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Special Committee on the Election Challenge to the Qualifications of Senator Ernie Chambers of  
District 11  
March 09, 2017

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[QUALIFICATIONS CHALLENGE]

The Special Committee on the Election Challenge to the Qualifications of Senator Ernie Chambers of District 11 met at 12:00 p.m. on Thursday, March 9, 2017, in Room 1525 of the State Capitol, Lincoln, Nebraska. Senators present: Dan Watermeier, Chairman; Kate Bolz; Sue Crawford; Dan Hughes; John Kuehn; John McCollister; and Jim Scheer. Senators absent: None.

SENATOR WATERMEIER: (Recorder malfunction)...after 1:00. I think we got our computer problem solved and we're ready to go. My name is Dan Watermeier. I am from Syracuse and I represent the 1st Legislative District in southeast Nebraska. I serve as the Chair of the special committee created by the Executive Board to hear Mr. Sciara's challenge to Senator Ernie Chambers' qualification to represent District 11. Let me start with some introductions. To my immediate right is Mr. William Connolly, our legal counsel. To my left is Janice Satra, legal counsel to the Executive Board. And at my far right is our committee clerk, Laura Olson. So I'll have the members introduce themselves, starting with Speaker Scheer.

SENATOR SCHEER: Jim Scheer, District 19.

SENATOR MCCOLLISTER: John McCollister, District 20.

SENATOR BOLZ: Senator Kate Bolz, District 29, south-central Lincoln.

SENATOR HUGHES: Dan Hughes, District 44.

SENATOR KUEHN: John Kuehn, District 38.

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford, District 45.

SENATOR WATERMEIER: All right. Thank you, Senators. As announced, there will be no testimony or legal filings accepted today. I would ask everyone to please turn off your cell phones during this meeting. I want to start with a little background on today and where we're at today. Mr. Sciara filed a Petition of Qualifications Challenge with the Clerk of the Legislature, contests the residency qualifications of Senator Chambers who won the legislative seat for which Mr. Sciara was competing in the November 8, 2016, election. Mr. Sciara's petition is required to be handled as an election contest under Nebraska statutes and legislative Rule 10. On November 15, 2016, Mr. Sciara filed his petition challenging Senator Chambers' qualifications; however, he did not then file a bond within the statutory required ten-day period following the filing of his Petition of Qualifications Challenge, which we did refer to as his initial petition. In addition, he

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did not verify his initial petition by affidavit as required by legislative Rule 10. Mr. Sciara did not attempt to correct these deficiencies in his initial petition. Although his initial petition was never dismissed, Mr. Sciara filed another Petition of Qualifications Challenge, which we will refer to as the second petition, on December 15, at the time filed a bond. All these filings occurred within the 40-day statutory requirement. Although Mr. Sciara verified the second petition by affidavit, he did not include proof of service upon Senator Chambers with his second petition, which Rule 10 requires. In reviewing the filings, it appeared to the special committee that Mr. Sciara met all statutory requirements regarding the filing of the challenge. However, it also appeared that he failed to strictly comply with the requirements of legislative Rule 10. His initial petition was not verified by affidavit, as required by Rule 10, while the second petition was verified by affidavit but it did not include proof of service upon Senator Chambers, which is also required by Rule 10. Because of these jurisdiction deviations, the special committee provided the parties with the opportunity to show cause why this special committee should or should not exercise jurisdiction over the challenge. Both parties responded to the order to show cause and presented arguments as to why the committee did or did not have jurisdiction. The special committee has had the opportunity to consider the parties' responses and the relevant law. In addition, our attorney has drafted a legal memorandum on the issue of jurisdiction which the special committee members have reviewed. We are here today to decide only one issue and that is whether or not the special committee has jurisdiction to hear Mr. Sciara's challenge to Senator Chambers' qualification to represent District 11. With that, I would open it up for discussion from the committee, if there's pertinent questions that you'd like to ask as far as the foundation. But when I do sense the idea that we're leaning one direction or the other, then I would ask for a motion one way or another as far as jurisdiction. So I'll open the floor now to our members. Senator Bolz. [QUALIFICATIONS CHALLENGE]

SENATOR BOLZ: A couple of things on my mind, and first, maybe in the name of creating a record and communicating in the public setting, to be clear, the issue of jurisdiction does not make any statement regarding the underlying validity of the claim. We're not making a decision today on whether or not the basis of the claim is valid in any way, shape, or form. Is that correct, Judge Connolly? [QUALIFICATIONS CHALLENGE]

WILLIAM CONNOLLY: That's correct. Correct. [QUALIFICATIONS CHALLENGE]

SENATOR BOLZ: Okay. So just for the sake of clarity. The second thing that I'd like to ask, and if the judge could speak to it, in response to this special committee's order to show cause, Senator Chambers argued that the deviations from legislative Rule 10 in Mr. Sciara's petitions are fatal jurisdictional flaws. And yet some of the information that we have discussed has been that the jurisdictional flaws are not fatal because there is a differentiation between statute and rule. And I was hoping that you could speak to that differentiation. [QUALIFICATIONS CHALLENGE]

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WILLIAM CONNOLLY: To establish jurisdiction, all statutory requirements must be met. Here the challenger has met the statutory requirements. In regard to Rule 10, that is a procedural rule. He missed, on the procedural rule, according to the Senator in that he did not give proof of service. His first petition did give notice and both petitions are identical in the language of the challenge or the operative language. And so he complied with all the statutory requirements. The proof of service is a legislative rule. It's procedural and it does not go to jurisdiction. For instance, in a court of law of the courts, they have statutory procedures they have to follow. For instance, on an appeal, it has to be filed within 30 days and the bond has to be filed within the same time. They also have procedural rules telling the parties how the briefs are supposed to be organized, the length of the briefs, they...how to prove service, that you served it on the other party. Those are all procedural rules. Legislative Rule 10 is a procedural rule. It is not jurisdictional. And that is the nuts and bolts or, summed up, that's why I came to the opinion that the committee had jurisdiction to hear the challenger's petition. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Senator Crawford is next. [QUALIFICATIONS CHALLENGE]

SENATOR CRAWFORD: Okay. Thank you, Senator Watermeier. And thank you, Mr. Connolly. If we were considering Rule 10 to be more substantial than simply procedural, is there anything in the statute or the rule that provides that when a second petition is filed that the first petition is dismissed or no longer active? Or is it the case, as we're considering the jurisdiction, that we should be considering the combination of the initial petition and the second petition? [QUALIFICATIONS CHALLENGE]

WILLIAM CONNOLLY: Senator, there is nothing in the statute nor rules that prohibit a challenger to file a second petition as long as it's timely, and here it was timely. [QUALIFICATIONS CHALLENGE]

SENATOR CRAWFORD: Thank you. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Senator McCollister. [QUALIFICATIONS CHALLENGE]

SENATOR MCCOLLISTER: Just to be certain--and thank you, Senator Watermeier, and thank you, Judge Connolly--so once the first petition has been filed, it kind of opens up a 40-day period of time and he can perfect that second...the first petition with a bond and then the proof of service at some later point. Is that correct? [QUALIFICATIONS CHALLENGE]

WILLIAM CONNOLLY: That's correct, Senator. [QUALIFICATIONS CHALLENGE]

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SENATOR McCOLLISTER: Thank you, Judge. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Thank you, Senator McCollister. Further discussion as far as laying a base? Senator Speaker Scheer. [QUALIFICATIONS CHALLENGE]

SENATOR SCHEER: Well, I guess I would just echo Senator Bolz's comments. What we're talking about today is not necessarily any merits to the appeal itself. It's just if the appeal should move forward and if the requirements were met in order for this body to hear the appeal. I have no idea what the appeal will amount to and don't want today's activities to be confused with the appeal process in and of itself. That will be some other day, some other time, if we choose to move forward. This is simply if that appeal should take place and if the requirements were met in order for that appeal to be heard. And I just want to clarify that with the judge as well. [QUALIFICATIONS CHALLENGE]

WILLIAM CONNOLLY: That's correct. If you find jurisdiction today, you'll have to establish a hearing date to hear the merits of the challenge. And at that time then both parties are entitled to due process and there will be a hearing. It will be like a trial. [QUALIFICATIONS CHALLENGE]

SENATOR SCHEER: Thank you. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Thank you, Speaker Scheer. Senator Crawford. [QUALIFICATIONS CHALLENGE]

SENATOR CRAWFORD: If we are considering the first petition and the second petition together, in their entirety, then I believe that the determination...well, let me back that up. If we're considering the first petition and second petition together, in their entirety, has the challenger met the standards of Rule 10 as well as the statute when both petitions are considered together? [QUALIFICATIONS CHALLENGE]

WILLIAM CONNOLLY: I don't quite understand the question. [QUALIFICATIONS CHALLENGE]

SENATOR CRAWFORD: Okay. So do...I believe when both petitions are considered together, combined, combined do they meet Rule 10? And we already I think established that combined they meet statute. But combined do they also meet Rule 10? [QUALIFICATIONS CHALLENGE]

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WILLIAM CONNOLLY: Well, the Rule 10, again, is a procedural rule. On the second petition he didn't, he didn't give proof of service. He did in the first petition. But that is a procedural rule which would not deprive this committee of jurisdiction. [QUALIFICATIONS CHALLENGE]

SENATOR CRAWFORD: But that was met in the first petition. [QUALIFICATIONS CHALLENGE]

WILLIAM CONNOLLY: You look at both petitions. Summed up, Senator had notice of the challenge. Both petitions, the operative language of both petitions, were identical and so couldn't be any surprise. [QUALIFICATIONS CHALLENGE]

SENATOR CRAWFORD: Thank you. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Thank you, Senator Crawford. Further discussion for basis? I would accept a motion one way or another as far as a jurisdictional motion one way or another. [QUALIFICATIONS CHALLENGE]

SENATOR HUGHES: Mr. Chairman. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Senator Hughes. [QUALIFICATIONS CHALLENGE]

SENATOR HUGHES: I'll make the motion that this committee does have jurisdiction on this issue,... [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Okay. [QUALIFICATIONS CHALLENGE]

SENATOR HUGHES: ...if that's correct (inaudible). [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: I have a motion here I'll read if I get a second. We can proceed if I get a second. Senator Kuehn. [QUALIFICATIONS CHALLENGE]

SENATOR KUEHN: I will second that motion. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: All right, seconded by Senator Kuehn. I do have a motion here to clarify the record for the public and for the future purposes because we are probably laying some groundwork here. If this is acceptable to the motion and to the second, I'll read this: The Special Committee of the Nebraska Legislature, upon consideration of the responses to its order to show

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cause, hereby finds that it has jurisdiction over Mr. John Sciara's challenge to the qualifications of Senator Ernie Chambers to represent District 11 in the Nebraska Legislature. If that's acceptable to the motion,... [QUALIFICATIONS CHALLENGE]

SENATOR HUGHES: Yes, it is. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: ...Senator Hughes. Senator Kuehn? [QUALIFICATIONS CHALLENGE]

SENATOR KUEHN: Yes, it is. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: All right. So we have a motion and a second. Now the floor is open to the jurisdiction issue. There's discussion? Senator Bolz. [QUALIFICATIONS CHALLENGE]

SENATOR BOLZ: Just also in the name of creating a record, Judge, would you speak to the opportunities that have been afforded to both Mr. Sciara and Senator Chambers to provide this committee with information? [QUALIFICATIONS CHALLENGE]

WILLIAM CONNOLLY: Yes. Of course I don't...I think the public is aware of a show cause because there was some concern by this committee whether they had jurisdiction because of the slight deviations between the statutes and the legislative rule. And so the committee wanted to make sure that the public understood and the parties themselves understood that there was a question, a colorable question of jurisdiction, and they wanted to resolve the jurisdictional issue and entered a show cause order, giving the challenger and the senator an opportunity to respond. They responded in writing. There was no evidentiary hearing, no facts. And based on their response and based on Counsel's memorandum and recommendation, that's why we are here today. [QUALIFICATIONS CHALLENGE]

SENATOR BOLZ: And it remains true that it's still incumbent upon the challenger to prove his case. [QUALIFICATIONS CHALLENGE]

WILLIAM CONNOLLY: Yes. This will be, I hate to use the word "trial" or "hearing," but there will be a trial and there will be a burden of proof and a burden of persuasion. And you, as committee members, will be acting as fact-finders, judges, and you'll have to decide the case on the merits. [QUALIFICATIONS CHALLENGE]

SENATOR BOLZ: And the question again, the question of jurisdiction, is in no way a commentary on the merits. [QUALIFICATIONS CHALLENGE]

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WILLIAM CONNOLLY: Once you get past the decision on jurisdiction, that issue is over. And then you go to a trial on the merits. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Thank you, Senator Bolz. Further discussion? Senator Speaker Scheer. [QUALIFICATIONS CHALLENGE]

SENATOR SCHEER: I guess I would just note, and not necessarily for the record, I guess just for conversation purposes, that from the process I appreciate Senator Watermeier's selection of Judge Connolly: certainly has expertise above/beyond reproach, has been very instrumental in providing and doing the research for us to work our way through the process of determining if we do have the ability to hear the appeal. And I feel that we've been fair in allowing both those involved in the appeal process to provide us with any additional information that may change the opinions one way or the other from that information as well as Senator...or Judge Connolly's additional information post those reports being provided to the (inaudible). And with that, I truly do believe that in fairness to all people provided that we should move forward, and I would be supporting the motion. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Thank you, Speaker Scheer. [QUALIFICATIONS CHALLENGE]

SENATOR McCOLLISTER: One more. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Senator McCollister. [QUALIFICATIONS CHALLENGE]

SENATOR McCOLLISTER: Thank you. Thank you, Senator. You know, the juxtaposition or the relationship between the statutes and Rule 10 were a big factor in our discussion, and the strict adherence to the statute isn't what we're looking at. We're talking about following the rule as best we can, and that gives us a certain amount of latitude to decide this issue. Wanted to say that for the record. Thank you, Senator. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Okay. Thank you, Senator McCollister. Senator Kuehn. [QUALIFICATIONS CHALLENGE]

SENATOR KUEHN: Thank you, Mr. Chairman. I do want to also for the record make sure that the public is clear in that we have taken a series of deliberate steps, both in terms of internal counsel and seeking external counsel, to afford both the challenger as well as the defendant in this case the equal opportunity to make a case to seek counsel and to provide information on the issue of standing. And so this has been while maybe for some not as rapid of a process as they had anticipated, we have been thoughtful and deliberate in moving forward. And I appreciate all

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of the time that was taken by the Chairman as well as both internal and external counsel in providing that expertise as we are thoughtful in gathering the evidence and determining the legal standing as to where we are today. [QUALIFICATIONS CHALLENGE]

SENATOR WATERMEIER: Thank you, Senator Kuehn. Further discussion? Anyone else to place something in record before we...? I'll call the roll here shortly. All right. You've heard the motion and the second and the discussion. I'll have the clerk call the roll. [QUALIFICATIONS CHALLENGE]

LAURA OLSON: Senator Kuehn. [QUALIFICATIONS CHALLENGE]

SENATOR KUEHN: Yes. [QUALIFICATIONS CHALLENGE]

LAURA OLSON: Senator Bolz. [QUALIFICATIONS CHALLENGE]

SENATOR BOLZ: Yes. [QUALIFICATIONS CHALLENGE]

LAURA OLSON: Senator Crawford. [QUALIFICATIONS CHALLENGE]

SENATOR CRAWFORD: Yes. [QUALIFICATIONS CHALLENGE]

LAURA OLSON: Senator Hughes. [QUALIFICATIONS CHALLENGE]

SENATOR HUGHES: Yes. [QUALIFICATIONS CHALLENGE]

LAURA OLSON: Senator McCollister. [QUALIFICATIONS CHALLENGE]

SENATOR McCOLLISTER: Yes. [QUALIFICATIONS CHALLENGE]

LAURA OLSON: Senator Scheer. [QUALIFICATIONS CHALLENGE]

SENATOR SCHEER: Yes. [QUALIFICATIONS CHALLENGE]

LAURA OLSON: Senator Watermeier. [QUALIFICATIONS CHALLENGE]



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SENATOR WATERMEIER: Yes. The motion passes that we have jurisdiction. I think the next step as far as the public would be aware of is that I will now set the special committee's next meeting, is going to be next Tuesday on March 14 at noon. I'm not sure of the room date (sic) yet, but it will be downstairs here as well and not upstairs, so. So at that, committee will be discussing a pretrial order and to set the actual hearing date. So next Tuesday is just to set the pretrial order and the hearing date. So with that, I would thank everyone for coming, thank Mr. Connolly and Janice as well. So thank you. This meeting is adjourned. [QUALIFICATIONS CHALLENGE]