

Approved: March 16, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson David Heinemann at 8:00 a.m. on February 7, 1995 in Room 529-S-of the Capitol.

All members were present.

Committee staff present: Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes
Cindy Wulfkuhle, Committee Secretary

Conferees appearing before the committee:
Victor Miller, Attorney for Joe Shriver
Doug Witteman, Attorney for Danny Jones
Eric Rucker, Attorney for Danny Jones

Others attending:

The Committee took up a request from Mr. Witteman for reconsideration of the motion dealing with accepting new evidence regarding Moddie Graham. (Attachment 1)

Chairman Heinemann stated that the committee had already discussed and voted not to allow new evidence which the court hadn't looked at.

Representative O'Neal commented that there is a difference between Moddie Graham and the Templeton's in that Moddie Graham's issue was before the court and the Templeton's was not, and that the committee should take additional testimony regarding the Moddie Graham ballot.

Representative Garner stated that he thought the issue was resolved earlier. Moddie Graham stated in court that she didn't remember who she voted for. He believed that if additional evidence was taken on the Moddie Graham ballot then additional evidence should be taken on Dickerson regarding her change of residence, Weigand as to whether she was registered to vote in August 1994 and several others, because they were before the court. The committee decided on a cut off date and should stick by it.

Representative O'Neal stated that the committee should look at the vote track. The two ballots the committee should be most concerned with is Edith Dickerson and Moddie Graham. They both should be brought in and asked further questions. The committee went to the extent of counting ballots in 3S to make sure that there wasn't an illegal ballot. So why would the committee not want to get to the bottom of this issue, when they know who cast the votes and that the votes clearly shouldn't count.

Representative Graeber agreed with Representative O'Neal but commented that he believes that Moddie Graham doesn't know who she voted for. When asked she replied in court "I don't know. If you stood me on a stack of bibles, I don't know who I voted for." This is the reason that the court couldn't decide the issue.

Several of the committee members were concerned that if Moddie Graham were brought in that either counsel could have talked to her and persuaded her to say she voted for the other candidate. Therefore, the committee would have questions as to whether they would know if she was telling the truth or did she even know who she really voted for.

The committee decided to stand by it's previous decision in not allowing additional evidence.

The next meeting is scheduled for February 8, 1995.

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BEFORE THE KANSAS HOUSE OF REPRESENTATIVES
SELECT COMMITTEE ON ELECTIONS

In the matter of the election of)
Joe D. Shriver to the position of)
State Representative, 79th District)
DANNY P. JONES,)
Contestant,)
v.)
JOE D. SHRIVER,)
Contestee.)

Cowley County District
Court Case No. 94-C201-W

Pursuant to K.S.A. 25-1434 et seq.

REQUEST FOR MOTION FOR RECONSIDERATION

COMES NOW the Contestant, Danny P. Jones, by and through his attorneys Douglas P. Witteman and Eric K. Rucker, and requests the Select Committee on Elections offer and approve a Motion to Reconsider its previous determination to not consider additional evidence related to a specific ballot previously considered by the Cowley County District Court at the Election Contest Hearing. In support of his request, the Contestant offers the following:

On Friday, February 3, 1995, the Select Committee on Elections heard argument from the parties' counsel concerning whether it should entertain additional issues not presented to the court and whether it should consider additional relevant and highly probative evidence that was not

available for the court's consideration as it related to a specific ballot considered and ruled illegal by the court. Consistent with the statutory scheme, the Select Committee properly determined to consider only those issues previously raised to the court. The Contestant respectfully disagrees, however, with the Select Committee's further determination to not consider additional evidence related to the vote of Moddie G. Graham which was an issue directly before the court.

The fact that Moddie G. Graham was not a properly registered elector and therefore cast an illegal ballot in the contested election is not at issue. The court so ruled and the Contestee so stipulated. The only issue to be decided by the Select Committee concerns how this illegal vote was cast and from which candidate the vote should be deducted. During the election contest hearing Ms. Graham indicated that she could not remember how she cast her vote. The Select Committee is aware that Ms. Graham indicated both prior to trial and the day following trial that she had, in fact, voted for Joe D. Shriver. (Affidavits of Eric K. Rucker and Carol Kingsley, attached to Contestant's Memorandum Select Committee Hearing Brief).

During the election contest hearing, the Honorable Stephen D. Hill, District Court Judge, determined that he was unable to determine how Ms. Graham cast her vote. The court reached this conclusion based on the limited information then available. Since that time, however, clear and convincing evidence that Ms. Graham cast her vote for Joe Shriver has become available, evidence that was not available and that could not have been presented to the court. This evidence, **including the sworn statement of Moddie G. Graham, attached hereto as Exhibit A**, indicates that Ms. Graham cast her ballot for Mr. Shriver. This evidence further includes the sworn statements of two (2) other wholly disinterested witnesses, who are close friends of Ms. Graham's. (See Affidavits of Robert Parker and Helen Parker, attached hereto as Exhibits B and C, respectively).

There are numerous compelling reasons why the Select Committee **must** consider the previously unavailable evidence concerning the Graham vote. The most compelling reason for

the Select Committee to take and consider further evidence on this vote is to ensure the fundamental fairness of the proceeding. First, it would be fundamentally unfair to the Contestant to have this election turn on the basis of inaccurate and false testimony presented during the contest hearing. Second, it would be fundamentally unfair to the citizens and electors of the 79th legislative district to have this election turn on the inaccurate and false testimony presented during the contest hearing. Third, it would be fundamentally unfair to Moddie Graham. The Select Committee should allow Ms. Graham to clear her conscience and to right the wrong while she is still able to do so. Ms. Graham should be allowed to relieve herself of the burden she now bears.

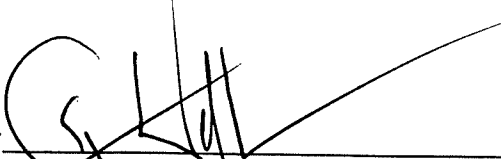
Additionally, the Select Committee should be consistent with the precedent that was set during the election contest of 1990-91. In that contest the Select Committee appropriately determined to accept additional evidence related to a contested ballot that had been considered by the District Court. As in the 1990-91 election contest, highly relevant and material evidence was unavailable to the court, but is now available to be considered by the Select Committee so that an accurate, true and just determination can be made. The Contestant asks nothing more than to allow the truth to establish who should be elected to represent the citizens of the 79th legislative district.

For the Select Committee to refuse to consider evidence that has now come to light and which would have been directly relevant and material to the court in making its ruling on the specific issue before the court, and which is directly relevant and material to the same issue directly before the Select Committee, would unquestionably taint the ultimate decision and recommendation of the Select Committee. Prior to opening arguments being offered, the fundamental fairness and the integrity of the election contest process will be irrevocably compromised if the evidence relevant to Ms. Graham's ballot is precluded. Any attempt to reach a fair and accurate result in this election will have been lost.

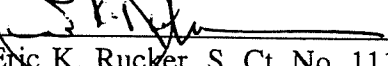
WHEREFORE, the Contestant, Danny P. Jones, respectfully requests the Select Committee offer and pass a Motion to Reconsider its determination to preclude the consideration of additional evidence related to the ballot of Moddie G. Graham and offer and pass a Motion to allow the consideration of additional evidence specifically related to the ballot of Moddie G. Graham.

Respectfully submitted,

PATTERSON, NELSON, NOLLA & WITTEMAN, L.C.

By 
Douglas P. Witteman, S.Ct. No. 15023
Attorneys for the Contestant
Danny P. Jones

ERIC K. RUCKER

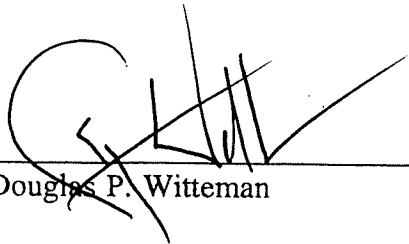
By 
Eric K. Rucker, S. Ct. No. 11109
Attorney for the Contestant
Danny P. Jones

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing REQUEST FOR MOTION FOR RECONSIDERATION was served on this 6th day of February, 1995 by hand delivering the same to the following:

Representative David J. Heinemann
Select Committee on Elections, Chairman
Kansas House of Representatives
State Capital Building
Topeka, Kansas 66612

Victor W. Miller
Attorney at Law
700 SW Jackson, Suite 404
Topeka, Kansas 66603



Douglas P. Witteman

Before the Selection Committee on Elections
Kansas House of Representatives

Danny P. Jones,
Petitioner

v.

Joe D. Shriver,
Contestee

_____)
Pursuant to K.S.A. 25-1434

AFFIDAVIT

I, Moddie G. Graham, 307 South 1st Street, Arkansas City, Kansas, make the following statement with regard to my participation in the General Election held for the 79th District race, Kansas House of Representations.

For many years I lived at my residence 614 North 5th Street, Arkansas City, Kansas. I was registered to vote at this address.

Several years ago, I moved from my long time residence to my residence located at 307 South 1st Steet, Arkansas City, Kansas.

Since moving into my new residence, I have not re-registered to vote.

I cast my ballot during the 1994 General Election on November 8, 1994, at the Cowley County Community College, Arkansas City, Kansas.

I voted for Joe D. Shriver, who was the Democrat Candidate for the Kansas House of Representatives, 79th District.

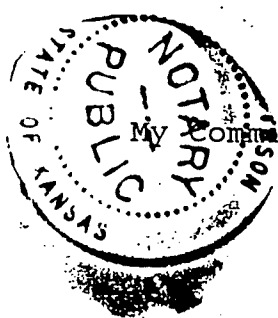
Moddie G. Graham
Moddie G. Graham

State of Kansas)
) ss:
County of Cowley)

Subscribed and sworn before me this 2nd day of February, 1995, in Cowley County, Kansas.

[Signature]
Notary Public

My Commission Expires: Feb 10 1997



AFFIDAVIT

State of Kansas)
) ss:
County of Cowley)

I, Robert Parker, of lawful age, being first duly sworn, on oath, deposes and states as follows:

1. The following facts are known to me to be true, of my own knowledge. I am competent to testify to such facts, and would so testify if I appeared either in Court or before the Kansas House of Representatives as a witness.
2. I am a long time resident of Arkansas City, Cowley County, Kansas.
3. I have personally known Ms. Moddie Graham of Arkansas City, Kansas, for many years. I know Ms. Graham to be of sound mind and in complete control of her mental faculties.
4. During the late afternoon hours of February 2, 1995, I went to visit Ms. Moddie Graham, at her residence, located at 307 North 1st, Arkansas City, Kansas.
5. While at Ms. Graham's residence during the time indicated above, I was in the presence of Ms. Moddie Graham and personally heard Ms. Graham state that she had voted for Joe Shriver, for the Kansas House of Representatives.
6. Furthermore, at the aforementioned place and time I witnessed Ms. Moddie Graham sign a sworn statement that she voted for Joe Shriver, for the Kansas House of Representatives at the General Election, held November 8, 1994.

FURTHER AFFLIANT SAITH NOT.

Dated this 5th day of February, 1995.

Robert Parker

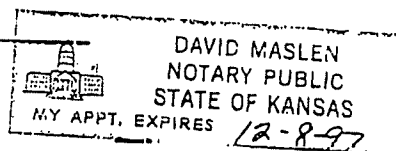
ROBERT PARKER

Subscribed and sworn to before me, the undersigned authority, on this 5th day of February, 1995.

David Maslen

Notary Public

My Commission Expires: _____



AFFIDAVIT

State of Kansas)
) ss:
County of Cowley)

1, Helen Parker, of lawful age, being first duly sworn, on oath, deposes and states as follows:

1. The following facts are known to me to be true, of my own knowledge. I am competent to testify to such facts, and would so testify if I appeared either in Court or before the Kansas House of Representatives as a witness.

2. I am a long time resident of Arkansas City, Cowley County, Kansas.

3. I have personally known Ms. Moddie Graham of Arkansas City, Kansas for many years. I know Ms. Graham to be of sound mind and in complete control of her mental faculties.

4. During the late afternoon hours of February 2, 1995, I went to visit Ms. Moddie Graham at her residence, located at 307 North 1st, Arkansas City, Kansas.

5. While at Ms. Graham's residence during the time indicated above, I was in the presence of Ms. Moddie Graham and personally heard Ms. Graham state that she had voted for Joe Shriver, for the Kansas House of Representatives.

6. Furthermore, at the aforementioned place and time I witnessed Ms. Moddie Graham sign a sworn statement that she voted for Joe Shriver, for the Kansas House of Representatives, at the General Election held November 8, 1994.

FURTHER AFFIANT SAITH NOT.

Dated this 5th day of February, 1995.

Helen L. Parker
HELEN PARKER

Subscribed and sworn to before me, the undersigned authority, on this 5th day of February, 1995.

David Maslen
Notary Public

My Commission Expires: _____

