

January 24, 2022

MINUTES: CALHOUN COUNTY ELECTION COMMISSION – RECALL EFFORT FILED AGAINST RICHARD LINDSEY, MATT DAVIS, SHAWNA GAMBLE

LOCATION: Calhoun County Building, Boardroom 3-C08, 315 W Green St, Marshall MI 49068

CALL TO ORDER: 8:21am. Clerk Hinkley called the hearing to order, welcomed all in attendance, explained reason for today's hearing, and notified audience that meeting was being recorded, and minutes taken.

ROLL CALL: PRESENT: Calhoun County Clerk Kimberly Hinkley, County Treasurer Brian Wensauer, County Prosecutor David Gilbert. Chief Probate Judge Michael Jaconette was unable to preside over the meeting due to illness. The meeting was conducted by Clerk Hinkley

APPROVAL OF AGENDA: Motion was made by Prosecutor Gilbert, Seconded by Treasurer Wensauer. Motion Approved.

ROLE OF THE COUNTY ELECTION COMMISSION: Clerk Hinkley read MCL 168.952 Michigan law regarding the purpose of the hearing and how the commission determines whether the language is of sufficient clarity and factual nature.

CONSIDERATION OF RECALL LANGUAGE: The sponsor and presenter of the recall language is David Atchison.

READING OF THE RECALL PETITION LANGUAGE: Clerk Hinkley read the petition of the recall language into the record.

Mr. Lindsey presided over school board discussions, deliberations and actions associated with Albion College while simultaneously serving as Albion College's paid attorney. His conduct violated MPS policy prohibiting Board members from engaging in activities which raises a reasonable question of conflict with their duties and responsibilities in the school system. His conduct also violated the Michigan Code of Education Ethics which require avoiding the appearance of impropriety. Mr. Lindsey violated the open meetings Act and School District policy on 11 October 2021 by presiding over a closed session meeting of the Board of Education without the purpose of meeting being disclosed to the public. He subsequently created a false official record by approving inaccurate official minutes of the meeting which hid the OMA violation. Mr. Lindsey disregarded the voters' 2 November 2021 rejection of a school bond, and despite public opposition to an alliance between Marshall Public Schools and Albion College, voted on 13 December 2021 to proceed in establishing a partnership between MPS and Albion College to construct a new school.

COMMENTS OF SPONSOR AND OFFICE HOLDER:

Clerk Hinkley: addressed the Recall Sponsor: Mr. Atchison, are the allegations stated in the recall petition based upon the officer's conduct during his current term in office? David Atchison: "Yes"

Clerk Hinkley: Mr. Atchison, do you or a representative wish to comment on the recall petition language? David Atchison: "Yes"

SPONSOR COMMENTS: 5 minutes (begin 8:28 – end 8:32) Mr. Atchison, arguments by Richard Lindsey alleging the petition is based on opinion and not true. You stated these are not based on truth, we are focused on if the language is clear and factual by his conduct. Let the electorate make a reasonable and informed decision.

CLERK HINKLEY: Does Richard Lindsey, or a representative, wish to comment on the recall petition language filed? Richard Lindsey: “Yes”

OFFICERS COMMENTS: 5 minutes (begin 8:32 – end 8:37) Mr. Lindsey, entire language must be factual and clear. These additions came about after the law was updated in 2012. All the cases Mr. Atchison sites are pre 2012. The code of conduct does not apply to school board members. There is no statute that this particular code applies to us. As far as the OMA violation there is no violation. As far as a false record, I don’t understand what Mr. Atchison is referring to.

Motion: by Prosecutor Gilbert, I move to consider the recall petition of Richard Lindsey, seconded by Treasurer Wensauer.

DISCUSSION BY COMMISSION MEMBERS Prosecutor Gilbert, we are not here to decide whether the allegations are true, isn’t for us to decide only if its factual. As to the MPS Code of Conduct what type of conduct did he engage in it doesn’t state. Clerk Hinkley, as far as the conduct, what conduct? The average elector must be able to decide from the language if it is factual when they are in the voting booth. Prosecutor Gilbert, as far as a violation of the Open Meetings Act, going into closed session to consult with their legal counsel is allowable. Treasurer Wensauer, we are not a court of law to determine if the petition is fact not truth. We need to look at it like a common citizen. Are things factual to a lay person. Clerk Hinkley, fact and truth, some people think they are the same, we must determine if its fact not truth. Does the common citizen understand it in order to vote on a ballot? Prosecutor Gilbert, I don’t believe it is factual or clear.

Motion: Prosecutor Gilbert, I move to reject the petition, seconded by Treasurer Wensauer

ROLL CALL VOTE: Clerk Hinkley: Reject, Treasurer Wensauer: Reject, Prosecutor Gilbert: Reject. With a 3 – 0 vote the motion to REJECT passed.

READING OF THE RECALL PETITION LANGUAGE: Clerk Hinkley read the petition of the recall language regarding Matt David into the record.

Mr. Davis violated the Michigan Code of Educational Ethics by failing to confront and take reasonable steps to resolve ethical conflicts involving Board President Lindsey while Lindsey simultaneously served as Albion College attorney and presided over School Board deliberations involving his client. Davis failed to communicate with parents in a respectful manner during the 27 September 2021 School Board meeting by telling the public voting no due to no trust in the board is the height of shooting themselves in the foot. Davis disregarded the voters’ 2 November 2021 rejection of a school bond, and despite public opposition to an alliance between Marshall Public Schools and Albion College, voted on 13 December 2021 to proceed in establishing a partnership between MPS and Albion College to construct a new school. Mr. Davis violated the Open Meetings Act and School District policy on 11 October 2021 by participating in a closed session meeting of the Board without the purpose of the meeting being

disclosed to the public. He subsequently created a false official record by approving inaccurate official minutes of the meeting which hid the OMA violation.

COMMENTS OF SPONSOR AND OFFICE HOLDER:

Clerk Hinkley: addressed the Recall Sponsor: Mr. Atchison, are the allegations stated in the recall petition based upon the officer's conduct during his current term in office? David Atchison: "Yes"

Clerk Hinkley: Mr. Atchison, do you or a representative wish to comment on the recall petition language? David Atchison: "Yes"

SPONSOR COMMENTS: 5 minutes (begin 8:51 – end 8:55) Mr. Atchison, the minutes doesn't reflect any purpose for the closed session which is a statement of fact. This is a political process. There have been several different versions of the minutes presented by Mr. Lindsey and Mr. Davis. They are not an official record of what took place. This is a political question, to hold the board members to at least the same standards as in the Code of Conduct. The language is based on factual statements and I believe they are factual.

CLERK HINKLEY: Does Matt Davis, or a representative, wish to comment on the recall petition language filed? Matt Davis: "Yes"

OFFICERS COMMENTS: 5 minutes (begin 8:55 – end 9:00) Mr. Davis, I don't believe much of this is factual but one person's thoughts. No statute, no rule, no law and no best practices on one board member confronting another board member over a conflict of interest. We have advice from our attorney. If the member discloses their conflict of interest, they should proceed in voting, unless otherwise instructed. I can vote no if I don't agree. Respectful manner is not factual. Fact is up to the individual to determine. Public opposition, I don't know how to measure this. What is public opposition? Can't be determined, this is not fact. The motion was to partner with Albion College for a strategic plan, that's it. The rest of his comments on that are not factual.

Motion: by Treasurer Wensauer, I move the Commission vote on the petition language submitted for the recall of the School Board Member Matt Davis to determine if each reason is factual and of sufficient clarity to enable officer holder Matt Davis and the electors of Marshall Public School District to identify the course of conduct that is the basis for the recall, seconded by Prosecutor Gilbert.

DISCUSSION BY COMMISSION MEMBERS: Treasurer Wensauer, one of the items you mentioned Mr. Davis, one person's viewpoint gives the rest of the people an opportunity to say yes, I do agree or no, I don't agree with it. This is part of the process to get signatures to say what is clear and factual. Prosecutor Gilbert, Yes, I agree with this statement. You can actually file a petition stating I don't like the gum he chews. Does it matter, someone can vote on this, is someone going to sign this petition? I do agree with Mr. Atchison that much of this is factual and clear. Open Meetings Act violation going into the closed session, created a closed session, which created a false record. Mr. Davis' recording secretary creates the record. Clerk Hinkley, Mr. Davis failed to speak to parents in a respectful manner can be misconstrued. Prosecutor Gilbert, voting no, you might as well shoot yourself in the foot may be viewed as disrespectful. Clerk Hinkley, Mr. Davis doesn't create the record and they are given time to correct the minutes before they are approved. Prosecutor Gilbert, these may be a factual statement but not necessarily true.

ROLL CALL VOTE: Clerk Hinkley: Reject, Treasurer Wensauer: Approve, Prosecutor Gilbert: Approve. With a 2-1 vote the motion to APPROVE passed.

READING OF THE RECALL PETITION LANGUAGE: Clerk Hinkley read the petition of the recall language regarding Shawna Gamble into the record.

Shawna Gamble violated the Michigan Code of Educational Ethics by failing to confront and take reasonable steps to resolve ethical conflicts involving Board President Lindsey while Lindsey simultaneously served as Albion College attorney and presided over School Board deliberations involving his client. Shawna Gamble disregarded the voters' 2 November 2021 rejection of a school bond, and despite public opposition to an alliance between Marshall Public Schools and Albion College, voted on 13 December 2021 to proceed in establishing a partnership between MPS and Albion College to construct a new school. Shawna Gamble violated the Open Meetings Act and School District policy on 11 October 2021 by participating in a closed session meeting of the MPS Board of Education without the purpose of the meeting being disclosed to the public. She subsequently created a false official record by approving inaccurate minutes of the 11 Oct 2021 BOE meeting which hid the OMA violation.

COMMENTS OF SPONSOR AND OFFICE HOLDER:

Clerk Hinkley: addressed the Recall Sponsor: Mr. Atchison, are the allegations stated in the recall petition based upon the officer's conduct during his current term in office? David Atchison: "Yes"

Clerk Hinkley: Mr. Atchison, do you or a representative wish to comment on the recall petition language? David Atchison: "Yes"

SPONSOR COMMENTS: 5 minutes (begin 9:10 – end 9:15) Mr. Atchison, I would like to clarify a couple of things of similarity with the recall language of the 3 recall petitions. Shawna as the secretary she is the official record keeper. The official minutes are the official record. So, when they are approved, they became the official record. The motion shows the motion to go into closed session was made by Matt Davis to go into closed session. That's not what the records in real time show. Ms. Gamble was there, and she voted to approve the minutes that weren't accurate. These are factual statement's, and this is a political process, let it go before the voters.

CLERK HINKLEY: Does Shawna Gamble, or a representative, wish to comment on the recall petition language filed? Shawna Gamble: "Yes"

OFFICERS COMMENTS: 5 minutes (begin 9:15 – end 9:18) Ms. Gamble, one of the points you have to consider whether this is factual and clear is that every time Mr. Atchison has had to clarify his language. Allegations that I didn't take measurable steps to do something, that is an opinion. That I got 2 legal opinions on whether Mr. Lindsey was able to participate in the vote and making sure the conflict of interest was disclosed. I am not sure what else could have been done. Disregarding the voters is an opinion. There were several matters to consider on that bond, so there is no way to know which thing caused the voters to vote no. I understand there were some people who were adamant about partnering with the college. But saying it was a complete disregard of voters as an elected official is an opinion. Can't say this is exactly why every single voter voted. Motion to construct a new school is not factual and it's not true. Not the motion that was made. This is not clear and factual. Mr. Atchison's opinion and I ask you to reject the language as a whole.

Motion by Treasurer Wensauer “I move the Commission vote on the petition language submitted for the recall of the School Board Member Shawna Gamble to determine if each reason is factual and of sufficient clarity to enable officer holder Shawna Gamble and the electors of Marshall Public School District to identify the course of conduct that is the basis for the recall”. . Seconded by Prosecutor Gilbert.

DISCUSSION BY COMMISSION MEMBERS Prosecutor Gilbert, same issues I had with Mr. Davis’ situation. First of all, it’s not for us to decide if she is actually responsible for taking reasonable steps. The allegations are, did she? Again, we are talking about true statements versus factual statements and they are not the same. She is charged with creating false minutes the same as Mr. Davis. It’s a factual statement and we aren’t here to determine if its true. I disagree that it is not up to the voters to decide if the language is clear or not to Mr. Lindsey, Mr. Davis, and Ms. Gamble because they’re part of the process. Just because its clear to them doesn’t mean its clear to the voters. Treasurer Wensauer, interesting information Mr. Atchison brought up. Treasurer Wensauer doesn’t know the opinion of the people in the newspaper article because he didn’t read it. Listening to both parties gives us a little more information that was provided. You have 1 person who is saying we need to put this up to the people. Clerk Hinkley, remind each one of us that not only must we decide on the clarity and factualness of the petition, it must be the whole thing. If one part is not clear or factual, we cannot approve it as a whole. There is a lot of the same information on all 3 of the petitions. I think it makes it difficult to approve the factual and clarity on one and look at each line in order to vote on the clarity and factualness of the petition.

Motion Prosecutor Gilbert “I move to vote on the recall petition”. Seconded by Treasurer Wensauer

ROLL CALL VOTE: Clerk Hinkley: Reject, Treasurer Wensauer: Approve, Prosecutor Gilbert: Approve. With a vote 2-1 the motion to APPROVE passed.

NOTICE OF DETERMINATION: THE COMMISSION MEMBERS TO SIGN A Notice of Determination for each recall submitted. Notice of Determination was made available following the meeting. Emailed copies of the determination were sent via email to the recall petition sponsor and the officeholders who are subject to the recall.

REVIEW OF 10 DAY APPEAL PROCESS was read by Clerk Hinkley to Mr. Atchison and Mr. Davis and Ms. Gamble

PUBLIC / CITIZEN COMMENT: Erica Robinson, Marengo Township resident, shared her comments with the commission members as to the recall of these board members.

ELECTION COMMISSIONERS’ COMMENTS: None

ANNOUNCEMENTS: None

AJOURNMENT: Motion to adjourn by Prosecutor Gilbert, seconded by Treasurer Wensauer at 9:36am

Respectfully submitted by,

Jill Stout - Election Specialist

