



# Secretary of State

Jason M. Gant

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## Board of Elections Minutes

The Board of Elections convened on May 11<sup>th</sup>, 2012 for a conference call with public space located in the Secretary of State's Office and Room 499 of the State Capitol.

Secretary of State Gant called the meeting to order at 10:01 a.m.

Board members present at public space: Pam Lynde and Secretary Gant.

Other's present at public space: Rich Williams, Attorney General's Office, Aaron Lorenzen, Director of Elections, Andrew Pietrus, Secretary of State's Office, Patrick Baker, Secretary of State's Office, Brandon Johnson, Secretary of State's Office, Chet Brokaw, Associated Press, Bob Mercer, Capitol Journal.

Board members present via conference call: Chris Madsen, Linda Lea Viken, Dick Casey, and Cindy Schultz

Board members absent: Matt McCaulley

Other's present via conference call: Zach Crago, South Dakota Democratic Party.

Motion made by Schultz, second by Lynde to approve the minutes of January 19<sup>th</sup>, 2012 board meeting.

Secretary Gant called a voice vote.

Aye's: Viken, Casey, Lynde, Schultz, Madsen, Gant

Nay: Zero

Excused: McCaulley

Motion Carried.

Secretary Gant moved to the first item on the agenda and discussed the submitted Help America Vote Act (HAVA) Complaint.

Rich Williams, addressed the complaint and the obligations of the board.

On February, 22, 2012 the Secretary of State's Office received a Complaint from Thomas C. Scheveck of Rapid City. The Complaint was copied to the Board of Elections. The complaint cited SDCL § 12-1-21 (complaints filed under the Help America Vote Act of 2002) and alleged that President Obama should not be placed on the 2012 ballot in South Dakota. Through this Complaint, Mr. Scheveck presented three allegations: 1) President Obama is not a natural born citizen; 2) President Obama is using a

falsified social security number and 3) President Obama is displaying a false birth certificate. See Attached Complaint.

South Dakota law provides an administrative procedure to address violations of the Help America Vote Act of 2002 ("HAVA"). Authorization is found in SDCL § 12-1-21 which states:

Complaints filed under the Help America Vote Act. The State Board of Elections shall resolve any complaint filed under Section 402 of the Help America Vote Act of 2002, as of January 1, 2003, in accordance with the contested case provisions of chapter 1-26. The complaint shall be signed, notarized, and filed with the secretary of state. The board shall resolve the complaint within ninety days of its filing. The State Board of Elections may promulgate rules, pursuant to chapter 1-26, governing the procedure for the complaint process.

The statutory authority only addresses complaints filed under Section 402 of HAVA. Section 402, however, only authorizes individuals to file complaints with a state entity for violations under Title III of HAVA. The relevant sections of Title III cover the following areas:

Section 301. Voting System Standards.

Section 302. Provisional Voting and Voting Information Requirements.

Section 303. Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register by Mail.

SDCL § 12-1-21 and the incorporated federal statutes do not confer, on the Board of Elections, authority to consider whether President Obama should appear on the 2012 ballot in South Dakota. See HAVA (attached). Likewise, no other authority, either under statute or rule, allows the Board of Elections to consider President Obama's eligibility to be placed on the ballot. Mr. Sheveck may consider contacting private legal counsel to discuss his legal options.

Without statutory authority to address an issue, an administrative agency is without jurisdiction. *In Re Solid Waste Disposal Permit Application By the City of Sioux Falls*, 268 N.W.2d 599, 601 (S.D. 1978) ("it is axiomatic that an administrative agency can only exercise the jurisdiction which has been granted to it by the Legislature." (citations omitted)). Without such jurisdiction, the Board of Elections is without authority to take evidence or hear testimony on the matter.

The board discussed the complaint and the jurisdiction it possess to address the complaint.

Secretary Gant discussed the process for which a presidential candidate would be placed on the South Dakota ballot.

Motion by Madsen, seconded by Viken to dismiss the complaint on the grounds of: On February, 22, 2012, the Secretary of State's Office and the South Dakota Board of Elections received a complaint from Thomas C. Scheveck of Rapid City. Mr. Scheveck alleged violations arising under SDCL § 12-1-21 and

requested the Board of Elections consider the matter. SDCL § 12-1-2 which incorporates Section 402 and Title III of the Help America Vote act of 2002 ("HAVA") does not confer jurisdiction on the Board of Elections to hear the allegations presented by Mr. Scheveck. Furthermore, no other State statute or rule grants the State Board of Elections authority to consider whether a particular candidate may be placed on the State ballot. Without jurisdiction, the Board of Elections may not consider the matter further.

Secretary Gant called a voice vote.

Aye's: Viken, Casey, Lynde, Schultz, Madsen, Gant

Nay: Zero

Excused: McCaulley

Motion Carried.

Secretary Gant asked if there was any other business.

With no further business before the board Casey moved to adjourn and second by Madsen.

Secretary Gant called a voice vote.

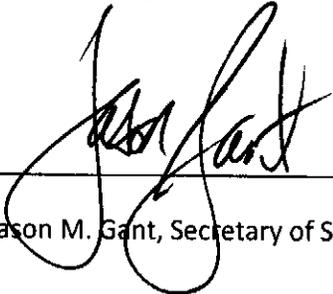
Aye's: Viken, Casey, Lynde, Schultz, Madsen, Gant

Nay: Zero

Excused: McCaulley

Motion Carried.

The Board adjourned at 10:11 a.m.



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Jason M. Gant, Secretary of State



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Aaron Lorenzen, Recorder