



**Pulaski County Election Commission
Meeting Minutes
March 4, 2014
4:30 p.m.**

Members Present

Leonard A. Boyle, Sr.
Chris Burks
Alex Reed

Staff Present

Bryan Poe
Shawn Camp
Tonya Washington
Amanda Dickens

Visitors Present: Phil Wyrick, Emily Walkenhorst, AR Democrat Gazette; Holly Dickson, ACLU; Larry Crane, David Berman, Jason Kennedy, County Clerk's office

The meeting was called to order by Chairman Leonard A. Boyle, Sr. A quorum was determined; Commissioner Burks, Chairman Boyle present.

Approval of Meeting Minutes

Motion to table meeting minutes until next scheduled meeting on March 10, 2014 made by Commissioner Burks; seconded by Commissioner Reed. All in favor; motion passed by voice vote.

Commissioner Oaths for New Term; New Commissioner Installed

County Clerk Larry Crane appeared to reinstall Chairman Boyle and Commissioner Burks. New Commissioner, Alex Reed, was installed and administered oath. Mr. Reed is temporary replacement until a new commissioner is appointed.

Other Business

Commissioner Burks noted that the original agenda had a discussion of absentee ballot procedures which was excluded from the amended agenda. He requested that this discussion be placed back on the agenda for today's meeting for a brief discussion. Chairman Boyle agreed.

Commissioner Burks noted that a motion was passed at the last meeting for the board to provide guidance to the county attorney, based on her direction to the board. The board then directed her to analyze and present to the commission a declaratory action asking the court to decide a legal dispute. There was conflicting advice and we want the court to advise how to apply the law. For discussion, Commissioner Burks wanted to clarify that the motion

be conveyed to the county attorney and staff quickly, and what they produce, that to come back to the commission and inform us of that process.

Mr. Poe stated that Tonya Washington transcribed the previous motion and he has forwarded it to the county attorney so we can move forward on that motion.

Commissioner Boyle stated that the board hopes to hear back from the county attorney by the next meeting. He also asked that we ask for her recommendations how we move forward.

Commissioner Burks stated that part of the motion was due to timeliness and he wanted to put it back on the agenda today because of concern for the upcoming election. With the county attorney being out of the office, it is undecided whether we will get a declaratory judgment in time for the election. He wanted to make sure the staff conveys this to the county attorney's office. Part of the motion was to make sure the county attorney's office worked with the election commission and the staff to fully research all the issues and present something to us that we can ask the courts.

Commissioner Reed asked if the board would see anything before filing. Commissioner Burks said that is his intention. Commissioner Burks asked if the board would be comfortable with him talking to the county attorney staff or would the board want the election commission staff to handle. Commissioner Reed asked what the staff would be doing.

Commissioner Burks stated that the board asked county attorney staff to analyze these issues and ask the court what to do. Commissioner Burks is curious as to what the county attorneys analyses will say and how broad or narrow the questions will ask the court. He said he can wait until Friday or next Wednesday. His concern is whether they are doing something the board does not want. Then we may not have time to file it in time to get guidance by this election. His concern is they may not be on the same page as we are and have the same understanding that we do to be able to get it done in time.

Commissioner Reed agreed and would like to be kept abreast of what is going on as well. Commissioner Burks stated that he would make sure to carbon copy the board and keep them informed of anything he receives.

Phil Wyrick asked if the board is potentially initiating a lawsuit to clarify absentee ballot issue. Commissioner Burks answered yes. He stated that he does not see it as initiating a lawsuit but to seek guidance of a higher authority. Mr. Wyrick noted his concern is what this commission wants to be portrayed as; an activist carrying the water for the whole state. He noted that the commission has obtained an opinion from the attorney general, in the absence of litigation, and he feels that is about as good as the commission can do. Now it seems as if the commission is initiating actions by the court, when if the commission follows what the attorney general says, then you wait for someone on the outside and challenge that. His question is what direction is the board taking at this point.

Chairman Boyle, for clarification, stated that the commission is looking for guidance from the courts whether they determine this law can't be implemented because of the fairness and

treatment of the absentee ballot voters or whether the court gives us some guidance how to proceed with those absentee ballots.

Mr. Wyrick reiterated that the commission has already received guidance from the attorney general. Larry Crane, County Clerk, noted that there are two sets of guidance; the attorney general and the secretary of state gave an opinion diametrically opposed to that. Mr. Wyrick believes that proceeding further beyond the attorney general's opinion takes it to the activist level when the focus should remain to ensure that every vote is counted as was the focus when he was on the board.

Commissioner Reed clarified that after the State Board of Election Commissioners (SBEC), proposed a set of emergency rules dealing with the cure period on absentee ballots and those rules passed the SBEC. The topic of the lawsuit deals with the rules the SBEC filed.

Commissioner Burks stated that the intent of his discussion point earlier was to consider what's said here today. We will see what our attorney will advise us to do. The board has heard concerns today but is not committed to do something that casts us in a light that reduces people's confidence in fair elections. We still have a process in place where we do what we feel is in the best interest of voters.

Commissioner Reed asked if the lawsuit is based on SBEC emergency rules, the law, or is it just based on a little bit of both. Commissioner Burks said the text of his motion will help to make sure that the board is on the same page and have all the same information.

Commissioner Burks, for clarification, noted that the board will need to call another meeting if the board will do something different than the prior motion based on the information.

Mr. Poe noted that the next meeting is scheduled for Monday, March 10, 2014 at 5:00 pm. He said he will notify the board of any new information and determine if a meeting needs to be scheduled to discuss any new information.

Holly Dickson stated that the ACLU has been following the Voter ID laws before it passed and observed the situation in Jonesboro. She sees the concerns behind all of the comments made yet it is a mess that needs to be straightened out. The ACLU's position on the Voter ID law is that it disenfranchises voters who are registered voters and not showing their ID's in the first place. How you treat their absentee ballots, to the ACLU is the "forest for the trees". This would be evidence with the problems of this law. We wouldn't bring anything that would get that for your clarity from a ruling court to the extent that you would want that or need that to protect yourselves, your voters, clerks, things of that nature.

Commissioner Burks asked Ms. Dickson if there is the potential for the Pulaski County Election Commission defensive declaratory judgment action asking a higher court to interpret the law, and give us guidance about the law, there will be issues in that law that the ACLU will be interested in?

Ms. Dickson said the ACLU is interested in the issues and the outcome. She doesn't believe there is an interest in airing an appearance or arguing about the issues. They have reached a

legal conclusion about the outcome of their own and that it is a clear question of law from their standpoint, but they are not unsympathetic to the myriad of opinions that are on the way. It seems pretty clear that absentee voters weren't thought about so much in this law in terms of making remedial efforts. The ACLU supports the rights of voters and wants to make it as easy as possible for voters and what happened was such a travesty in watching Jonesboro trying to undo some of the harsh effects of the Voter ID laws. There is a lot of uncertainty about what to do in the upcoming special election and coming elections.

Commissioner Burks asked if we don't file the declaratory judgment action, that we already filed, and we follow one side of conflicting advice or another, is there a chance, based on the advice we choose to follow in the absence of declaratory judgment action, we could take an action that would expose us to create a plan for litigation from the ACLU on an issue?

Ms. Dickson stated that the Voter ID law has put the board in that position, so yes. The question about whether there's a special exposure to liability by the way you treat the ballots, she said that is a question that needs to be posed to the county attorney because your clerks and your employees have particular rules, rights and responsibilities that include civil penalties and sometimes criminal penalties.

Mr. Wyrick, for clarity, asked Ms. Dickson that if her interest group took action and the result did not satisfy them, there could be a challenge by the ACLU. There are no guarantees because there are interests that have other questions. He asked, for clarity, if the ACLU took action, if there were questions that would not be asked the board that they wanted to know. Ms. Dickson disagreed. He then stated we may have some questions she didn't cover at the initiation of her lawsuit. Ms. Dickson said, yes, and that she thinks the reverse of that is true also.

Mr. Wyrick stated that being a special interest group, and the plaintiff, she would have the right to ask any question she wants to as part of the lawsuit. Ms. Dickson said you would have to have standing to raise that question. You have to be harmed, affected, directed, and have some nexus to the law. You can't just go into court and get an advisory opinion so the condition would be, on the question of clarification of securing absentee ballots. The ACLU is not going to go in and ask that question to the court because they feel it is a secondary question. Whether the voter is given time to cure or not, the voters have shown up at the polls and they are registered, they shouldn't have to show ID every time. That's not their concern. In the context of the challenge of the Voter ID law, she doesn't foresee that the court would decide secretary's question of how you treat absentee ballots. There needs to be uniformity across the state or it going to create greater confusion and problems. It needs to be sorted out how voters of Arkansas are going to be treated and if Pulaski County voters don't get it's cures up, but Saline County voters do, then you may be raising questions between various clerks about possible actions.

Chairman Boyle stated this is the reason for this action. The purpose of this commission is to provide fair and accessible elections so that everyone's voice is heard and everyone's ballot gets counted provided they have presented those ballots in the proper context. At the same

time, Chairman Boyle is in favor of the ACLU not being in agreement with the Voter ID law because he saw the potential of disenfranchisement. However, with the position this commission is with the SBEC, deciding to come up with emergency rules, has the appearance of changing the law when they are not the body to do that. And that's where this commission disputes the actions of the SBEC. This is why our attorney advised us not to follow the guidelines provided by the SBEC because it would open us up to further litigation. We want to do everything possible to cover not only the board but every voter in this county.

Commissioner Reed asked if the ACLU had looked at the SBEC emergency rules on the cure period for absentee ballots and what is their position on the rules. She said that she is sympathetic that the SBEC wants to take action but she is not confident that the board has that authority.

Mr. Wyrick commented that he did not feel that the voters of Pulaski County would feel comfortable in the Pulaski County Election Commission "carrying the water" for the ACLU. Chairman Boyle stated that although voters may not feel comfortable, but they would be in favor of the commission seeking the court's opinion on how to move forward so they will have clarity. This is not just about the commission. The commission feels it has to take in consideration all of the voters and the county. When this was originally decided, the commission felt this is what needed to be done.

Ms. Dickson stated that the ACLU neither supports nor opposes the Election Commission on their action. The group chooses their interests.

Mr. Crane stated that he is not carrying anybody's water. He said he has employees who have been put in a position where if they follow the SBEC's rules, then they may be subject to question. If they follow the attorney general's advice, they may be subject to question. If you and I, choose to follow the attorney general's opinion, and other counties around the state choose to follow the rule and the opinion of the secretary of state, then we're going to have people treated differently across the state of Arkansas. And it's not carrying anybody's water to take action appropriate to determine that everybody gets treated the same and fair treatment for everybody. He feels that Mr. Wyrick is advocating that any of us addressing the issue and that we go forward blindly and wait for somebody to sue us and that's not appropriate.

Mr. Wyrick stated for clarity that the commission went through the process and asked the attorney general for an opinion and received that. He posed the question is it the role of the Election Commission to follow the law passed by the legislature, whether you like the Voter ID law or not. The commission sought an opinion, received it and should follow the law pertaining the attorney general's opinion. He stated that he did not say that Mr. Crane or his office was carrying the water for anybody. He directed all of his statements to the commission.

Ms. Dickson stated that if the Election Commission follows the attorney general's opinion and other counties follow the SBEC rules, then there will be the potential for future claims for voters to bring against Pulaski County. Commissioner Burks added any claims that the ACLU may bring as well.

Chairman Boyle noted the way the law is written, there is an unfairness in the way absentee voters are treated as opposed to those voters going to the polls. While the SBEC's emergency rules may be the right way to solve the issue, they are not the body to apply it.

Commissioner Reed stated that he is of the opinion that the state board rules cure the problem. If every county followed them, that would be fantastic. It would be his preference to follow the state board rules. However, he understands that he is of the minority opinion.

Chairman Boyle stated that every person on the commission has a voice and all voices are heard. All of the information gathered is used to make the decisions. There is no majority or minority. Commissioner Reed clarified that partisan lines were not intended in his comments; only his opinion. Commissioner Burks also noted to Commissioner Reed that he's had no preconceived thoughts about any of his comments. He is appreciative of his comments and that he has listened attentively to what he's had to say here and at the SBEC.

Commissioner Burks stated that being a young lawyer he a reader of history and law there are times when you have laws when you're in an official function and you have conflicting laws or conflicting advice. There are times when you can follow the law to do the right thing and there are times when you can follow the law to do the wrong thing. He's trying to do the right thing. He feels that the commission is on the right track in moving forward with this action so that they can do the right thing.

Ms. Dickson congratulated Commission Reed as the new addition to the county board.

Meeting adjourned.