

CHAIRPERSON: Rep. Michael D'Agostino

REP. D'AGOSTINO (91ST): All right. We will call the Committee on Contested Elections to order at 3:05 on January 11. This is our first meeting sort of in the vein of an organizational meeting and we have a brief agenda that we will move through right now. So part two, remarks by the Chair and Committee members.

My name is Michael D'Agostino, a State Representative from the 91st District in Hamden, Connecticut and just by way of brief remarks, I thought it would be useful just to put in the record something I found in a case that dealt with contested elections because I think it is a good summary of really the challenges and issues facing this Committee and if you will just indulge me for a second with respect to the remarks.

This is from Bortner v. Town of Woodbridge. It's a Connecticut Supreme Court case from 1999. And it talks about how the law requires in determining whether or not to order a new election to arrive at a sensitive balance among three powerful interests all of which are integral to our notion of democracy but which in a challenged election may pull in different directions.

One such interest is that each elector who properly casts his or her vote in the election is entitled to have that vote counted. Correspondingly the candidate for whom that vote properly was cast has a legitimate and powerful interest in having that vote properly recorded in his or her favor. When an election is challenged on the basis that particular elector's votes for a particular candidate were not

properly credited, these two interests pull in the direction of ordering a new election.

The third interest, however, is that the rest of the electorate who voted at a challenged election has to be addressed and arises from the nature of an election in our democratic society generally. An election is essentially and necessarily a snap shot. It is preceded by a particular election campaign for a particular period of time which culminates on a particular date, namely the officially designated Election Day. And when that day comes, the election records the votes of those electors and only those electors who were available to and took the opportunity to vote on that particular day.

The snap shot can never be duplicated. The campaign, the resources, availability for it, the totality of the electors who voted in it and their motivations inevitably will be different a second time around. Thus when a court orders a new election it is really ordering a different election. It is substituting a different snapshot of the electoral process from that taken by the voting electorate on the officially designated Election Day.

Consequently, all of the electors who voted in the first officially designated election have a powerful interest in the stability of that election because the ordering of a new and different election would result in their Election Day disenfranchisement. All of these reasons strongly suggest that although a court undoubtedly has the power to order a new election and it should do so if the statutory requirements have been met, the court should exercise caution and restraint in deciding whether

to do so. The proper respect for the electoral process mandates no less.

And I read that because I feel like it really captures at least for me the tension and the issues facing this Committee which is we have got the allegation before us of 75 or so electors being disenfranchised and trying to weigh that versus the potential disenfranchisement if we were to decide a new election should be ordered of the people who already voted. Those are powerful interests that conflict and one thing that is obviously clear is that this Committee I know is going to approach that soberly and carefully and with regard to the integrity of the entire election process for all the voters who voted or attempted to vote that day. And I look forward to working with the rest of the Committee on that and I'll turn it over to the other members. Representative Candelora.

REP. CANDELORA (86TH): Thank you, good evening and I think -- or afternoon. I think it is not lost on me either the significance of what we need to do here today and going forward on addressing this contested election. The last time I think this occurred was in 1986 and the precedent is very weak on how we do proceed.

But what was clear in what the Supreme Court had said in its last ruling is that the decision making lies within this Committee. And having said that, I think we are all sympathetic to the candidates, the three candidates that were on that ballot that day. I think having all of us going through that experience, it is not a joyful one and the thought of having to do it again is certainly, you know, a daunting process and could be stressful for any individual. But I'm also mindful of the fact that

this body potentially is the last stop for recourse for anybody. Not just the voters in the 120th District but both candidates.

And so as we proceed forward, the precedent that we are setting here today could be significant to our election process if in fact ultimately a court would rule that a Committee on contested elections made up of the legislature would be the final arbiter of any type of contested election. That could have something even more significant than what I think we are going to hear about whether it be fraud or mistakes that are clearly so egregious that our democratic process on its face would be called into question.

So moving forward, you know, I think we certainly should be mindful of the precedent that we are setting here for the State of Connecticut and certainly for the 120th House seat. Thank you.

REP. D'AGOSTINO (91ST): Representative Haddad.

REP. HADDAD (54TH): Yes, I mean, I appreciate the opportunity to listen to my two colleagues talk so eloquently about this issue. I come from this from a very layman's perspective. I remember when I first cast a ballot as a voter and felt the sort of awesome power of being, finally being an elector in and having exercising that right to vote. And obviously as an elected official who stood for reelection and election several times have great compassion and sympathy for folks who put themselves up for election.

Our process is substantial in the respect that it's pretty awesome. Democracy is a tremendous responsibility and democracy is a tremendous thing that we need to protect and value and so when we

have a contested election of this sort, I think that we need to be very deliberate and thoughtful and careful about how we proceed and mindful of the fact that we are out to protect I think a very fundamental value that we hold in our country.

Moving forward, I will say very practically I hope that this Committee will and expect that we will operate in a very transparent manner, that the things that we do as a Committee will be open and open to scrutiny and open to the public, that we will work very hard to treat parties and voters fairly, that, you know, when we -- well, I expect that this will be a plain language Committee. I'm not an attorney myself, I don't anticipate getting bogged down in a lot of legalese personally but I want to make sure that what we do here in this Committee is easily understood by members of the public, that they can see what we are doing and they understand it.

I hope that we will and expect that we will do a complete and thorough review of the facts and once we have compiled the information that we need to make a decision that we will endeavor to make the best decision possible to protect our ideals and the integrity of all of our election system and also of the tremendous body that we call the House of Representatives.

REP. D'AGOSTINO (91ST): Thank you. Representative Perrillo.

REP. PERRILLO (113TH): Thank you, Mr. Chairman. You know, it's interesting, you know, we are talking about an election. Elections are inherently political and that politics can become inherently partisan and I think one of the reasons why the four of us are here is to avoid that both in reality and

in perception. And I think to do that, we really have to be laser focused on the facts of the case.

We have 75 ballots. What happened to them? Were the -- did the individuals who cast those ballots, were they able to actually vote in the election in the 120th District? If they were, then that says one thing. If they weren't, then that means they were regulated. So I think our charge is to identify what the true facts are, utilize those facts and present a report, make a recommendation based upon the facts. And if we are able to do that and I think we are, then I think we have done our job and kept politics, partisanship, gainsmanship out of the issue and I think I'm proud to be a member of these four who can do that.

REP. D'AGOSTINO (91ST): Thank you all. Moving to the third item on the agenda, discussion of Committee process, times and dates of next meetings. With respect to process, I wanted to start off by acknowledging that the Committee has received a written and formal complaint by Jim Feehan, the Republican and Independent party candidate for the office of the state representative for the 120th Assembly District. That will be noted in the record so we have received and are working off of a complaint by the Republican candidate Mr. Feehan and I just wanted to acknowledge that and have the clerk reflect that we've received that complaint.

With respect to process, I would like to just open that up to discussion. There is some different points we can talk about but further to Representative Perrillo's point about getting to the facts, I think we are all of the mindset that at some point soon hopefully, we will take evidence

because as you mentioned, that is the critical question here. What happened?

And I note for the members of the public listening and here and watching that that's actually never occurred. There has never been that kind of hearing before. It didn't happen in the underlying trial court, it didn't happen at the Supreme Court. This is the body where that evidence will be taken and I think we are of the mindset that we will do some sort of public, I mean, the public hearing format allowing anyone including the parties who want to present evidence to us to present it in that format, to come in and present it to the Committee. Are we all of the mindset with respect to that?

REP. CANDELORA (86TH): Yes, thank you. I think what certainly would make sense is coming up with a witness list, so individuals that have information that we identify have information could present that to us. And certainly I think for both parties we should probably afford them the opportunity to submit this Committee a list of written names of who they think that we should speak to. And what I would just envision is that we would have those witnesses come forward at a scheduled meeting with them on the agenda.

My suggestion would not to have a public hearing per say, but to have a Committee meeting where those individuals are identified on the agenda and would be -- have the opportunity to be questioned by us and then I think if we feel that we should have a public hearing process that maybe we do that afterward for individuals or people that we may not have identified. But I think it is important that we get people who are relevant to the case to provide us information.

My worry about having a public hearing is that and maybe you didn't mean this, but I'm just thinking does that end up causing any individual to be able to come here and speak which could be any resident or non-resident in the state of Connecticut. So maybe to limit that focus to the people that we, you know, we feel would have evidence would make sense to start and then as we had talked about if there is an opportunity for both parties if they want to remark after we have collected that evidence, we can do that and then formulate some sort of a report and opinion based on what we have received.

REP. D'AGOSTINO (91ST): Yes, I think we are on the same page in terms of styling this in some sort of evidentiary hearing type of format and maybe public hearing was the wrong word given the meaning that that has around here and take evidence from various witnesses. So I think we are going to contact the parties and I think some of the representatives are here today and while the Committee I think is capable of formulating a witness list, we would like to get from the parties themselves, Mr. Feehan and Mr. Young and their representatives, lists of people that they think we should speak to and then go about through our staff contacting them, finding the time for them to come and proceeding exactly I think as you have indicated, Representative.

REP. PERRILLO (113TH): Thank you. And further on that, as we lay the foundation for those witnesses and what we are going to hear and the questions we are going to ask, it would probably make sense that quite frankly we begin and to your point, the parties really haven't had a great opportunity to represent their own evidence. So it would probably make sense that we start with the parties, hear what they have to say, you know, we have seen things in

writing but to be walked through that would be of value. So that's probably a good place to start in my opinion.

REP. D'AGOSTINO (91ST): I mean, it sounds like and apologies, Greg and Jason for the lawyer, you know, but we almost be dealing with like an opening statement from the parties, an evidentiary hearing and then maybe even giving the parties one last opportunity if we feel it is necessary to speak to us again almost like a closing argument and really proceed in that sort of three pronged fashion.

And I would think I would couple that with at the first hearing that we set where we hear from the parties if there are any documents that they want us to look at, they should feel free to submit it through the Committee to all the members. Does that make sense to everyone?

REP. CANDELORA (86TH): Yes, I think that makes sense.

REP. D'AGOSTINO (91ST): All right. I think that's, I think we have landed on a bit of a process that we are going to follow with respect to that kind of a day with opening statements from the sort of presentations from the parties along with any documents they want to present, followed up with a day and if we decide we need more than that for evidence from various witnesses that the Committee identifies with again the help and the input of the parties and maybe a closing day. Do we want to talk -- before I move to dates and times, anything else we want to talk through about process?

REP. CANDELORA (86TH): So, thank you. I guess one question would be, I mean, two things and I think you are alluding to the dates. Is the initial

process of making the request of a witness list and an evidence list of who to submit it to and we should let sort of a closed time table, you know, I'm thinking next -- early next week to get that information in and then we could set our Committee meeting to call those witnesses in.

REP. D'AGOSTINO (91ST): I think we have got some of the representatives here. I mean, I'm thinking, I think we would love it by Monday but maybe Tuesday morning to give people enough time over the weekend. Is that? All right. Tuesday at 5:00? All right. So we will make a request of the parties and their counsel to get to us by Tuesday at 5:00 a list of witnesses who they think the Committee should hear from and also to submit any documentary evidence they think the Committee should consider.

And then if we scheduled a day for the initial presentations at the end of the week? Friday? Does that work for everybody? I'm generally available. All right. We will talk amongst ourselves to pick a time but maybe sometime in the morning or early afternoon, earlier the better. Then I would say maybe, you know, 10:00 at the latest. 9:30, 10:00. That's a good start.

And then we can go from there with respect --- that will give us next week also to digest the witness list and reach out to people and try to find days when they are all available.

REP. CANDELORA (86TH): And then I guess who should be receiving the documents? Are we having the GAE clerks or?

REP. D'AGOSTINO (91ST): I think that's a good question. I think everything should run through the clerk and that way it is distributed to all of us

properly so material should be appointed to the clerk of the Committee or sent to the clerk of the Committee.

REP. HADDAD (54TH): Just a point of clarification on that. So the clerk of this Committee is the GAE clerk? The GAE clerk has been assigned to --

REP. D'AGOSTINO (91ST): Do we know?

REP. HADDAD (54TH): Clerk this Committee? I mean, we will find out.

UNKNOWN SPEAKER: [inaudible-00:20:12]

REP. D'AGOSTINO (91ST): Why don't they send it to me then now for now until we have got an actual clerk we can announce maybe at the next meeting. And I'll make sure it is distributed to everybody. Does that make sense? Until we have got an actual clerk?

REP. HADDAD (54TH): And I guess I don't want to gloss over this point, I mean, I think that we need to talk with our leadership, make sure there's a, that there is staff assigned to this Committee. I think the responsibility is great enough that it warrants perhaps even the expenditure of some additional resources to ensure that we have a Committee that is dedicated at least whole or in part to this, to our work, that they can be the central repository for communication and holder.

You know, I mention this as well because I'm going to be, I think that we should also make see that our meetings are noticed in a way that meetings would typically be noticed and so a Committee clerk would be valuable and helpful to make sure that that was occurring. And of course, you know, there is all sorts of work that goes on during Committee, our

Committee meetings and our public hearings to make sure that our decisions are properly recorded and we are being recorded now and that takes work and staff as well. And so at the earliest available opportunity I hope that we can work with legislative management to ensure that we have somebody designated to help us do this work.

REP. D'AGOSTINO (91ST): Right, I think we have got like three attorneys assigned to this Committee but we don't have a permanent clerk yet so we will make sure we have got one and hopefully before the end of the day or certainly Monday and then we will circulate that around. And we will try to get that to the parties as well if we have got a permanent one by Monday, we will make sure that that person, that they're aware of who that person is and it is public -- published.

You know, you mentioned a good point, Representative Haddad with respect to notice. I think it is 5F of our joint rules that's the notice provisions for Committees, its 24 hours, you set an agenda. I would be fine adopting that basic House rule or excuse me, joint rule with respect to this Committee to make sure again we are following that if that's agreeable to everybody, it's pretty simple.

REP. CANDELORA (86TH): Yes, I think that's the most appropriate is just for us to operate under our joint rules since obviously we are formulated under them. Thanks.

REP. D'AGOSTINO (91ST): How about a motion and a second?

REP. CANDELORA (86TH): I will make a motion that we operate under the procedures of our joint rules.

REP. D'AGOSTINO (91ST): I think it's, I just want to be clear, I think it's 5F, the rest of the joint rules, there's a whole bunch of other thing that might be --

REP. CANDELORA (86TH): That are --

REP. D'AGOSTINO (91ST): -- we may not want to have like with the public hearing stuff.

REP. CANDELORA (86TH): Right, right, right. So I will amend that to 5F.

REP. D'AGOSTINO (91ST): Thank you. And a second from Representative Perrillo. Any discussion? All those in favor.

ALL: Aye.

REP. D'AGOSTINO (91ST): All right. Motion carries, Thank you.

I think that's it for three unless members have other items they want to discuss with respect to process, dates and times? Any other comments from Committee members? Motion to adjourn? Second. Second by Representative Haddad. All those in favor?

ALL: Aye.

REP. D'AGOSTINO (91ST): Thank you. Thank you all.