

**R. I. STATE BOARD OF ELECTIONS
MINUTES OF MEETING**

July 9, 2014

The Rhode Island State Board of Elections convened at 3:35 PM at the Rhode Island Board of Elections, a quorum included, Vice-Chairman William West, and Commissioners Rhoda E. Perry, Stephen P. Erickson and Frank J. Rego. Executive Director Robert Kando and legal counsel Raymond Marcaccio were also in attendance.

The meeting was called to order by Vice-Chairman West, first order of business: The appeal of James E. Scullin who filed a declaration for office for the office of town council ward 3 and who subsequently filed a declaration for the office of Cumberland Fire District, from the Cumberland Board of Canvassers ruling that the last declaration filed (Cumberland Fire District) negated the previous declaration (town council ward 3).

After Mr. Kando summarized the issue for the Board and exhibits were entered into evidence, Mr. Scullin stated that the Fire District was completely independent of the Town of Cumberland. Attorney Raymond Marcaccio then addressed the issue of dual office holding with members of the Board.

At the close of the discussion Commissioner Erickson moved to sustain the appeal and reverse the decision of the Board of Canvassers seconded by Commissioner Rego. Voting in the affirmative were Commissioner Perry, Erickson, Rego and Vice-Chairman West. No dissenting votes, motion passed.

A motion was then made by Commissioner Rego to extend to the close of business on July 15th for Mr. Scullin to obtain signatures. Voting in the affirmative were Commissioners Perry, Erickson, Rego and Vice-Chairman West. No dissenters, motion passed.

Commissioner Rego moved to adjourn, seconded by Commissioner Erickson. Voting in the affirmative were Commissioners Perry, Erickson, Rego and Vice-Chairman West. No dissenting votes, motion passed at 4:37 PM.

Please review the attached transcript for the detail of above meeting.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
RHODE ISLAND BOARD OF ELECTIONS

IN RE: Appeal of James E. Scullin

HEARD BEFORE: William E. West
Rhoda E. Perry
Stephen P. Erickson
Frank J. Rego
Raymond A. Marcaccio
Robert Kando

Wednesday, July 9, 2014

3:30 p.m.

Rhode Island Board of Elections
50 Branch Avenue
Providence, Rhode Island 02908

Heather A. Lussier, CSR
Capitol Court Reporting, Inc.
931 Jefferson Boulevard
Warwick, Rhode Island 02886
(401) 739-3600

EXHIBITS

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NO.	DESCRIPTION	PAGE
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(ALL EXHIBITS RETAINED BY THE BOARD OF ELECTIONS)

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(COMMENCED AT 3:35 P.M.)

MR. WEST: I'd like to call the meeting of
the Board of Elections for Wednesday, July 9, 2014.
The time is 3:35. Roll call, please.

MS. SKIPWORTH: Chairman Pierce.

(BRIEF PAUSE)

MS. SKIPWORTH: Vice Chairman West.

MR. WEST: Here.

MS. SKIPWORTH: Commissioner Perry.

MS. PERRY: Here.

MS. SKIPWORTH: Commissioner Joyce.

(BRIEF PAUSE)

MS. SKIPWORTH: Commissioner Rego.

MR. REGO: Here.

MS. SKIPWORTH: Commissioner Dubois.

(BRIEF PAUSE)

MS. SKIPWORTH: Commissioner Erickson.

MR. ERICKSON: Here.

MS. SKIPWORTH: Executive Director Robert
Kando.

MR. KANDO: Here.

MS. SKIPWORTH: Counsel Ray Marcaccio.

MR. MARCACCIO: Here.

MS. SKIPWORTH: Thank you, Vice Chairman.

1 MR. KANDO: If the Board would permit
2 me, I would like to state the case as it comes before
3 the Board. There was an appeal from Mr. Scullin, who
4 is to my left. Has filed an appeal from the decision
5 of the Board of Canvassers in Cumberland. The decision
6 is on the last pages of your packet. Mr. Scullin filed
7 a dec -- two declarations in Cumberland. One
8 declaration that's on -- it's listed as Number 1 in
9 your package. It was for Town Council. The second
10 declaration at Page 2 is for Independent Fire District.
11 On Page 3, there is a statute, 17-14-2, specifically,
12 (b) that allows a person to file for -- as one
13 candidate for -- in a general election either state,
14 local or both. I've highlighted that for you in the
15 package. Mr. Scullin has a similar package.

16 The Board of Elections at Page 4 in your
17 package has a regulation for declarations. In Section
18 3 in the highlighted portion, it states that if a
19 person -- if a voter files a declaration for candidacy
20 for more than one state or local office during the
21 declaration period, the last declaration filed shall
22 negate any previous filings. At Page 5, the definition
23 of election is in there, and in the highlighted portion
24 under Number 1, there's an exception that excludes

1 financial town meetings or a meeting to elect officers
2 of a fire, water or sewer district. One of the
3 declarations that Mr. Scullin filed was for the
4 Cumberland Fire District. At Page 8 of your package,
5 it is the enabling statute that created the fire
6 district. I have highlighted on Page 8 at the bottom
7 of the -- of a paragraph that any and all elections
8 provided for under this act shall be administered by
9 the State Board of Elections and the Town of Cumberland
10 Board of Canvassers. And, again, as I've previously
11 stated, you have the decision of the Board of
12 Canvassers in Cumberland that found that Mr. Scullin
13 could only run for one office, and that being for the
14 office of Independent Fire District which was the
15 second one file -- which was the second declaration
16 that was filed. I -- if you would like, I think that
17 Mr. Scullin would like to address the Board.

18 MR. MARCACCIO: Before he does so, should
19 we first mark the documents you just referred to as
20 full exhibits so that there is a record?

21 MR. KANDO: Mr. Scullin, would you have
22 any objection to the items that we've just gone over as
23 being entered as full exhibits?

24 MR. SCULLIN: No. Not at all.

1 MR. KANDO: Okay. So --

2 MR. MARCACCIO: I think all of those could
3 be marked as one, except for the draft minutes from the
4 local Board which would be Exhibit 2.

5 MR. KANDO: Okay. So we'll mark the
6 package as Exhibit 1. This package, Mr. Scullin. And
7 the Minutes will be Exhibit 2.

8 MR. SCULLIN: Okay.

9 (Exhibit Numbers 1 and 2 marked)

10 MR. MARCACCIO: And then just for purposes
11 of completion, why don't we mark as Exhibit 3 the
12 originals. That would be in the event that any other
13 body were to review this, we'll have as Exhibit 3 with
14 the Vice Chairman's position the original documents
15 that were submitted including the appeal notice, the
16 declaration of candidacies as well as the copy of the
17 act.

18 MR. WEST: Fine.

19 MR. KANDO: So the original copies will be
20 Exhibit 3. And you're okay with that, right,
21 Mr. Scullin?

22 MR. SCULLIN: Yeah.

23 (Exhibit Number 3 marked)

24 MR. KANDO: Could I -- I just want to show

1 those -- Exhibit 3 to Mr. Scullin before he starts.

2 MR. MARCACCIO: The originals?

3 MR. KANDO: Yes, please. Just to let him
4 know that these are the -- these are the exhibits that
5 are going to be Exhibit 3. You can take those apart.

6 MR. SCULLIN: Yeah. Yeah. I got a copy
7 here. Same thing.

8 MR. KANDO: I just want you to see them
9 all. Here's the declaration, the original declaration,
10 the statute and the rules and regulations.

11 MR. SCULLIN: That was all provided by the
12 Town, the Board of Canvassers?

13 MR. KANDO: They provided --

14 MR. SCULLIN: Except the top.

15 MR. KANDO: They provided me the
16 declaration. So this is all I got. I think this is
17 all I got, but I may have received this as well.

18 MR. SCULLIN: Okay. Because they had that
19 at -- on the -- all as one packet.

20 MR. KANDO: So you're okay with all that?

21 MR. SCULLIN: Yes. I'm fine.

22 MR. KANDO: All right. If you would like
23 to address the Board --

24 MR. WEST: All set. Mr. Scullin, would

1 you please raise your right hand. Repeat after me. I
2 do solemnly swear to tell the truth, the whole truth
3 and nothing but the truth so help you God?

4 MR. SCULLIN: I do.

5 MR. WEST: Please state your name and
6 address for the record, please.

7 MR. SCULLIN: James E. Scullin, 85 Carlson
8 Drive, Cumberland, Rhode Island 02864.

9 MR. WEST: Proceed.

10 MR. SCULLIN: Okay. Thank you for your
11 time today. This is a very important issue to me.
12 I've been on the Fire Board for 17 plus years in Valley
13 Falls, and we have always been able to have the option
14 of being on both the Town Council, the School Committee
15 and a Fire Board, any of those three -- any of those
16 mixtures. And I feel that is not proper that this
17 legislation which I don't -- I think the legislation is
18 meaning -- can be interpreted in a different way to
19 prevent my running for a Town Council seat and the
20 Town-wide Fire Board. And my biggest objection comes
21 because the Town-wide Fire Board is created by a
22 legislation to be a completely independent board from
23 the Town. It doesn't report to the Town. It has its
24 own taxing authority. It sets its own budget, and it

1 has nothing to do with the Town of Cumberland, except
2 it provides public safety to the residents of the Town
3 of Cumberland in which they pay the Independent Board
4 for on a separate tax, not including their town tax.

5 And I will tell you, I supported this
6 legislation when it went in. There were holes in it, I
7 knew, but it was a 12th-hour legislation. And I hoped
8 that we could straighten it out because we had another
9 full session before this went in; but powers beyond my
10 control, we couldn't get there. So I feel it's
11 imperative that it should be straightened out because
12 it -- there is a large issue here that if the Board --
13 if the ruling of the Cumberland Board rules, you know,
14 you're in effect creating -- the Fire Board is going to
15 become -- they're going to become Town officials. So
16 you're going to have Town officials running an
17 independent board that doesn't report to the Town. On
18 that end, I think it's a major liability to the Town of
19 Cumberland. They should be watching this closely,
20 and -- and I don't think that -- I know that wasn't the
21 intent of this legislation to involve the Town in any
22 liability of the fire district because they are two
23 separate entities unto themselves, their own charter.
24 So it creates a problem.

1 Another issue I do want to bring up that's
2 the basis of the entire challenge of my declarations is
3 when I did meet with the Cumberland Board of
4 Canvassers, they had some of the paperwork that was
5 provided by Mr. Kando and his office. But it was
6 not -- it was missing a page that referred to fire
7 districts, and water and sewer authorities being
8 separate. I don't know whether that was just an
9 oversight, they didn't realize that was in the packet
10 or what. And I think that's a very important part of
11 it because, obviously, the Board knew that these fire
12 districts, water commissions, sewer commissions are
13 separate entities from the Town, and the two should not
14 mix.

15 So, basically, I think the legislation
16 doesn't really specify what law they were going to run
17 the elections under. Just says they're going to run
18 the elections. So they're just going to create,
19 basically, a Town-wide meeting to elect the Board
20 members. And I think that's where we're at. I think
21 that's the conclusion I would like to see this come to,
22 and I think it's fair to everybody. I think it's fair
23 to the taxpayers. It saves the taxpayers a burden of
24 having Town officials run an independent board and

1 creating a conflict which I -- could become a major
2 problem because there are some major liabilities within
3 the fire districts currently that could have serious
4 ramifications on the Town of Cumberland. And that's
5 definitely in all my years of being involved because
6 we've been working on mergers -- for the 17 years I've
7 been on Valley Falls, we've been working for 17 years.
8 This is the closest we've come to it, and I don't
9 really want to see this stopped in its tracks because
10 of some procedural mistakes. But I think it's vitally
11 important that we have some clarification of how it
12 should go forward.

13 MR. WEST: Does the Board have any
14 questions?

15 MR. REGO: I have nothing for Mr. Scullin.
16 I just have questions -- obviously, it's to the -- I
17 just have some questions to the Legal Counsel in the
18 proper time.

19 MR. WEST: Would be now.

20 MR. REGO: Okay. Thank you. I look --
21 first, I look at the -- I look at Chapter 505 of
22 Cumberland, and I see here it talks about that we
23 administer the -- it talks about the Board of Elections
24 being administered and the Town of Cumberland

1 Canvassers, but I mean, that's just that we're the ones
2 that count the ballots and everything. That's what the
3 word, administered means. We prepare the ballots. Do
4 all --

5 MR. MARCACCIO: Yeah.

6 MR. REGO: Do all the necessity.

7 MR. MARCACCIO: That's -- that's correct.

8 MR. REGO: All right. If I was then to
9 refer -- and I go to 17-1-2 under (1) Elections, and it
10 says here it shall not include financial town meetings
11 or a meeting to elect officers of the fire, water or
12 sewer district. To me, that's pretty cut and dry, I
13 mean, from what I'm seeing. Again, I'm not a lawyer,
14 but I've been up here long enough. Meaning that if
15 you're running for a fire district, you're -- it
16 doesn't count towards you running for another office.
17 That's what -- that's what I'm reading in this.

18 MR. MARCACCIO: I could address each of
19 those. I've actually -- what I've tried to do is -- I
20 said to the Director before we started I created some
21 legal observations that I could share with you now that
22 might give you some guidance and my answer to those
23 questions that Commissioner Rego just presented.

24 First, I think the -- this isn't the order

1 I had it in. Let me just -- let me just address
2 your -- your -- your question with respect to the
3 Chapter 505. I agree that the reference to the State
4 Board of Elections at the end of Section 1 -- Section 1
5 actually then has Section 1, 2, 3. Any and all
6 elections provided for under this act shall be
7 administered by the State Board of Elections and the
8 Town of Cumberland Board of Canvassers. I would agree
9 that the normal meaning for the word, administer would
10 relate to the oversight, management of as opposed to
11 the typical language you might find from the General
12 Assembly which we say shall be governed by, for
13 example, Title 17 of the General Laws or shall having
14 specific exception of a certain act. So that I -- I do
15 agree with.

16 I do find that the operative provision is
17 17-14-2 as Mr. Kando mentioned. Subsection B -- I --
18 before we met, I did some research and could not find
19 any Rhode Island Supreme Court case that has assessed
20 the legality of that position, except for a provision
21 set forth in Subsection B. However, in a 2009 decision
22 from the United States District Court, Judge Smith, he
23 did analyze briefly that provision. And that was in
24 the context of a Central Falls local boards case, and

1 that's before him. And Judge Smith found that this
2 provision as it was applied by the state board which is
3 similar to the way that the local board has done for
4 Mr. Scullin was a reasonable interpretation of the act
5 and in his view was legal. Now, he did say the better
6 approach would be to have that certified to the Supreme
7 Court. But given the speed that these elections go, he
8 instead made a decision on it. So we do have the
9 Fontes versus City of Central Falls case of 2009 that,
10 at least, has his own assessment as to the legality of
11 the statute in question. I think the key thing is
12 whether or not the office that we're dealing with right
13 now for the fire district is a quote, public office.

14 MR. ERICKSON: Public or state or local?

15 MR. MARCACCIO: Well, public office would
16 be either of those. It would include that whole genre
17 of offices. And there's nothing within Title 17-14,
18 the operative chapter that defines public office.
19 However, we get some instruction from 17-25 which is
20 the campaign finance chapter. And in that, it defines
21 public office as any state, municipal, school or
22 district office or other position that is filled by
23 popular election, which I think is a key factor, -- we
24 should make sure it's clear on the record -- except for

1 political parties. And then it says political party
2 officers mean any state, city, town, ward,
3 representative or senatorial district committee office
4 of a political party or delegate to a political party
5 convention or a similar type office. So, again, that's
6 at 17-25-3, Subsection 11. So that does give you some
7 guidance.

8 MR. REGO: Can you just -- sorry. Can you
9 just repeat the offices that they just repeated that?

10 MR. MARCACCIO: Yes.

11 MR. REGO: Can you just repeat them all
12 for me?

13 MR. MARCACCIO: Public office means any
14 state, municipal, school or district office or other
15 position -- which is fairly broad -- that is filled by
16 popular election. And then it -- then it has the
17 exception for party officers.

18 MR. REGO: Okay. So I got a question for
19 you right now before we proceed any further. I'm just
20 going to throw this out to you. I'm a state senator or
21 state rep., right? So I'm running for senator or rep.,
22 and I'm also on my rep. committee. That's running for
23 two offices.

24 MR. MARCACCIO: Well, it has an exception

1 for that.

2 MR. REGO: There is an exception?

3 MR. MARCACCIO: Yes.

4 MR. REGO: That's what I was wanting to
5 have the clarity on.

6 MR. MARCACCIO: Those are exceptions. The
7 real question I think, Commissioner, and to the Board
8 is whether or not this office is elected by popular
9 vote now in light of Section 504. My understanding
10 from reviewing the act, and we can -- I think this
11 should be placed to the witness is that for the
12 at-large seats it is by election by the electors of the
13 town of Cumberland which would at least as far as
14 Chapter 25 is concerned fall under that definition.

15 There's one other thing I would direct you
16 to, and that is the 1984 Supreme Court decision of
17 Gelch versus State Board of Elections which dealt with
18 very, very different issues. But in it, the Supreme
19 Court did address what a public office was, and it
20 states that public office is defined to include the
21 idea of quote, tenure, duration, powers and duties of
22 an office. And there are three principal tests for
23 determining what constitutes a public office. (1),
24 whether the sovereignty either directly through

1 legislative enactment or executive appointment or
2 indirectly as through municipal charter is the source
3 of the authority. (2), whether the duties pertaining
4 to the position are of a public character that is due
5 to the community and its political capacity. And (3),
6 whether the tenure is fixed and permanent for a
7 definite period by law. Later the same court says the
8 meaning of the word, office not only includes the
9 entitlement to a salary and the right to exercise
10 certain powers but also includes a fixed period for
11 which the office may be held. And my understanding
12 from reviewing this section, this is for a defined
13 period of time, again, where the popular vote elects
14 the person.

15 If you look at Section 3 of 504 which is
16 in your docket of materials, it states there are seven
17 members to this district that shall be elected. Each
18 of the five council districts shall elect one member
19 with two members being elected from the town at-large.
20 So from that, I understand that there is an election
21 for the at-large members by the town electors
22 themselves.

23 Finally, with respect to what Commissioner
24 Rego raised on the definitions, 17-1-2 which refers to

1 election. So the term, election is not the same as
2 defining public office. Instead, what they're doing in
3 this section is saying that election means the filling
4 of any public office or the determination of a public
5 question by vote but shall not include a financial town
6 meeting or a meeting to elect officers of a fire, water
7 or sewer district. I see that as slightly different
8 than saying what is a public office. I see that
9 instead of saying whether all of the rules and statutes
10 under Title 17 attach to that local office where
11 they're elected by a meeting. So, again, there's a
12 distinction even within this new act where two of the
13 members appear to be voted by the town. Five appear to
14 be voted by districts. So with respect to those two as
15 best as I can determine -- and we're creating a
16 decision from your vote that that would be a public
17 office because of the tenure of it and the election. I
18 think the factual questions are whether I'm correct
19 that this is a person who is elected by a popular vote;
20 and second, whether -- or which of these declarations
21 was signed first, and were they submitted at the same
22 time. Those are questions that might be of guidance to
23 the Commissioners when they -- when they make their
24 ruling.

1 MR. REGO: All right. So you did clarify
2 that. You know, as I see it now, it looks like -- when
3 I read it again, if Town of Cumberland or any town or
4 city was to have a public meeting, you know, first
5 Tuesday of October and they're going to elect the Fire
6 Commission or Water Board or anything like that, that
7 wouldn't be -- that would be covered, and you get
8 elected to that position. That doesn't void you from
9 holding any other office is what you're basically --

10 MR. MARCACCIO: That's -- that's the
11 way --

12 MR. REGO: The way I'm reading it and what
13 you said. So --

14 MR. MARCACCIO: That's correct. And even
15 if he filed two declarations, if the second declaration
16 wasn't for a public office, then it wouldn't nullify
17 the first declaration even if he's using that form.
18 Here the question -- dispositive question is whether or
19 not it is a public office. From my review of the case
20 law and the other statutes from Chapter 25, it appears
21 that it is.

22 MR. REGO: You know, I'm not -- you know,
23 I'm sorry, Commissioner.

24 MR. ERICKSON: I'm not sure I necessarily

1 agree with your reading, and so I have a couple of
2 questions about that. First of all, with respect to
3 17-14-2 Sub B, it says the person is declared to be a
4 candidate for another elected public office, either
5 state, local or both. It doesn't end with the term,
6 public office. It is a comma rather than a period, and
7 defines the public office as being either state or
8 local. It seems to me that that creates a distinction
9 with respect to Section 17-1-2, Subsection 6,
10 definition of local election which says that it's any
11 election limited to the electorate of any city or town
12 or any part at which city, town, water district offices
13 are to be chosen, which implies that it is a municipal,
14 i.e. city or town election that is considered to be
15 local. And so the question is if this isn't a state
16 office and it isn't a local office, what is it? And
17 the answer I think can be found in Section 8 of the
18 statute that is the enabling act.

19 MR. MARCACCIO: Of which chapter?

20 MR. ERICKSON: Of the enabling act.

21 That's Chapter 505, Section 8 which refers to this
22 organization as having corporate status under the
23 corporate -- under the corporation law, not under --
24 not under the election law or under any other

1 organizational structure. Very clearly states the
2 consolidated Cumberland Fire District is a corporate
3 entity which makes it a quasi-governmental corporation
4 rather than a governmental entity per se. And so it
5 seems to me the public office may include
6 quasi-municipals, but the statute does not. It seems
7 to include just state or local offices. And the third
8 category would be a quasi-governmental, and despite the
9 enabling statute, it's a quasi-governmental
10 organization rather than a state or local organization.

11 The other -- the other consideration I had
12 with respect to that goes not to the interpretation of
13 the statute but to, frankly, the constitutionality of
14 the statute. Given the fact that if the Cumberland
15 Fire District decided to make the declaration period
16 May 1 through 2 and the election on the first Wednesday
17 after the first Monday in November, they would be
18 allowed to run for both offices. But if they make the
19 declaration period the same as for state and municipal
20 offices, then have the election on the same day,
21 they're not. So you're creating two categories of
22 elective capacity for the same type of entity based on
23 whether they hold -- when they hold their election.

24 Many decades ago, more than I care to

1 think about, I was the attorney for the Portsmouth
2 Water and Fire District for a brief period of time, and
3 they had their elections -- I think they were in April,
4 and they ran their own. What seems to me to be here
5 the case is the Cumberland -- the statute gives the
6 State the authority to run the election so that unlike
7 Portsmouth or the other water and fire districts or
8 whatever they may be, they're not -- they're not being
9 run locally. They're being run by the Board of
10 Elections by the court adherences and not by the
11 organization. But that doesn't alter the fact that
12 it's a quasi-governmental corporation and not a
13 municipality. The mere fact that the
14 quasi-governmental covers exactly the same area as the
15 municipality is really irrelevant if they're two
16 different organizations that just happen to cover the
17 same geographic population.

18 MR. MARCACCIO: I think -- I think first
19 I -- I very much agree with the last point with respect
20 to the administration of the elections. I guess the
21 question that we need to focus on and -- and your
22 position may prevail, but we are left with I believe
23 two people from this fire district who are voted by the
24 entire town.

1 MR. ERICKSON: By the dis -- by the -- by
2 the fire district population which happens to be the
3 same as the town.

4 MR. MARCACCIO: I think that's -- I think
5 that -- and that makes it apparently unusual with
6 respect to fire districts. This isn't a consolidation.

7 MR. ERICKSON: Right.

8 MR. MARCACCIO: But I -- I struggle with
9 how to treat that office when you do have the town
10 electors voting that person for a defined period. At
11 least from my view of the statutes and the case law,
12 that appears to be sufficient to be what a public
13 office would mean.

14 MR. ERICKSON: But it doesn't say just
15 public office. It says public office, whether state or
16 local and does not include quasi-governmental
17 corporations.

18 MR. MARCACCIO: But if you're running --
19 if you are receiving votes from the entire town, the
20 question is whether or not that would be sufficient to
21 be considered a local election.

22 MR. ERICKSON: So if they left 50 people
23 out of one of the villages, there would be a different
24 outcome here?

1 MR. MARCACCIO: Possibly. Then that would
2 be -- that -- if they were voting -- if there was no
3 popular vote for the office, my view would be
4 different. Since there is a popular vote for the
5 office and it is a for a specific period of time --

6 MR. ERICKSON: But if they had a popular
7 vote for the entire town, except for 50 people who
8 aren't included in the fire district, then it's not
9 congruent, and therefore, the outcome is different?

10 MR. MARCACCIO: Well, I -- it is still a
11 popular vote.

12 MR. ERICKSON: Is it the congruency -- is
13 it the congruency of the town with the fire district?

14 MR. MARCACCIO: I think it's the fact that
15 it's a popular vote. I mean, that's what Gelch touches
16 on, which is whether -- that's one of the criteria. Is
17 it a -- it's a public office, if it is a person who's
18 elected by popular vote.

19 MR. ERICKSON: But this is a
20 quasi-governmental corporation, not a governmental
21 entity.

22 MR. REGO: Public corporation changes --

23 MR. ERICKSON: Because it's organized as a
24 corporation.

1 MR. MARCACCIO: That certainly -- I think
2 you're right. I don't dispute that. But does it
3 change the fact that the person sitting in those two
4 seats is a -- in a public office even if -- even if the
5 seat he occupies is on some type of a corporate entity?
6 I don't -- I haven't --

7 MR. ERICKSON: But the statute says public
8 office, state or local.

9 MR. MARCACCIO: Right.

10 MR. ERICKSON: Which are two subsets of
11 the entirety of public office.

12 MR. MARCACCIO: I agree with you.

13 MR. ERICKSON: Public office as a whole
14 includes quasi-governmentals. Let's assume that for
15 argument sake. Assuming that quasi-governmentals are
16 included in the general universe of public office, when
17 the statute limits the public office to state or local,
18 then that creates a different environment for the
19 statute to be considered as far as this. So you can
20 run -- so if they had changed the dates by five days in
21 one direction, it would be permissible for a person to
22 declare for both offices because the elections are not
23 on the same day, and the declaration period is not the
24 same day. So if Cumberland decided to have their

1 declarations in April and their election in October, we
2 wouldn't be here today.

3 MR. MARCACCIO: Well, I think you're
4 right. We might not be here today. I'm not sure that
5 would -- I'm not sure that there wouldn't be an
6 adequate or successful challenge to somebody occupying
7 two public offices.

8 MR. ERICKSON: That happens all the time,
9 though, with the quasis because all --

10 MR. MARCACCIO: Were they elected by the
11 general -- by the general vote, popular vote?

12 MR. ERICKSON: Sure. Sure. Aren't most
13 fire districts? Water districts are elected by popular
14 vote. I know that was my -- the experience I had in
15 Portsmouth.

16 MR. MARCACCIO: They're not -- it's not by
17 the actual meeting that --

18 MR. ERICKSON: No. They have -- they go
19 to the -- they go to the district office, and they cast
20 the vote. It's not --

21 MR. REGO: They just put this one to be
22 administrative by the Board of Elections, but normally
23 like -- like you -- that's what I was alluding to.
24 They're just the facilitator of the elections.

1 Normally whatever, the first Tuesday of April, May,
2 June, you go to the local, you know, middle school, and
3 you vote for -- for the fire district or the water
4 district.

5 MR. WEST: The point of the matter is that
6 it's not the case. The case is that it's on the same
7 day as the regular -- the regular election.

8 MR. ERICKSON: Right.

9 MR. WEST: So that's what we have to look
10 at, not what might be should it fall on a different
11 day.

12 MR. ERICKSON: Right. But we have an
13 obligation to interpret the statute in a way that
14 avoids constitution infirmity. And it seems to me that
15 there's a due process, an imperfection issue if the
16 Portsmouth Water and Fire District can have their
17 self-administered elections in May and still have
18 somebody who's on that board sit on the city or Town
19 Council and the Town Council would be a State
20 representative. And I'll explain why I give that
21 specific example in a moment. And the Cumberland
22 situation where because they've decided to have their
23 elections for convenience apparently on the same day as
24 municipal elections, now you've created two categories

1 for water and fire and quasi-governmental
2 organizations. One category that holds their elections
3 for convenience purposes on Election Day as we define
4 it where you're not allowed to hold two offices. And
5 those organizations like the Portsmouth Water and Fire
6 District have their elections on a different day are
7 allowed to hold two offices. And my recollection of
8 that is based on the fact that I was on the losing side
9 of the when the Board challenged one of the people for
10 dual office holding back in the 1980s.

11 Although there's no Supreme Court case on
12 it, there was a Superior Court decision on it where
13 they, essentially, ruled that was not prohibited. Now,
14 it's a different statute. It was a different
15 situation. But clearly, the quasi-municipal shouldn't
16 be -- your capacity to function as a representative of
17 a quasi-municipal corporation shouldn't be determined
18 by whether or not you happen to use the same election
19 date. And if you're creating two different categories
20 of quasi based on what date they pick to have their
21 election, I think there is a constitutional infirmity
22 with the statute, and it's our obligation to interpret
23 the statute. And the way to do that is to say this is
24 included in the statute. It's a quasi-municipal. It's

1 not state. It's not local. So just as if they decided
2 to hold the election at a different time, the mere fact
3 that they used the two forms are not really relevant.
4 That would be --

5 MR. MARCACCIO: Yeah. I -- I -- I -- I --
6 I think that's a -- that analysis is reasonable, very
7 reasonable. I -- I can't sit here and say that it's
8 unreasonable. And I -- I know that yesterday when I
9 reviewed this I also was concerned with some of the due
10 process challenges that could result from this
11 particularly for people who are in different districts,
12 not in Cumberland, not under this Section 504
13 consolidated one. But at the end of the day, I was
14 left with trying to reconcile two declarations being
15 filed at the same time with an operative provision
16 saying that one nullifies the other. My focus was on
17 whether or not it would be a public office. So I defer
18 to the Commissioners. I think that --

19 MR. ERICKSON: I don't disagree that it's
20 a public office. I just think that there's a
21 qualification which public offices are covered by
22 17-14-2.

23 MR. WEST: Should this be clarified in --
24 in the law now? I mean, you know, otherwise, -- well,

1 depending on what we rule, but should there be a
2 clarification in the State law; or do we determine --

3 MR. MARCACCIO: Well, I think you have
4 enough before you to make a determination with respect
5 to this candidate, and I think we all could look at
6 Section 504 of this act, this consolidation act and
7 find a number of problems with it and -- but it is what
8 we're left with right now. What Commissioner Erickson
9 said is -- is certainly one of your obligations, and
10 that is to -- when at all possible, to harmonize
11 competing statutory provisions so that you do not have
12 either a constitutional challenge or a conflict between
13 the statutes.

14 MR. REGO: Can -- I have a question to
15 Legal Counsel here. Can we go back to -- you mentioned
16 earlier about the ruling from Federal Court Judge
17 Smith. And I think I raised this with you in past
18 elections, and I don't know if he covers it or -- I
19 under -- I read the law on declaration of candidacy.
20 And my thing is I don't think it's ever been challenged
21 locally. Really -- I'm not a -- I can pull out a piece
22 of paper and say I'm running. I don't -- you know,
23 people do it all the time. And they pull out papers,
24 and then they don't return it. So they're not --

1 you're not a candidate until you go out there and
2 collect enough -- you know, enough signatures to be
3 certified to be a candidate for an office, right?

4 So right now, for instance, I'll use an
5 example. My son was getting -- you know, all the
6 colleges recruit, were going after him to be a runner.
7 And he had seven or eight of them. They all wanted
8 him, and he could go to every choice. And he could go
9 to all of them until he made his decision to go where
10 he choosed (sic). So I mean, maybe it's a wrong
11 analogy, but I haven't decided what office I'm going to
12 run for. I understand what this law's trying -- what
13 this law tried to do. There were people that would run
14 for, you know, City Council, Mayor, you know,
15 everybody, would run for seven offices. It would stop
16 them from running, getting the name on the ballot. But
17 I'm not a candidate until my -- until my paperwork
18 comes back to the local city or town and whatever --
19 you know, whatever it is, fifty signatures, a hundred
20 signatures, two hundred, whatever that local office
21 equates to. I'm not a candidate. All I am -- I just
22 filled out a piece of paper. What it -- I mean, -- and
23 again -- and I don't know -- again, I'm not a lawyer.
24 I'm not a judge -- as far as what the Supreme Court

1 would do with this. When do I actually -- I actually
2 become the candidate for an office is when the -- when
3 the signatures are certified. Up to that --

4 MR. MARCACCIO: Truly, under the case law,
5 you have to be qualified to run for that office on the
6 date that you file your declaration. That's the
7 operative date.

8 MR. REGO: So you're certified to run in
9 that district or whatever?

10 MR. MARCACCIO: You have to be qualified.

11 MR. REGO: You have to be qualified. So
12 you have to live in the area that you're running for?

13 MR. MARCACCIO: Right. As of the date
14 that you file your declaration, that's the date --

15 MR. REGO: Right. So I could be a rep. I
16 could be a Rhode Island state rep. and also run for a
17 city. Technically, I'm eligible for my city -- you're
18 eligible for multiple offices if you live in a city.
19 You could be City Council, School Committee, you know,
20 etc., etc.

21 MR. MARCACCIO: Right.

22 MR. REGO: So I'm eligible for all those
23 offices. I'm not really a candidate until I'm
24 certified.

1 MR. MARCACCIO: Well, not -- for example,
2 we have a case -- we had a case --

3 MR. REGO: I'm just asking for your
4 guidance.

5 MR. MARCACCIO: I know. I'll give you --

6 MR. REGO: When am I actually a candidate
7 on the record?

8 MR. MARCACCIO: I'll direct you back to
9 the case we have with a woman named, Edna Poulin who
10 ran in Central Falls several years ago, and she filed
11 declarations both for City Council and for Mayor. And
12 once she filed for the second one, it nullified the
13 first.

14 MR. REGO: I remember that now. Yeah.

15 MR. MARCACCIO: So she had -- she
16 certainly was qualified as an electorate for either,
17 but that declaration form nullified her -- her first
18 declaration. That was discussed by Judge Smith, and he
19 found that --

20 MR. REGO: Okay.

21 MR. MARCACCIO: We applied this statute.
22 We applied our regulation. And he found that our
23 application to be in his view reasonable. So he said,
24 well, the Supreme Court could under what the judge

1 mentioned raise some concerns with constitutional
2 challenges. At least what we did then was considered
3 by him to be reasonable and, therefore, legal. Now,
4 I --

5 MR. ERICKSON: Let me give you some
6 examples. For example, if, I mean, a municipality
7 decided to have off-year elections and the water
8 district and the fire district had on-year elections,
9 you could be on both because you file one for one year
10 and one the other year. You could be elected mayor to
11 a four-year term and then running for the legislative
12 two years later because you're not on the ballot be
13 elected to the legislature, but then two years later
14 not be able to run for the both offices that you
15 currently hold.

16 MR. MARCACCIO: So were you submitting two
17 declarations in the same time?

18 MR. ERICKSON: Not -- not in Case 1 which
19 is you file a declaration for mayor in Year 1.

20 MR. MARCACCIO: Right.

21 MR. ERICKSON: Okay. In say 2010, you
22 file a declaration for mayor. That's a four-year term.

23 MR. MARCACCIO: But this one you're
24 elected.

1 MR. ERICKSON: Okay. So now you've got a
2 four-year term. Two years later you're in the middle
3 of your four-year term. You file a declaration for
4 some other office, and you get elected to that office.
5 You're now holding both offices. Two years after that,
6 both your two-year term and your four-year term come
7 up. Now, you could only file for one of the two
8 offices at which you were legally entitled to file for
9 when they came up individually. It seems to be the
10 statute is not drafted well for the purpose of
11 precluding dual office holding as opposed to dual
12 declaration. It would be very easy for the legislature
13 to ban dual office holding, but the Supreme Court has
14 said dual office holding is acceptable as long as one
15 office doesn't report to the other.

16 MR. MARCACCIO: I can tell you, Judge,
17 what I think the purpose of this statute is which is a
18 little different, and that is to make sure that voters
19 are not confronted with someone running for office --
20 offices in one election cycle. I think 14-2 is one
21 election cycle so that you don't have a person who
22 might win two offices in one election cycle and choose
23 to serve only one of those, thereby requiring a special
24 election for the other. So, I mean, I think 17-14-2

1 was -- I wasn't on the General Assembly. I don't know,
2 but it seems that it was designed -- or one could
3 conclude it was designed to avoid that result as
4 opposed to simply dual office holdings.

5 MR. ERICKSON: And for the situation where
6 you may not be legally entitled to hold both offices
7 because under the Supreme Court's interpretation of
8 dual office holding, if one office is subservient to
9 the other office, then you cannot hold both. They're
10 in conflict. All right. So, clearly, if you ran for
11 two offices that were in conflict with each other, then
12 you would have to select one afterwards. You would
13 create the special election. But when you're talking
14 about a Town Council and you're quasi-governmental
15 where there is no ban in the common law in holding both
16 of those offices, you're now making that decision based
17 upon an arbitrary determination as to when the election
18 cycle is rather than based on any policy that supports
19 that.

20 MR. MARCACCIO: I -- I -- I -- I've come
21 to understand and appreciate your position on that.

22 MR. ERICKSON: We may disagree.

23 MR. MARCACCIO: And that's fine.

24 MR. WEST: Do we have any more questions

1 from the Board? Commissioner Perry, do you have any
2 questions?

3 MS. PERRY: No.

4 MR. WEST: Mr. Rego?

5 MR. REGO: No. This Commissioner is good.

6 MR. MARCACCIO: Mr. Vice Chair, I still
7 think one -- one thing. I think what Commissioner
8 Erickson just went through is extremely important, but
9 the other thing from a factual perspective, I -- I
10 wasn't sure if the -- I think the record should at
11 least establish that the office he ran for was one that
12 was elected by the voters of the town of Cumberland.
13 I'd also like to know for the record which of these
14 declarations he filed -- signed first and second and
15 then whether they were filed contemporaneous and it was
16 the clerk who decided which would be filed or him.

17 MR. ERICKSON: I agree with you a hundred
18 percent because, you know, I -- we might rule one way,
19 and we may have basis for the ruling; and the Supreme
20 Court is going to look at this entirely differently.

21 MR. MARCACCIO: Remand it. Or remand it
22 and say we need more facts.

23 MR. ERICKSON: And they may say we need to
24 know which one was filed first. They very well may

1 have that.

2 MR. WEST: Do we have -- Mr. Kando.

3 MR. KANDO: If you look at your copies,
4 one was filed at 3:48, and one was filed at 3:46.

5 MR. ERICKSON: Well, that's when it was
6 noted.

7 MR. MARCACCIO: That's when it was
8 stamped. That's when it was stamped.

9 MR. ERICKSON: I think we need testimony
10 from the witness concerning the actual process for the
11 filing.

12 MR. MARCACCIO: Right. Were they
13 contemporaneous?

14 MR. SCULLIN: No. I purposely handed it
15 to the Town Clerk's office one at a time. Asked them
16 to stamp that one --

17 MR. ERICKSON: You asked them to have it
18 marked that way?

19 MR. SCULLIN: Right. They come back, and
20 then I gave the other one.

21 MR. ERICKSON: There it is for the record.

22 MR. SCULLIN: For the record, the Town
23 Clerk's office -- I had asked previously how they were
24 going to handle this. So they weren't oblivious to

1 what they were going to do, you know, because they knew
2 my issues prior to the filing.

3 MR. KANDO: So it would be your -- your
4 statement that they -- they are correctly timed?

5 MR. SCULLIN: Yes. The Council first and
6 the Fire District second.

7 MR. KANDO: Okay.

8 MR. WEST: We have a gentlemen in the back
9 of the room. What -- what -- before you even say
10 anything, what do you have regarding --

11 MR. SANTOS: I'm on the Cumberland Board
12 of Canvassers, and I find this conversation absolutely
13 terrific. I'm on the Cumberland Board of Canvassers.
14 You made a decision. Nobody's interested --

15 MR. WEST: Just a minute, please.

16 MR. SANTOS: -- why we made a decision?

17 MR. WEST: Just a minute, please. I just
18 ask you raise your hand --

19 MR. SANTOS: I'm on the Cumberland Board
20 of Canvassers, and I would like to make a statement --

21 MR. WEST: Okay.

22 MR. SANTOS: -- on behalf of the town.

23 MR. WEST: Do you -- you represent the
24 Board of Canvassers?

1 MR. SANTOS: Yes, I do. I'm a member of
2 the Board of Canvassers.

3 MR. WEST: No. Do you -- are you --

4 MR. SANTOS: They asked me to show up
5 today, and here I am.

6 MR. MARCACCIO: It's up to the Board.
7 I -- if he is a member, you can hear a brief statement
8 from him, or you could say that the Minutes as drafted
9 are sufficient. That's entirely up to the Board.

10 MR. WEST: What's the pleasure of the
11 Board?

12 MR. REGO: Well, the gentleman came here.
13 I'm always open to public speaking. I mean, I don't
14 want to stifle anybody, at least when I was the Chair.

15 MS. PERRY: I agree.

16 MR. WEST: Come forward.

17 MR. KANDO: You can sit right here.

18 THE REPORTER: Could you just state your
19 name for me.

20 MR. SANTOS: Alfred Santos. I'm a new
21 member of the Board of Canvassers. Having been
22 involved in politics all my life --

23 MR. WEST: Sir, -- sir, --

24 MR. SANTOS: Yes.

1 MR. WEST: Just a minute, please, until
2 you're sworn in.

3 MR. SANTOS: Yes. Fine.

4 MR. WEST: Raise your right hand. Repeat
5 after me. I do solemnly swear to tell the truth, the
6 whole truth and nothing but the truth so help me God.

7 MR. SANTOS: I do solemnly swear to tell
8 the truth, the whole truth so help me God.

9 MR. WEST: Please state your name and
10 address for the record.

11 MR. SANTOS: Alfred Santos, 114 Thomas
12 Leighton Boulevard, Cumberland, Rhode Island.

13 MR. WEST: And you are a?

14 MR. WEST: I'm a what?

15 MR. WEST: You're a member of the Board of
16 Canvassers for --

17 MR. SANTOS: Yes.

18 MR. WEST: -- Cumberland?

19 MR. SANTOS: Yes.

20 MR. WEST: Okay. And speak into the
21 microphone, please.

22 MR. SANTOS: If this gentleman wants to
23 run for two offices, he can do it if he wants to. They
24 came before the Cumberland Board of Canvassers, and

1 they both agreed there was two people who filed for two
2 different candidacies. And this one -- and I hope he
3 wins here -- agreed that he filed --

4 MR. WEST: None of that, please. Just
5 state your case.

6 MR. SANTOS: Fine. The first one said he
7 filed for the -- the fire because that's what he wanted
8 because he knew that if he filed for the fire first and
9 a committee second the fire district would be --
10 disapprove. He knew that. And that's the conversation
11 he had with the clerk, that I'm going to file both of
12 them. And, basically, my understanding is he knew that
13 the second one would be effective, and he would lose
14 the first one, Number 1. The law says you can't
15 file -- now, I'm not a judge. I'm not an attorney
16 either, but I am a citizen of Rhode Island. I was a
17 lobbyist for 32 years in this state, and I don't even
18 want to get into that part.

19 MR. WEST: Just what happened at that --

20 MR. SANTOS: He filed -- the law says you
21 can't file for two positions. He filed for two
22 positions. The form he signed said he can't file for
23 two positions. He filed for two positions. The third
24 one -- the third one says that the law -- the positions

1 he filed for are actual -- they're local offices. This
2 one talks about a meeting of a fire district. This
3 gentleman was on the Central Falls -- Valley Falls Fire
4 District, and they made their own decisions at the fire
5 district. That fire district was consolidated into the
6 Town of Cumberland. So the Town of Cumberland
7 voters -- I'm one of them -- are going to vote for that
8 particular position. It's -- it wasn't held on
9 Election Day as a convenience to anybody. It was held
10 on Election Day because that is Election Day. Now, you
11 can mess this up any way you want. You can do anything
12 you want with it, but I'm appalled at these
13 conversations. Even your lawyer agrees that we're
14 right, but you, Judge, have come up with some -- I
15 think a scheme.

16 MR. WEST: No. No. No. No.

17 MR. REGO: We have the right to discuss
18 anything.

19 MR. SANTOS: You have the right to
20 discuss -- I've known him for a thousand years.

21 MR. WEST: We're just asking you about
22 what happened at the Board of Canvassers, and that's
23 all.

24 MR. SANTOS: All right. I've had a

1 stroke. I've had a stroke. So I'm having difficulty
2 explaining that.

3 MR. WEST: That's not germane.

4 MR. SANTOS: Everyone met. Everyone
5 decided that this was a local election that the voters
6 of the town of Cumberland were going to vote for him.
7 Now, someone else is going to run for that position,
8 and if he runs for that position, too, what is going to
9 happen to the second person? What are you going to
10 tell the second person? He can't run. We decided he
11 could run, so you lost.

12 MR. WEST: Thank you. Thank you --

13 MR. SANTOS: I think it's pretty clear.

14 MR. WEST: No. That's it. Thank you very
15 much for your input. That ends the conversation.

16 MR. SANTOS: I think it's pretty clear,
17 you know.

18 MR. WEST: No. No.

19 MR. SANTOS: I took this position because
20 the Mayor asked me to.

21 MR. WEST: You said you had something --

22 MR. SANTOS: Getting involved in Rhode
23 Island politics is bullshit.

24 MR. WEST: Thank you.

1 MR. REGO: Please treat this Board as a
2 professional Board. I don't appreciate --

3 MR. SANTOS: You're not treating the
4 taxpayers --

5 MR. WEST: Point of order.

6 MR. REGO: Could you please --

7 MR. WEST: Thank you.

8 MR. SANTOS: Do what you want.

9 MR. ERICKSON: Can the record reflect that
10 I don't know how I know him.

11 MR. REGO: You must be a popular guy.

12 MR. ERICKSON: Well, just in terms of any
13 possible --

14 MR. WEST: Right now I would like to know
15 if there is -- the Board has any recommendations? Do
16 we have any motions on the floor?

17 MR. ERICKSON: I'll make a motion. I'd
18 like to move that the appeal be sustained, the Board --
19 decision of the Board of Canvassers be reversed.

20 MR. MARCACCIO: I think if -- Your Honor,
21 I think you should just also just briefly explain why
22 just in a sentence or two just in case this is appealed
23 there's a record of our decision.

24 MR. ERICKSON: Right. I am satisfied --

1 based on -- I would recommend that we make a finding of
2 fact that this is not a state or a local office but
3 rather a quasi municipal office and that it is not
4 subject to the provisions of 17-14-2 based upon the
5 enabling statute enacted by the General Assembly, and
6 that the administration of this election by the Board
7 of Canvassers does not alter the nature of the
8 non-local or state basis for the election.

9 MR. REGO: I second that motion.

10 MS. PERRY: I have a --

11 MR. WEST: Discussion?

12 MS. PERRY: Discussion. Yes. You
13 mentioned in your dialogue -- and I believe that our
14 attorney also said that he had observed a possible
15 problem with constitutionality and due process. Is
16 that not something that you would include in that
17 motion?

18 MR. ERICKSON: I could do that if you --
19 if you're suggesting I also include a finding that --

20 MS. PERRY: I think --

21 MR. ERICKSON: -- that this determination
22 is necessary to harmonize the statute as we interpret
23 it with constitutional requirements of due process and
24 equal protection.

1 MR. REGO: I'll --

2 MR. WEST: Discussion?

3 MR. REGO: I'll second the revised motion.

4 MR. WEST: Any discussion?

5 MR. REGO: I'm good, Mr. Vice Chairman.

6 MS. PERRY: I'm good with that issue.

7 MR. WEST: We have a motion on the floor.

8 Read the motion back, please. Andy, could you read
9 that motion back, please.

10 MR. MARCACCIO: Well, we have a
11 stenographer.

12 MR. REGO: Why don't we let the
13 stenographer where it's official.

14 MR. WEST: Okay. Could you read that
15 motion back.

16 (MOTION READ BACK BY COURT REPORTER)

17 MR. WEST: We have a motion on the floor
18 and a second. All in favor?

19 MS. PERRY: Aye.

20 MR. ERICKSON: Aye.

21 MR. REGO: Aye.

22 MR. WEST: Aye. Opposed?

23 (BRIEF PAUSE)

24 MR. WEST: None. Motion carries.

1 MR. REGO: I call for a motion to adjourn
2 the Board of Elections hearing of the 9th -- right,
3 today's the 9th? Yeah -- 9th day of --

4 MR. ERICKSON: I'll second that.

5 MR. REGO: Okay.

6 MR. WEST: Seconded. All in favor?

7 MS. PERRY: Aye.

8 MR. ERICKSON: Aye.

9 MR. REGO: Aye.

10 MR. WEST: Aye. Motion to adjourn.

11 (HEARING ADJOURNED AT 4:31 P.M.)

12 (OFF-THE-RECORD DISCUSSION)

13 MR. MARCACCIO: We just have to address
14 one question, that is whether or not the candidate will
15 have enough time to obtain signatures.

16 MR. REGO: What's the deadline?

17 MR. MARCACCIO: It's in two days I
18 believe.

19 MR. SCULLIN: Friday at four.

20 MR. REGO: Friday's the 11th.

21 MS. PERRY: What is the number that you
22 need for those nominations?

23 MR. SCULLIN: Fifty.

24 MS. PERRY: Fifty for each?

1 MR. SCULLIN: Right.

2 MR. KANDO: Yeah. July 1st is the first
3 day of nomination papers.

4 MR. SCULLIN: Ten-day window.

5 MR. KANDO: Yeah. It turns on the 11th.
6 So right now the first list -- so normally every 10
7 days.

8 MR. SCULLIN: Right.

9 MR. ERICKSON: But would it be appropriate
10 to move that the Board of Canvassers could be directed
11 to issue him nomination papers and to accept those
12 papers 10 days --

13 MR. REGO: So based on tomorrow --

14 MR. MARCACCIO: I think that motion would
15 be in order. I don't think we've ever gone that far to
16 actually change the statutory calendar framework, but I
17 can say that there is an old -- there is a case from
18 1981 that -- that indicates that you've got broad
19 powers and -- and while I can't vouch for this, I
20 believe that it would be most appropriate at this point
21 just to give him the additional time. It could be
22 subject to a challenge, but I think that may be the
23 best way to address it.

24 MR. KANDO: I would like to bring to the

1 Board's attention that we have several dates here. I
2 just want to go over them with you. The -- there is a
3 date for objections to candidates for local office.
4 That's July 16th. And nomination papers are certified
5 on July 17th. And objections to candidates -- on the
6 other hand, I think the Board just ruled that this is
7 not a state election subject to -- subject to --

8 MR. WEST: Right. So therefore, --

9 MR. KANDO: Which I'm going over with you.
10 So I think that -- that --

11 MR. MARCACCIO: But the other office is
12 for the Town Council.

13 MR. REGO: Right. For Town Council.
14 That's what we're talking about.

15 MR. KANDO: So we are correct. So that we
16 are -- obviously, these dates -- I mean, I can give you
17 the calendar, but --

18 MR. REGO: The 10-day window -- the
19 business -- the business of most cities and towns
20 concludes at 4:00, 4:30. We're at 4:34 according to my
21 phone right here. So I will make a motion if -- if
22 it's -- excuse me, I'll make a motion, you know, that
23 from Thursday, the 10th of July, 2014, the 10-day
24 window would be just like any other candidate; that he

1 would have to have his papers in the 20th of July,
2 2014. It's a 10-day window.

3 MR. MARCACCIO: Right. It just does
4 affect the other statutory calendar dates including
5 those who object to papers that are -- signatures that
6 are filed which is before that.

7 MR. ERICKSON: And all other dates. All
8 other dates be similarly modified.

9 MR. REGO: Right. So I mean, -- I
10 mean, -- so I mean, do we -- does that mean --

11 MR. MARCACCIO: It's -- that's new
12 territory.

13 MR. KANDO: I see. I just want to bring
14 to the attention of the Board that there are mail
15 ballot rules that require the printing of ballots, and
16 the mail ballots have to go out by a certain date. I
17 do not know how this impacts it. So by moving the
18 calendar backwards, you may be -- there may -- and I'm
19 not sure that you are, but you may impact --

20 MR. WEST: Yes.

21 MS. PERRY: As someone who has done a lot
22 of collecting of signatures, 50 don't seem that
23 overwhelming. I mean, if he was really out there with
24 his gum shoes and doing it -- I would ask that he

1 attempt to get it in at the appropriate time, if he
2 can.

3 MR. SCULLIN: Right. I can't --

4 MS. PERRY: Just do your best.

5 MR. SCULLING: I can't do it by Friday at
6 four, though.

7 MS. PERRY: And then you have -- then you
8 have that additional time period if you need it. But
9 50 is not many signatures.

10 MR. REGO: If you go -- the 17th is the --
11 I heard the 17th is an objection date.

12 MR. MARCACCIO: 16th, I believe.

13 MR. REGO: 16th or 17th is the objection
14 date.

15 MS. PERRY: Then you have to change
16 something.

17 MR. ERICKSON: We have to give him --

18 MS. PERRY: A few more days.

19 MR. REGO: So if we give him until --

20 MR. ERICKSON: 16th. 15th, 16th --

21 MR. REGO: If we give him until -- would
22 be a week from --

23 MS. PERRY: And you've got the weekend.
24 That's the best part. That's when we got them mostly.

1 MR. SCULLIN: Well, I've been collecting
2 them for my other position.

3 MS. PERRY: So you know.

4 MR. SCULLIN: I could have been collecting
5 them both together.

6 MR. KANDO: See, these two don't apply
7 to --

8 MR. MARCACCIO: For what position? I'm
9 sorry.

10 MR. SCULLIN: The Fire Board.

11 MR. MARCACCIO: That's the one you've been
12 collecting?

13 MR. SCULLIN: Yeah. It's the other one
14 that I've got to define the district. So I got to get
15 the district people to sign that.

16 MR. KANDO: But these two don't apply
17 to --

18 MR. SCULLIN: Right. Just the 16th.

19 MR. KANDO: -- to the town. The 16th.

20 MS. PERRY: So what date do you suggest?

21 MR. ERICKSON: So why don't we make it the
22 15th?

23 MR. MARCACCIO: What if we give him until
24 the 15th?

1 MR. KANDO: Would the 15th work for you?

2 MR. SCULLIN: Yeah.

3 MR. KANDO: All right. The 15th --

4 Mr. Scullin's okay with the 15th.

5 MR. REGO: I make a motion to allow the
6 candidate to have all his proper paperwork returned to
7 the Cumberland Board of Canvassers by the 15th of July
8 at the end of the -- by the end of the business day.

9 MR. SCULLIN: Four p.m.

10 MR. WEST: All in favor?

11 MS. PERRY: Aye.

12 MR. ERICKSON: Aye.

13 MR. REGO: Aye.

14 MR. WEST: Aye. Opposed?

15 (BRIEF PAUSE)

16 MR. WEST: The motion passed.

17 MR. KANDO: I think that does it.

18 MR. REGO: Motion to adjourn again.

19 MR. WEST: Do I have a motion to adjourn?

20 MR. REGO: Motion to adjourn.

21 MR. ERICKSON: I'll second the motion to
22 adjourn again.

23 MR. WEST: All in favor?

24 MS. PERRY: Aye.

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MR. ERICKSON: Aye.

MR. REGO: Aye.

MR. WEST: Opposed?

(BRIEF PAUSE)

MR. WEST: Motion carried. Thank you.

(HEARING ADJOURNED AT 4:37 P.M.)

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C E R T I F I C A T E

I hereby certify that the foregoing is a true and accurate transcript of the hearing taken before the Rhode Island Board of Elections, on Wednesday, July 9, 2014, at 3:30 p.m.

Heather A. Lussier



HEATHER A. LUSSIER, CSR
Notary Public, State of Rhode Island

**STATE OF RHODE ISLAND
BOARD OF ELECTIONS**

IN THE MATTER OF: JAMES E. SCULLIN

ORDER

This matter was heard on July 9, 2014 before the Board of Elections, in connection with an appeal filed by James E. Scullin from a decision by the Cumberland Board of Canvassers.

Mr. Scullin filed a Declaration of Candidacy for the office of Cumberland Town Council, Ward 3 ("Town Council") and also filed a Declaration of Candidacy for an at-large seat on the Consolidated Cumberland Fire District ("Fire District"). The Cumberland Board of Canvassers determined that the Town Council declaration was nullified when Mr. Scullin filed his subsequent declaration for the Fire District. Its ruling was made based upon its application of R.I. Gen. Laws § 17-14-2(b), which states that:

no person shall be eligible to file a declaration of candidacy, or be eligible to be a candidate or eligible to be voted for or to be nominated or elected in any party primary or general election if that person has declared to be a candidate for another elected public office, either state, or local or both.

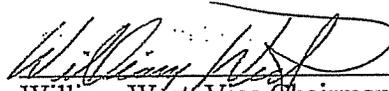
The local board made its decision at an open meeting held on June 30, 2014.

The Board finds that the election to the Fire District does not constitute an election to a public office. Specifically, a "local election" means "any election...at which any city, town, ward or district officers are to be chosen..." R.I. Gen. Laws § 17-1-2(6). The Fire District is a quasi-public corporation established pursuant to its enabling legislation. *See*, P.L. 2013, ch. 505, §8. Nothing contained in Title 17 of the General Laws applies to elections to positions held on quasi-governmental entities. Therefore, the election to a position on the Fire District is not a

public office. Since the election to a seat on the Fire District does not constitute a public office, the filing of a Declaration of Candidacy for Fire District does not nullify Mr. Scullin's previously filed declaration for Town Council.

The Board hereby sustains Mr. Scullin's appeal and reverses the finding of the local board of canvassers. Mr. Scullin is hereby authorized to submit his nomination papers for a seat on the Town Council by the close of business on July 15, 2014.

So ORDERED, this 17 day of July, 2014.



William West, Vice Chairman