



MINUTES

Election Contest Committee

Thursday, January 24, 2019

MEMBERS PRESENT

Representative Steven Holt, Chair
Representative Jon Jacobsen
Representative Brian Meyer

Representative Matt W. Windschitl
Representative Mary Lynn Wolfe

LSA CONTACTS: Minutes prepared by Ed Cook, Legal Services, 515.281.3994

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I. Procedural Business

Call to Order. Chairperson Steven Holt called the January 24, 2019, meeting of the Election Contest Committee to order at 2:00 p.m. in Room 103 of the State Capitol.

Committee Business. Upon motion by Chairperson Holt, the committee approved the minutes from the January 16, 2019, meeting of the committee. Following a motion by Chairperson Holt and discussion by the committee, the proposed contested election committee report submitted by Chairperson Holt was approved by a 3-2 vote of the committee.

Adjournment. The meeting was adjourned at 2:36 p.m.

II. Opening Remarks — Motion

Chairperson Holt noted that the purpose of the meeting is to vote on a report of the committee concerning the election contest. Chairperson Holt then moved for adoption of the proposed contested election committee report. Chairperson Holt read from the proposed report which stated that the relief sought by the contestant is not supported by Iowa law, that there exists no legal authority to open and count the 29 ballots in question and thus no right to recanvass or recertify the election, and that the committee recommends the House dismiss the election contest and agree with the official certification showing the incumbent, Michael Bergan, to be duly elected to the Office of State Representative from House District 55. Representative Wolfe objected to the proposed report, and moved to substitute a minority report of the Election Contest Committee which report was distributed to members of the committee.

III. Consideration of Minority Report of the Election Contest Committee

Representative Wolfe. Representative Wolfe read excerpts from the minority report, noting that voting is a fundamental right guaranteed by both the United States and Iowa Constitutions and that each state representative took an oath to support the United States and Iowa Constitutions, including the right to vote. Representative Wolfe further noted, as stated in the minority report, that the majority report failed to mention or give consideration to the fundamental right to vote but instead relied on flawed legal reasoning to deny that right to 29 citizens. Representative Wolfe further commented from the minority report that the majority report ignores the equal protection violation that occurred in this election contest as Fayette and Winneshiek counties handled ballots received after election day dissimilarly and violates the due process rights afforded all Iowans and the contestant by not allowing for witnesses to testify before the committee. Representative Wolfe concluded, in reading from the minority report, that the majority report is contrary to the rule of law and that members of the House of Representatives should do their sworn duty and count every vote.

Committee Vote. The committee failed to approve the motion to substitute the minority report for the proposed contested election committee report with two aye votes and three nay votes. Representative Wolfe and Representative Meyer voted in favor of the substitution, with Chairperson Holt, Representative Jacobsen, and Representative Windschitl voting against the substitution.

IV. Consideration of Proposed Contested Election Committee Report

Representative Wolfe. Representative Wolfe stated that the key legal authority in this election contest is Article II, section 1 of the Iowa Constitution that guarantees every citizen the right to vote. Representative Wolfe noted that narrowly tailored restrictions on this right are allowed, and Iowa Code section 53.17 establishes the manner of determining whether a voter has complied with the requirement that an absentee ballot must be mailed one day before the election in order to be counted. The Iowa



Code section authorizes the examination of an intelligent mail barcode in determining whether an absentee ballot was timely mailed and in this case, the 29 absentee ballots were indisputably mailed on time as the United State Postal Service(USPS) was able to confirm that the absentee ballots had a traceable barcode which indicated when the ballots were mailed. Interpreting administrative rules describing the Intelligent Mail barcode Tracing system provided by the USPS as being the only barcode that can be used to determine whether an absentee ballot is timely mailed is incorrect. Administrative rules should not limit rights established by the Constitution and unduly narrow procedures established by statute to govern these constitutional rights. The law should be interpreted to allow all voters the same right to have their votes count, regardless of whether the county agrees to use the Intelligent Mail barcode Tracing system. Equal protection and the constitutional right to vote requires that if a barcode on a ballot reliably ascertains the date of mailing, that ballot, if mailed on time, should be counted. In this case, all 29 absentee ballots should be opened and counted.

Representative Meyer. Iowa Code section 57.5 provides the committee, and the Iowa House, with the clear authority to open and count every ballot in this contested election, including the 29 absentee ballots. The Iowa Code section provides that any party to a contested election shall have the right, in open session, to have the ballots opened and all errors in counting or refusing to count ballots corrected. No evidence or witnesses were presented to the election committee, only attorney arguments. Equal protection concerns exist in this contest as Fayette County counted similarly situated ballots that Winneshiek County failed to count. The right to vote is fundamental and the election committee should have been predisposed to count every ballot and to not rely on a narrow interpretation of intelligent mail barcode to disenfranchise 29 voters in Winneshiek County.

Chairperson Holt. Chairperson Holt noted that the goal of the election committee was to provide a fair process that focused on the facts and the rule of law. In this contest, the contestant made three requests, to count the 29 absentee ballots, to recanvass the ballots, and to recertify the results of the election. All fundamental rights, including the right to vote, can be subject to lawful parameters designed to protect that right. For absentee ballots, Iowa Code section 53.17 establishes lawful parameters for determining whether an absentee ballot received after election day can be counted. In this case, the 29 absentee ballots were not received by election day, did not contain a postmark, and did not contain an intelligent mail barcode as provided by law. In this case, the barcodes on the 29 absentee ballots were not intelligent mail barcodes. Legislative debate was clear that the intelligent mail barcode authorized by Iowa Code section 53.17 is the barcode affixed pursuant to the Intelligent Mail barcode Tracing system offered by the USPS. The use of this system is optional under Iowa law and the system requires the mailer to subscribe to the system and affix the barcode. In this case, Winneshiek County did not subscribe to and utilize the Intelligent Mail barcode Tracing system. Mail barcodes other than those utilizing the Intelligent Mail barcode Tracing system are sprayed on by the USPS and are used inconsistently by the USPS, making reliance on these barcodes unreliable. No more evidence is needed to determine the meaning of intelligent mail barcode in the Iowa Code as it relates to this election contest. Chairperson Holt stated that the proposed election committee report reflects the facts of this election contest and concluded his remarks by reading the proposed contested election committee report.

Committee Vote. The committee voted to adopt the proposed contested election committee report as the report of the election contest committee with three aye votes and two nay votes. Chairperson Holt, Representative Jacobsen, and Representative Windschitl voted in favor of the proposed report, with Representative Meyer and Representative Wolfe voting against the proposed report.



V. Concluding Remarks

Representative Holt stated that the adopted report would be submitted for consideration by the Iowa House of Representatives next week. Representative Wolfe requested that, pursuant to House Rule 55, the minority report be noted in the House Journal.

VI. Materials Filed with the Legislative Services Agency

The following materials listed were distributed at or in connection with the meeting and are filed with the Legislative Services Agency. The materials may be accessed from the "Committee Documents" link on the committee's Internet Site: <https://www.legis.iowa.gov/committees/meetings/documents?committee=24163&ga=ALL>

1. Proposed Contested Election Committee Report
2. Minority Report of the Election Contest Committee
3. Contested Election Committee Report — Adopted