



South Dakota Secretary of State

SHANTEL KREBS

State Board of Elections Regular Meeting Agenda Wednesday, October 28, 2015

Conference Call Dial-in Information:
Dial-in Number is 866.410.8397
Conference Code is 2178377981
Capitol Building, Secretary of State's office

Secretary Krebs called the meeting to order at 11:05 am (Central Time).

Present via conference call: Cindy Brugman (Board of Elections member), Mitch LaFleur (Board of Elections member), and Linda Lea Viken (Board of Elections member).

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

Board of Elections Members not able to attend: Drew Duncan, Dick Casey and Pam Lynde.

Quorum present.

Motion to approve the minutes of the October 19, 2015 meeting by Cindy Brugman.

Substitute motion moved by Linda Lea Viken to change how the sentence on the bottom of page two "Linda Lea Viken asked what the process." To "Linda Lea Viken asked about the process" and to change Matt on the first page to Mitch. Substitute motion seconded by Cindy Brugman. Roll call vote: Cindy Brugman- aye; Mitch LaFleur – Aye, Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

Secretary Krebs reviewed the proposed changes to SDCL 12-1-3(17) and gave an overview to the board on why the change was needed.

Mitch LaFleur asked if prior practice was intended, regardless of party affiliation, that a candidate could run as an independent.

Secretary Krebs said that it is important to define independent so that it would be clear who could run for what office under each affiliation.

Kea Warne stated that this definition came from SB 69, which stated that a candidate had to be registered as an independent to run as an independent.

Secretary Krebs stated that the legislature had amended SB 69 so many times but the original intent was to change the nominating petition circulation dates. This definition had been agreed upon internally with the Secretary of State's office and put into the bill. There had been no way to pull the numbers to define how many independents there were. Felt it was right to be able to define and search these numbers.

Linda Lea Viken stated that Independent voter had been referred to before in statute and asked where it could be found.

Secretary Krebs stated that Independent voter had been defined at the last meeting and now the Secretary of State's office is asking for a small change in subsection 17.

Mitch LaFleur asked if the reference in SB 69 was a part of this chapter.

Kea Warned stated that we don't know where the Legislative Research Council (LRC) would have put the new language but assumed it would be here.

Secretary Krebs stated that hopefully subsection 16 would be approved by the 2016 Legislature since it is currently not in there and it needs to be defined.

Mitch LaFleur stated his concern with this language conflicting with SB 69.

Secretary Krebs stated that if the referral of SB 69 fails, we would have to make changes in the 2017 Legislative Session and that it could easily be fixed.

Mitch LaFleur asked if there was anywhere else Independent voter is defined.

Linda Lea Viken stated no but it is referenced in other places.

Mitch LaFleur asked if there are conflicts with independent candidates elsewhere in the statutes.

Kea Warne stated that it would just be in this chapter and it would not conflict.

Linda Lea Viken stated that subsection 16 says who an independent is and subsection 17 says who can register to be a candidate.

Tom Deadrick further clarified the need for separate definitions for independent voter and the independent candidate.

Mitch LaFleur asked why this would be needed.

Secretary Krebs stated that it is needed to help clarify to voters the definitions. Stated that the office is constantly asked all of the time and it would help considerably to have a definition in state law.

Mitch LaFleur asked what was driving this issue and if it dealt with SB 69.

Secretary Krebs stated that the final SB 69 was not the original intent of the proposed bill and that she just wants to be able to define these terms.

Mitch LaFleur asked if prior to SB 69, anyone who was running as an independent could have anyone sign their petition.

Secretary Krebs stated that under current law that is correct but passage of SB 69 could change that.

Mitch LaFleur stated that he doesn't want the board to be getting ahead of itself.

Linda Lea Viken stated that she did not think that was the case and that there is an election and if it fails we have nothing to go by for guidance.

Secretary Krebs stated that we need something set statute.

Linda Lea Viken stated that we also needed this change because of the open Democratic primary.

Secretary Krebs stated that she was going to bring that up later but it needs to be defined so what we can clarify who can vote in which primary. She went on to say that if someone left the field blank they would be listed as a NPA (no party affiliation) and then the questions arises if that person would get to vote in the Democrat primary.

Cindy Brugman stated that anyone who is not registered as a republican could vote in the democrat primary.

Kea Warne concurred that in the 2012 and 2014 elections the previous administration had lumped them all together and they were able to vote in the Democratic primary.

Secretary Krebs stated that she also thought SDCL 12-6-26 would need more clarification as well. This section has reference to NPA (no party affiliation) and in the 2012 and 2014 anyone not registered as republican could vote in the Democratic primary.

Kea Warne stated that it was either in 2006 or 2008 that the Democratic Party opened up their primary and in the 2010 election they only let independents vote. It was not until

2012 and 2014, that the previous administration allowed everyone but the registered Republican to vote in the Democratic Primary.

Linda Lea Viken asked where the office received this guidance during the 2012 and 2014 election to open up further who could vote in the democrat primary.

Kea Warne stated that former Secretary of State's office employee, Brandon Johnson, had said that he reached out to the South Dakota Attorney General's office for guidance.

Linda Lea Viken asked Secretary Krebs what her intent was on this issue and stated that this was the first time she had heard about it being broader.

Secretary Krebs asked Linda Lea Viken if she would want to go speak with democratic party leaders on what they would prefer but a definition is still needed for cross references and defining. She advised the group she had actually worked on the changes to the Democratic Constitution/bylaws on this issue and it was the intent that only those registered as "Independents" were to be allowed to vote in the Democratic primary, not those who were registered as something else, or other or nothing. Secretary Krebs reminded everyone that no matter what a person is registered as, they should be able to go on the ballot as an independent.

Tom Deadrick stated that we wanted the practice clarified so the political parties could do what they wanted.

Linda Lea Viken stated that she would like to take out "notwithstanding the definition of independent as stated in this chapter" to make it clearer.

Mitch LaFleur stated that he did not think that would work. Said he was nervous at agreeing to this language until this has been vetted with party leaders.

Linda Lea Viken stated that she appreciates his concerns but a definition is needed.

Mitch LaFleur asked what the purpose of the "other" category for party affiliation.

Kea Warne explained that it was necessary for those voters who write a party affiliation down that is not recognized by the state of South Dakota.

Mitch asked where else this is found.

Kea Warne explained that it is not referenced anywhere else in statute but it used in the Total Vote system and that "other" is used during elections so we know who can vote in which primary.

Secretary Krebs discussed that the challenge is having so many different parties and being able to categorize people correctly and produce accurate statistics.

Cindy Brugman asked if it was the intent to let everyone, except republicans, vote in the democratic primary. As she noted earlier, Linda Lea Viken stated that was not the intent.

Kea Warne explained that it was not until 2011 that the previous administration started breaking it down.

Secretary Krebs stated that the Secretary of State's office has been cleaning up from the previous administration. It is her goal to make it as clear as possible who can vote in each primary.

Mitch LaFleur feels making this change would not solve the problem.

Kea Warne stated the board approved subsection 18 during the previous meeting and that would prohibit anyone registered as NPA or other from voting in the Democratic Party or from being an Independent candidate.

Mitch LaFleur stated that he thought it was overkill but it didn't matter at this point.

Linda Lea Viken moved approval of the proposed change to SDCL 12-1-3 subsection 17, second by Cindy Brugman. Roll call vote: Cindy Brugman- aye; Mitch LaFleur – Aye, Linda Lea Viken – aye, Secretary Krebs- aye. Approved.

Secretary Krebs opened the meeting up to public comments. No comments.

Secretary Krebs closed the meeting with general remarks and that clearer definitions were needed and that she wanted to clean this up as much as possible and feels independents will be more prevalent in the future. She feels that it is helpful to have definitions for all of these types of party affiliations and hopes to avoid questions and confusion in the future. Mitch LaFleur's concerns are taken into consideration and Secretary Krebs wants to speak with leaders from both parties to make sure they are acceptable with changes.

Motion to adjourn at 12:05 by Mitch LaFleur, second by Linda Lea Viken. Roll call vote: Cindy Brugman- aye; Mitch LaFleur – Aye, Linda Lea Viken – aye, Secretary Krebs- aye. Approved.