide initiative, referendum and constitutional initiatives in the statute.

Mitch LaFleur asked if anyone else had concerns on how this is included in the section and why this is put in as a clause.

Secretary Krebs explained that if there are any issues with how this included, the Legislative Research Council will make the corrections.

A *motion* was made to approve item #5, as amended by Mitch LaFleur, second by Linda Lea Viken. Roll call vote: Cindy Brugman– Excused; Margaret Gillespie– Aye; Drew Duncan– Excused; Pam Lynde– Excused; Mitch LaFleur– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs asked if there were any other questions on this section.

Linda Lea Viken stated she had a question on subsection 5 on the random sample.

Secretary Krebs clarified what is not challengeable under subsection 5. She stated that we will take all changes in the previous section and add to this section.

Mitch LaFleur asked if that would include the references in SDCL 2-1-18.

Secretary Krebs that it will be added in.

Linda Lea Viken stated that she wants to make sure it is the same non-exclusive language added throughout.

Secretary Krebs that it will be added in and that the same language that Linda Lea Viken and Mitch LaFleur suggested would be used.

A *motion* was made to approve item #5, as amended by Linda Lea Viken, second by Mitch LaFleur. Roll call vote: Cindy Brugman– Excused; Margaret Gillespie– Aye; Drew Duncan– Excused; Pam Lynde– Excused; Mitch LaFleur– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs explained item #19 and that we are not able to obtain precinct level results for counties with vote centers. Explained that in District 1 this past year, we were unable to determine the number of signatures needed for Susan Wismer, a legislative candidate. She stated

that we need something to base signatures off of for those counties. She explained the proposed changes in SDCL 12-6-7 and 12-6-7.1.

Linda Lea Viken asked where is the information on independents listed.

Secretary Krebs stated that it is listed under SDCL 12-7-1.

Linda Lea Viken asked what is a county party.

Secretary Krebs stated that this is for party ticket and next we will discuss independents. Stated that what we are currently addressing is counties that use vote centers and can't determine precinct level results.

Mitch LaFleur asked why there is a change from 50 to 60 voters.

Secretary Krebs asked if Mitch had looked at the comparison sheet that had been sent out. She explained the information on the comparisons.

Linda Lea Viken asked where is District 10.

Secretary Krebs stated that District 10 is east Sioux Falls.

Mitch LaFleur asked why independents have to collect so many more signatures than party candidates.

Deputy Kea Warne explained the signature requirement for independents is current language under state law for any candidate that runs as an independent. She also stated that they can collect petition signatures from any registered voter regardless of party affiliation.

Linda Lea Viken further explained the difference and that independent candidates can collect from any registered voter and party candidates can only collect from people from their party.

Mitch LaFleur asked if this would have been different had Referred Law 19 passed.

Secretary Krebs stated Referred Law 19 would have changed it but it did not pass. She gave an overview of all of the changes in item #19.

Linda Lea Viken stated that even though they have to collect more signatures, they have longer to collect signatures.

Secretary Krebs explained that party candidates have until the last Tuesday in March to collect signatures and independent candidates have until the last Tuesday in April.

Linda Lea Viken stated that she was confused on the wording of non-judicial public office in SDCL 12-7-1 and who would fall under that category.

Deputy Kea Warne stated that it would cover anyone running for office and they are listed out under SDCL 12-7-1.

Linda Lea Viken stated that still has some confusion and sees that there are two SDCL 12-7-1 sections.

Deputy Kea Warne stated that the Legislative Research Council has to change the titles.

Secretary Krebs overviewed the changes to the section. She explained that these changes are essentially because of the legislative candidates in those vote center counties that we can't currently determine signature requirements for. We increased the threshold since many of the counties were already hitting the maximum signature requirement. The change being made would change it so that the numbers would be from the last general election instead of the gubernatorial election. She stated that this gives us a better picture of what they need and who would be nominating them in that district. Stated that we had to specifically pull out and create a new section for independents. She explained that we wanted to make sure that no one was impacted negatively and wanted to be as fair as possible.

A *motion* was made to approve item #19, as amended by Linda Lea Viken, second by Margaret Gillespie. Roll call vote: Cindy Brugman– Excused; Margaret Gillespie– Aye; Drew Duncan– Excused; Pam Lynde– Excused; Mitch LaFleur– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

Secretary Krebs asked if there were any public comments regarding the meeting.

Corey Heidelberger asked what his limits on comments were.

Secretary Krebs stated that his limits were on what was approved during the meeting.

Corey Heidelberger stated that he had concerns with item #4 and #5. He has concerns that the Secretary of State is limiting challenges to the 5% sample. Stated he would like to

remove that so people can challenge the entire petition, especially if there are facial errors. His next concern is on subsection 6 and that a person can't challenge a rejected petition. Stated he thinks that not allowing a challenge of a rejection puts the challenger on an uneven footing. Also, can't challenge if the Secretary of State made an error. Stated that not allowing a challenge electronically is a change from past practice. In both cases he said he was involved in, he said he sent electronically and sent the original by registered mail by the deadline. Stated he finds it hard to get in the hands of the Secretary of State and that it gives up a whole business day to work on the challenge.

Corey Heidelberger continued with his concerns on item # 19. He stated he understands the problem that vote centers have. However, he believes that it is a counting problem. Stated that new thresholds get around the counting and makes it harder for people to run for office. Stated that the Secretary of State can look up at voter rolls to figure out the number for calculating. Corey stated that using registration numbers would mean counting people who people who have not been purged from the voter rolls. Stated that it is not an accurate number and that he likes original draft proposed by the Secretary of State. He suggested setting flat numbers and preferred that method. If we need to avoid counting problems, go with hard numbers. Also stated that the Secretary of State is exploding the number of signatures that independents need to get. Stated that it makes it harder for them to get on that ballot and that there have been no troubles with them and no harmful surplus. They already don't have an advantage. He stated that most of the time they are running because party candidates didn't run and need to fill a space. He explained that instead of an extra month, they only have a month because they start after the party candidate's deadline. Stated that the proposed changes would double the number of signatures that independent candidates need to receive to make it on the ballot. Suggested having them get the number of which republicans and democrats have to get together. He finished by saying that independents aren't getting off easy currently.

Secretary Krebs thanked Corey Heidelberger for his comments. She stated that the Secretary of State's office had originally proposed flat numbers but the board moved to have a calculation. Explained that this can still be changed during session and that these are only proposed legislative changes. She stated that she would keep the Board of Election members notified during session on any changes and updates. She stated that the next meeting would be in the spring.

Linda Lea Viken thanked the staff for their work and for allowing input on all of the important issues.

Secretary Krebs stated that she values the Board of Elections member's input and appreciates all of the detailed information that they go through during these meetings. She stated that she was

glad they understood the challenges the Secretary of State's office faced and appreciated them addressing taking them on.

A motion was made to adjourn by Mitch LaFleur, second by Margaret Gillespie. Roll call vote: Cindy Brugman– Excused; Margaret Gillespie– Aye; Drew Duncan– Excused; Pam Lynde– Excused; Mitch LaFleur– Aye; Linda Lea Viken– Aye; Secretary Krebs– Aye; Approved.

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