

Indiana Election Commission Minutes February 27, 2024

Members Present: Paul Okeson, Chairman of the Indiana Election Commission (“Commission”); Suzannah Wilson Overholt, Vice Chair of the Commission; Karen Celestino-Horseman, member; Litany A. Pyle, Member.

Members Absent: None.

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Secretary of State (Election Division); Angela M. Nussmeyer, Co-Director of the Election Division; Matthew Kochevar, Co-General Counsel of the Election Division; Valerie Warycha, Co-General Counsel of the Election Division; Abbey Taylor, Campaign Finance staff, Indiana Election Division; Michelle Thompson, Campaign Finance staff, Indiana Election Division.

Others Attending: Ms. Stella Anderson; Mr. Kyle Babcock; Mr. Raymond Baker; Ms. Ali Bartlett; Mr. Scott Bieniek; Ms. Christine Bohm; Ms. Beth Boyce; Mr. David Crooks; Ms. Tamie Dixon-Tatum; Mr. Mark Dole; Mr. Bronson Nicholas Dossett; Ms. Lisa Fisher; Ms. Chunia Graves; Mr. Keith Graves; Mr. Greg Hahn; Mr. Mitchell Harper; Ms. Michelle Harter; Ms. Kelli Heuer; The Hon. Andrea Hunley, Indiana State Senator; Mr. Thomas John; Mr. Benjamin Kester; Mr. Trent Lester; Ms. Myrna Martin; Mr. Carl McGiliger; Ms. McSpadden; Mr. David Nicholson; Mr. Brett Roy; Ms. Shackelford; Mr. Ryan Shouse; Ms. Sarah Shydale; Mr. Sutton; Ms. Deandra Thompson; Mr. Thomas Wheeler; Mr. Russell Willis; Ms. Kelly B. Wittman; The Hon. Victoria Garcia-Wilburn, Indiana State Representative; Mr. Will Young; Mr. David Ziemba.

1. Call to Order:

The Chair called the February 27, 2024 meeting of the Commission to order at 10:00 a.m. EST in Conference Room B, Indiana Government Center South, 402 West Washington Street, Indianapolis.

2. Transaction of Commission Business:

The Commission proceeded to transact the business set forth in the Transcript of Proceedings for this meeting prepared by Maria W. Collier, RPR, CRR, of Stewart Richardson and Associates, which is incorporated by reference into these minutes.

The following scrivener’s errors are corrected:

- Page 25, line 4, replace “disappearing” with “disagreement”.
- Page 40, line 1, replace “September 28” with “December 8”.
- Page 51, line 12, after “is”, insert “an”.
- Page 72, line 10, replace “Associate” with “Commissioner”.
- Page 82, line 11, replace “cost” with “costly”.
- Page 219, line 5, replace “Tommy” with “Tom”.

Page 219, line 5, replace "IC 3-8-2-7(4)(a)" with "IC 3-8-2-7(a)(4)".

Page 228, line 12, replace "computer" with "computerized".

Page 252, line 20, replace "an empiric" with "a pyrrhic".

Page 256, line 18, replace "Mr." with "Ms."

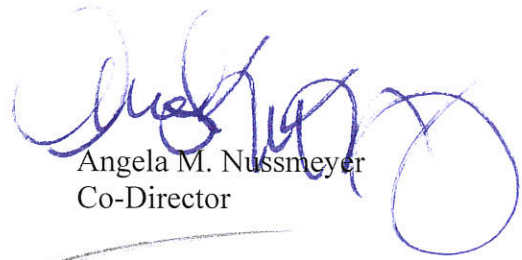
Page 260, line 22, replace "State Voter System" with "State Voter Registration System".

The Commission adjourned its meeting at 4:38 p.m. EST.

Respectfully submitted,



J. Bradley King
Co-Director



Angela M. Nussmeyer
Co-Director

APPROVED:



Paul Okeson, Chairman

In the Matter Of:
INDIANA ELECTION COMMISSION PUBLIC SESSION

Transcript of Proceedings

February 27, 2024

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2 INDIANA ELECTION COMMISSION
3 PUBLIC SESSION
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7 Conducted on: February 27, 2024
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9

10
11 Conducted at: Indiana Government Center South
12 402 West Washington Street, Conference Room B
13 Indianapolis, Indiana
14

15
16 A Stenographic Record by:
17 Maria W. Collier, RPR, CRR
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20
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24 STEWART RICHARDSON & ASSOCIATES
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APPEARANCES

INDIANA ELECTION COMMISSION:

Paul Okeson - Chairman

Suzannah Wilson Overholt - Vice Chairman

Litany Pyle - Member

Karen Celestino-Horseman - Member

INDIANA ELECTION DIVISION STAFF:

Angela M. Nussmeyer - Co-Director

J. Bradley King - Co-Director

Matthew Kochevar - Co-Counsel

Valerie Warycha - Co-Counsel

Michelle Thompson - Campaign Finance Director

Abbey Taylor - Campaign Finance Director

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1 CHAIRMAN OKESON: I call to order the Indiana
2 Election Commission meeting public session, today's
3 date Tuesday, February 27, 2024, at 10:00 a.m.,
4 Conference Room B here at Government Center South.

5 The following members of the Commission are
6 present: Myself, Chairman Paul Okeson; Vice Chair
7 Suzannah Wilson Overholt; Member Karen
8 Celestino-Horseman; and to my right, Member Litany
9 Pyle. I also recognize the Indiana Election
10 Division staff: Co-Director Brad King, Co-Director
11 Angie Nussmeyer, Co-Counsel Matthew Kochevar and
12 Valerie Warycha, to my right. And again our good
13 friend Court Reporter Maria Collier from Stewart
14 Richardson Deposition Services is joining us once
15 again.

16 And before we go on, I'd like to remind
17 everyone, for purposes of getting the record
18 straight, if you are providing any testimony or
19 interaction with the Commission today, please speak
20 clearly, state your name, and then spell it for the
21 court record.

22 With that, we'll move on to documentation of
23 the Open Door Law. I request co-directors have
24 given proper notice.

25 Mr. King.

1 MR. KING: Mr. Chairman, members of the
2 Commission, on behalf of myself and Co-Director
3 Nussmeyer, we certify that notice of this meeting
4 was given in compliance with the Indiana Open Door
5 Law.

6 CHAIRMAN OKESON: Thank you.

7 Next we have approval of our September 22,
8 2023, Commission meeting minutes. I recognize the
9 co-directors to present the minutes.

10 MR. KING: Mr. Chairman, on behalf of myself
11 and Co-Director Nussmeyer, we present to you the
12 September 22, 2023, Indiana Election Commission
13 minutes and recommend them to you for your
14 approval.

15 VICE CHAIRMAN OVERHOLT: So moved.

16 CHAIRMAN OKESON: Thank you.

17 Is there a second?

18 MS. PYLE: Second.

19 CHAIRMAN OKESON: Any discussion?

20 Hearing none on the minutes, all those in
21 favor signify by saying "Aye."

22 VICE CHAIRMAN OVERHOLT: Aye.

23 MS. CELESTINO-HORSEMAN: Aye.

24 MS. PYLE: Aye.

25 CHAIRMAN OKESON: Aye.

1 The "ayes" have it. The minutes are approved.

2 Anyone planning to testify today or provide
3 any information to the Commission I would like to
4 take administration of the oath by Matthew
5 Kochevar, so please stand.

6 Mr. Kochevar.

7 MR. KOCHEVAR: Thank you, Mr. Chair.

8 If you plan on testifying before the Indiana
9 Election Commission, please rise, raise your right
10 hand, and say "I do" after recitation of the oath.

11 Do you solemnly swear or affirm, under the
12 penalties of perjury, that the testimony you are
13 about to give to the Indiana Election Commission is
14 the truth, the whole truth, and nothing but the
15 truth? Please say "I do."

16 ALL: I do.

17 CHAIRMAN OKESON: Thank you, Mr. Kochevar.

18 We have a pretty heavy schedule today with
19 some campaign candidate challenge hearings that we
20 will get to in a moment. Before heading into that,
21 we will take care of a couple of housekeeping
22 items, campaign finance matters. The Commission
23 will consider approval of campaign finance orders
24 from previous meetings and the ratification of
25 settlement agreements regarding campaign finance

1 violations.

2 I recognize Ms. Taylor and Ms. Thompson from
3 the Election Commission campaign finance staff to
4 present these matters.

5 MS. THOMPSON: Mr. Chairman, members of the
6 Commission, behind your campaign finance tab in
7 your binders, there's a list of committees that are
8 ready to ratify that have agreed to pay the
9 settlement agreement and waive a hearing.

10 CHAIRMAN OKESON: Is there a motion to ratify
11 the campaign finance settlements as presented?

12 VICE CHAIRMAN OVERHOLT: So moved.

13 MS. PYLE: Second.

14 CHAIRMAN OKESON: Having a motion and a
15 second, is there any discussion on the matters, any
16 questions?

17 Hearing none, all those in favor signify by
18 saying "Aye."

19 VICE CHAIRMAN OVERHOLT: Aye.

20 MS. CELESTINO-HORSEMAN: Aye.

21 MS. PYLE: Aye.

22 CHAIRMAN OKESON: Aye.

23 The "ayes" have it. The matters are settled.
24 Thank you.

25 CHAIRMAN OKESON: Next we'll establish the --

1 oh, we have adoption of the orders?

2 MS. THOMPSON: Yes.

3 CHAIRMAN OKESON: Yes. Sorry.

4 MS. THOMPSON: Mr. Chairman, members of the
5 Commission, Orders 2023-422 through 2023-431 have
6 been prepared from the actions taken at the
7 September 22, 2023, meeting, and these orders are
8 ready for adoption.

9 CHAIRMAN OKESON: Is there a motion to
10 approve?

11 VICE CHAIRMAN OVERHOLT: So moved.

12 CHAIRMAN OKESON: Second?

13 MS. PYLE: Second.

14 CHAIRMAN OKESON: Any discussion, questions?
15 All those in favor signify by saying "Aye."

16 VICE CHAIRMAN OVERHOLT: Aye.

17 MS. CELESTINO-HORSEMAN: Aye.

18 MS. PYLE: Aye.

19 CHAIRMAN OKESON: Aye.

20 The "ayes" have it. Thank you. Appreciate
21 it.

22 Now we'll move on to candidate challenge
23 hearing procedures. We will now begin
24 consideration of candidate challenges based on the
25 order in which the challenges were filed with the

1 Election Division, subject to consolidating some
2 challenges which present essentially identical
3 issues to the Commission. I remind everyone to
4 identify yourself again when you begin speaking,
5 and spell your name for the court reporter.

6 MS. CELESTINO-HORSEMAN: Mr. Chairman.

7 CHAIRMAN OKESON: Yes.

8 MS. CELESTINO-HORSEMAN: Before we begin, can
9 we go ahead and get consensus on using the hand
10 stamp for signatures.

11 CHAIRMAN OKESON: Valerie, any concern?

12 MS. WARYCHA: No.

13 CHAIRMAN OKESON: There's a motion to consent.
14 Second?

15 MS. PYLE: Second.

16 CHAIRMAN OKESON: Any discussion?

17 Hearing none, all those in favor.

18 Aye.

19 VICE CHAIRMAN OVERHOLT: Aye.

20 MS. CELESTINO-HORSEMAN: Aye.

21 MS. PYLE: Aye.

22 CHAIRMAN OKESON: So we'll do it by consent.

23 And I will say, as I read off these
24 procedures, we intend to keep them. We will run it
25 fairly and efficiently, try and get through the

1 entire list and agenda of cases, so please abide by
2 them, if you will.

3 In the past, the Commission has followed
4 certain procedures for conducting candidate
5 challenge hearings, and I move the Commission use
6 the following procedures for today:

7 When each candidate challenge is called, the
8 hearing will begin by recognizing Election Division
9 staff to provide information about documents
10 provided to Commission members, including candidate
11 challenge forms, and the notice given to the
12 candidate and the challenger.

13 Unless there is objection, the documents
14 provided to the Commission by the Election Division
15 will be entered into the record of this meeting.

16 After the Election Division staff completes
17 its presentation, the challenger will be recognized
18 first. The challenger or the challenger's
19 authorized representative, if written authorization
20 was given for said representative and filed with
21 the Election Division, may present their case for
22 no more than five minutes, unless the Commission
23 votes to allow additional time for the presenter.

24 Commission members may ask questions during a
25 presentation, but the time spent answering these

1 questions will not be counted against the
2 presenter's time. The Election Division may signal
3 the Chair when the presenter's time is up.

4 If the presenter offers additional documents
5 or other physical evidence not previously received
6 by the Division or the Commission, the original
7 must be provided to the Election Division, and I
8 would direct you to Valerie Warycha, to my right,
9 to hand such documents to preserve the record.

10 The candidate or candidate's representative
11 will be recognized following the last presentation
12 by a challenger. The candidate may present their
13 case for no more than five minutes as well, unless
14 the Commission votes to allow additional time for
15 that presenter.

16 Following presentation by a challenger, the
17 candidate may cross-examine the challenger.
18 Following the presentation by a candidate, the
19 challenger may cross-examine the candidate.
20 Cross-examination in all cases will be limited to
21 two minutes, unless the Commission votes to allow
22 additional time. The cross-examination must be
23 limited to questions regarding statements made by
24 the presenter during their opening five minutes.
25 Following presentation by a candidate, the

1 challenger may present a rebuttal for no more than
2 two minutes.

3 The Commission may dismiss the cause of any
4 challenger who has failed to appear to testify
5 before the Commission.

6 If more than one challenge has been filed
7 against an individual candidate, the Commission may
8 consolidate the challenges, but will provide the
9 same equal -- excuse me -- same amount of time for
10 each individual challenger and equal time to the
11 candidate.

12 Is there a second to my motion for the
13 Commission to adopt these procedures for today's
14 hearings?

15 VICE CHAIRMAN OVERHOLT: Second.

16 CHAIRMAN OKESON: Any discussion? Any
17 questions?

18 Hearing none, all those in favor signify by
19 saying "Aye."

20 VICE CHAIRMAN OVERHOLT: Aye.

21 MS. CELESTINO-HORSEMAN: Aye.

22 MS. PYLE: Aye.

23 CHAIRMAN OKESON: Aye.

24 The "ayes" have it, and those are the
25 procedures.

1 Moving right into the agenda then, we have the
2 Bartlett v. Carter challenge, 2024-01, in the
3 matter of the challenge to Autumn Carter, candidate
4 for Democratic Party nomination for State
5 Representative, District 95. After filing the
6 challenge in this matter, the challenger, the
7 Honorable John Bartlett, filed a request to
8 withdraw the challenge.

9 The Election Division has provided copies of
10 the candidate filing challenge form, copy of notice
11 given in this matter, and a copy of the motion to
12 withdraw in your binders.

13 I therefore move that the Commission dismiss
14 this cause based on the challenger's withdrawal of
15 the challenge. Is there a second?

16 VICE CHAIRMAN OVERHOLT: Second.

17 CHAIRMAN OKESON: Having a second, any
18 discussion? Any questions?

19 Hearing none, all those in favor signify by
20 saying "Aye."

21 VICE CHAIRMAN OVERHOLT: Aye.

22 MS. CELESTINO-HORSEMAN: Aye.

23 MS. PYLE: Aye.

24 CHAIRMAN OKESON: Aye.

25 The "ayes" have it. The motion is adopted and

1 this case is dismissed. The Election Division will
2 be directed to include the name of Ms. Carter on
3 the certified list of primary candidates sent to
4 county election boards.

5 Next on the agenda in filing order we have
6 Kester v. Trump, Challenge 2024-02, in the matter
7 of the challenge to Donald J. Trump, candidate for
8 the Republican Party nomination for President of
9 the United States.

10 The Election Division has provided copies of
11 the candidate filing challenge form, with
12 attachments, and a copy of notice given in this
13 matter in your binders.

14 I now recognize Mr. Kester, the challenger,
15 for presentation, unless...

16 VICE CHAIRMAN OVERHOLT: Yes. Mr. Chairman,
17 if I might, before we get started on this, I just
18 wanted to disclose the fact that I believe it's the
19 Trump campaign that is represented by the same firm
20 where my husband is employed.

21 CHAIRMAN OKESON: Okay.

22 VICE CHAIRMAN OVERHOLT: And he is an owner.
23 But I do not believe that creates -- is having any
24 impact on my judgment, but I guess Mr. Wheeler
25 might disagree.

1 MR. WHEELER: Oh, not at all. But I left the
2 firm at the end of the year, so I'm now with the
3 firm of Bose McKinney & Evans.

4 VICE CHAIRMAN OVERHOLT: Oh, right, you left.
5 I forgot.

6 MR. WHEELER: So I just wanted to clarify.

7 VICE CHAIRMAN OVERHOLT: There never would
8 have been a conflict. Mr. Wheeler knows my
9 background. Okay. Never mind. I forgot that
10 part.

11 CHAIRMAN OKESON: Presume for the record all
12 has been appropriately dealt with.

13 VICE CHAIRMAN OVERHOLT: Yes.

14 CHAIRMAN OKESON: Anything from the
15 co-division before we start on this matter?

16 MR. KOICHEVAR: I don't know how both
17 co-directors want to go, if we want to ping back
18 and forth on presenting the record or if we want to
19 handle them based on the candidate and which
20 primary they're running in. I forget how we
21 usually do this. It's been two years. But I defer
22 to both co-directors on how they want to present.

23 CHAIRMAN OKESON: You don't use it on a daily
24 basis, so...

25 MR. KING: Mr. Chairman, my recollection is

1 that Mr. Kochevar is correct that, in terms of
2 staff presentations, depending upon the party
3 affiliation of the candidate involved, the Election
4 Division for that staff will make an initial
5 presentation of the record.

6 CHAIRMAN OKESON: I think that's how we listed
7 it in the proceedings.

8 MS. WARYCHA: Sure.

9 CHAIRMAN OKESON: Valerie.

10 MS. WARYCHA: So this one is filed by Benjamin
11 Kester. He is challenging the candidacy of Donald
12 J. Trump for U.S. president, and the claim is the
13 candidate is disqualified from holding public
14 office under Section 3 of the 14th Amendment of the
15 U.S. Constitution.

16 And I believe this is Mr. Kester that is here
17 to make his presentation.

18 MR. KESTER: I have a few documents.

19 CHAIRMAN OKESON: Before you go on,
20 Mr. Kochevar, do you have anything to add to that?

21 MR. KOCHEVAR: I have nothing to add to that.

22 MS. WARYCHA: I'll start the five minutes
23 then.

24 MR. WHEELER: Mr. Chairman, we have a
25 preliminary objection.

1 CHAIRMAN OKESON: Do we take that first?

2 State your name, and you know the game.

3 MR. WHEELER: Thank you, Mr. Chairman. Our
4 preliminary objection --

5 THE REPORTER: Could you state your name,
6 please.

7 MR. WHEELER: I'm sorry. Thomas Wheeler with
8 the law firm of Bose McKinney & Evans. Ali
9 Bartlett, one of my partners, is here, as is Carlin
10 Yoder, who is chairman of the Trump campaign in the
11 state of Indiana.

12 What we filed with the Commission members just
13 now is a preliminary jurisdictional objection to
14 the filing. There's two motions there. The first
15 motion is based on --

16 MS. CELESTINO-HORSEMAN: Sorry to interrupt.
17 But have you provided copies of this to the
18 Commission?

19 MR. WHEELER: We have not yet.

20 MS. CELESTINO-HORSEMAN: Can we get those
21 first, please.

22 MR. WHEELER: Absolutely. I'm sorry.

23 CHAIRMAN OKESON: And before you go on,
24 Mr. Wheeler, are we following proper procedure
25 here?

1 MR. KING: Mr. Chairman, I'll defer to
2 counsel, but the proceedings of the Commission
3 today are governed by the Administrative Orders and
4 Procedures Act and Indiana Code 4-21.5.

5 CHAIRMAN OKESON: Does it permit such a filing
6 at the time of Commission?

7 MS. WARYCHA: I believe it does, yes, sir.

8 CHAIRMAN OKESON: Okay. Thank you. Sorry
9 about that.

10 MR. WHEELER: And I'll just summarize.
11 There's two motions here. The first motion is a
12 preliminary jurisdictional motion based on
13 IC 3-8-1-6(a). As was noted, Mr. Kester's
14 challenge is based on Section 3 of the 14th
15 Amendment of the Constitution. IC 3-6-1-6(a), and
16 this is noted in the motion you have in front of
17 you, that statute specifically excludes sections
18 like -- a Section 3, 14th Amendment challenge. It
19 limits candidate challenges to, and I quote, "A
20 candidate for the office of President and Vice
21 President of the United States must have the
22 qualifications provided in Article 2, Section 1,
23 Clause 4."

24 MS. CELESTINO-HORSEMAN: Can you please give
25 us the citation again.

1 MR. WHEELER: Sure. And it's set out fully in
2 the motion. IC 3-8-6-1-6(a). It's four sections
3 behind the base candidate challenge statute.

4 CHAIRMAN OKESON: Sorry. We're getting your
5 documents distributed.

6 MR. WHEELER: No, no. I understand, and I
7 apologize.

8 CHAIRMAN OKESON: You're fine. So right now
9 we're talking about the first motion.

10 MR. WHEELER: The second motion is the federal
11 argument, and it's the argument that we made in
12 front of Supreme Court on the fact that Section 3
13 doesn't apply to the president.

14 VICE CHAIRMAN OVERHOLT: And I'm sorry. You
15 said 3-8-6-6, but it looks like it's all 3-8-1-6.

16 MR. WHEELER: 3-8-1-6. Did I misspeak? I
17 apologize. 3-8-1-6.

18 So the statute under which the challenge has
19 been made is the general statute. It is the
20 statute that applies to all candidates, state or
21 federal, that want to be on the ballot. The
22 specific statute that deals with the president
23 makes it clear that you cannot bring just any
24 challenge under the Constitution. You may bring
25 challenges under Article 2, Section 1, that's it,

1 which is the basic qualifications for the
2 president, not under Section 3, 14 or anywhere
3 else.

4 And if you look at the second paragraph,
5 part (b), the General Assembly, in this statute,
6 considered Section 3, 14 challenges and limited
7 those to presidential electors. As you know,
8 there's five constitutional officers in the U.S.
9 Constitution. It's the president, vice president,
10 Senate, House, and then presidential electors.

11 So they made it clear, the legislature's made
12 it clear in this statute, which is the more
13 specific statute -- I know all of you guys are all
14 attorneys here. The Indiana Supreme Court has made
15 it absolutely clear that a specific statute
16 controls over a general statute. This is a
17 specific statute that says that the only challenge
18 to a president can be made in Indiana under the
19 qualifications under Article 2, Section 1, Clause 4
20 of the Constitution. It limits Section 1, which is
21 the basis for the candidate challenge.

22 Therefore, our position that we take in the
23 motion is that the Commission lacks the
24 jurisdiction to even hear this, which is a
25 preliminary thing that the Commission, sitting as

1 administrative law judges, has to deal with before
2 hearing the challenge.

3 MS. CELESTINO-HORSEMAN: Mr. Wheeler, how do
4 you reach that conclusion? I mean, it just states
5 that you have to have the qualifications of one
6 particular clause of the Constitution, but it does
7 not state, it does not state, that this is the only
8 basis upon which you can be challenged. It's just
9 simply stating Indiana says you have to meet these
10 qualifications.

11 CHAIRMAN OKESON: Do we have to take a motion
12 and second it before we have any engagement here?

13 MS. CELESTINO-HORSEMAN: We can ask questions.

14 MS. WARYCHA: Yeah, you can ask questions.

15 MR. WHEELER: Sure, it does. The statute, the
16 general statute -- and all of our statutes, we have
17 general provisions and then we have specific
18 provisions. The general provision applies to all
19 candidates, which is the first part upon which it's
20 brought. The Constitution says -- the Indiana
21 Constitution says statute and IAC rules.

22 With respect to this statute, this is a
23 specific statute passed to deal with the president
24 and the vice president, and then under it it deals
25 with presidential electors, which makes it clear

1 that the Indiana General Assembly, when it enacted
2 that, intended to limit, in that specific
3 circumstance, the challenge to a president only to
4 Article 2, Section 1 challenges and does not
5 contemplate Section 3 because part (b) does add
6 that for presidential electors.

7 MS. CELESTINO-HORSEMAN: Well, that's
8 presidential electors. We're not having
9 presidential electors here, and, in fact, the fact
10 that they didn't say the only qualification you
11 must meet is this, I mean for president and vice
12 president, also says something.

13 Now, my question is, since we just got your
14 brief, do you have any legislative history, any
15 case law, anything that supports your
16 interpretation of this?

17 MR. WHEELER: Sure. If you look in there, the
18 statute was amended in 1993. Before that, both the
19 presidential section, part (a) and part (b), just
20 had the qualifications section. In 1993, the
21 legislature looked at those two and they amended
22 part (b) to add Section 3 in there. They did not
23 amend it to section (a).

24 Now, as I'm sure you know, Indiana doesn't
25 have any legislative history, but we can presume --

1 and the Indiana Supreme Court has done that.
2 That's why you read the statutes to harmonize with
3 each other. We can presume, when they amended the
4 presidential election statute to add presidential
5 electors section, part (b), to add in 1993
6 Section 3 of the 14th amendment, they chose not to
7 make that same amendment in part (a) dealing with
8 the president, which is basically a recognition of
9 the arguments that have been made to the Supreme
10 Court, which is that it doesn't apply to the
11 president or the vice president, Section 3.

12 MS. CELESTINO-HORSEMAN: I'm sorry, but I just
13 cannot agree with that interpretation because, for
14 an elector, what you're saying is that you cannot
15 be an insurrectionist to help to serve to cast
16 electoral votes for the president of the United
17 States. It's not saying there that, as a candidate
18 for president of the United States, it doesn't say
19 that you can or can't be an insurrectionist.

20 So, I mean, I would be much more comfortable
21 with this -- we tend to, here at the Commission, to
22 be inclusive and, you know, to hear a challenge
23 like this. And, you know, I am personally not
24 comfortable with adding a brand-new interpretation
25 of this law that has not been interpreted by

1 Indiana court.

2 And true, while we don't have legislative
3 history, what I should have said was the
4 disappearing about histories regarding the adoption
5 of the Indiana constitutions or any amendments and
6 such, so I apologize for my misstatement. But
7 since we are now traversing a brand-new area of
8 law, I am not comfortable giving this provision
9 such a narrow, narrow reading and would prefer just
10 to proceed to hear the challenge.

11 So I would move that we deny the motion and
12 proceed to the challenge.

13 CHAIRMAN OKESON: Yes. First, motion. Is
14 there a second?

15 VICE CHAIRMAN OVERHOLT: Second.

16 CHAIRMAN OKESON: I have a second, a motion
17 and a second.

18 Any questions, Litany?

19 MS. PYLE: I don't think so.

20 CHAIRMAN OKESON: Any discussion?

21 This is, unless I'm mistaken, the first time
22 I've dealt with such a motion on the other side of
23 it, so I appreciate you giving me a couple minutes.
24 But I certainly applaud your attempts and the legal
25 gymnastics to get to this point.

1 But we have a motion to -- how did you state
2 that, deny the --

3 MS. CELESTINO-HORSEMAN: To deny the motion to
4 dismiss.

5 CHAIRMAN OKESON: Motion to deny the motion
6 and proceed with the challenge.

7 MS. CELESTINO-HORSEMAN: Yes.

8 CHAIRMAN OKESON: And we have a second.

9 Okay. All those in favor signify by saying
10 "Aye."

11 VICE CHAIRMAN OVERHOLT: Aye.

12 MS. CELESTINO-HORSEMAN: Aye.

13 MS. PYLE: Aye.

14 CHAIRMAN OKESON: Aye.

15 The "ayes" have it. We will proceed with the
16 challenge.

17 MS. CELESTINO-HORSEMAN: And, Mr. Wheeler, I
18 also applaud your creativity. You are an excellent
19 lawyer. We all know that.

20 CHAIRMAN OKESON: Mr. Wheeler, I think, if I
21 understood correctly, your second motion was more
22 for background and not to each --

23 MR. WHEELER: The second motion probably is
24 appropriately dealt with after because it is a
25 Section 3, Article 14 actual argument, and it's our

1 Supreme Court argument, for all intents and
2 purposes. So it's more appropriately addressed
3 after the challenger speaks.

4 CHAIRMAN OKESON: So this constitutes a
5 motion, and I guess we need to vote on it.

6 MS. CELESTINO-HORSEMAN: Are you talking about
7 the motion to take --

8 CHAIRMAN OKESON: For the second. So he has a
9 second filing that he made to the state Election
10 Commission.

11 MS. CELESTINO-HORSEMAN: But, Mr. Wheeler, you
12 were just saying that you think that this should be
13 addressed when we get into the challenge itself?

14 MR. WHEELER: It's essentially a merits
15 argument. So think of -- I made a 12(b)(1), okay,
16 and this is essentially a 12(b)(6) motion.

17 CHAIRMAN OKESON: Is this a motion -- would
18 you be willing to withdraw it for the purposes of
19 this proceeding?

20 MR. WHEELER: We'll withdraw it -- I want to
21 keep it on based upon the -- but we're willing to
22 hold in abeyance until the challenger makes his
23 argument.

24 MS. CELESTINO-HORSEMAN: The way I understand,
25 Mr. Chairman, what he's saying is that we'll go

1 ahead, go through the challenge, and at the end he
2 can then -- using the evidence and what has been
3 presented and discussed, he can then make a motion
4 before we decide.

5 CHAIRMAN OKESON: So to clarify, this is not
6 jurisdictional; correct?

7 MS. CELESTINO-HORSEMAN: No.

8 MR. WHEELER: It is jurisdictional, yes.

9 MS. CELESTINO-HORSEMAN: But it goes to the
10 merits.

11 MR. WHEELER: But it is also jurisdictional
12 because the point of the argument is that under
13 Indiana elections, Section 3, Article 14, my
14 position, the General Assembly has made it clear
15 that that does not apply, one.

16 This argument says, look, under federal law,
17 the federal law makes it very clear that Section 3,
18 Article 14 does not apply to the president, which
19 is, again, jurisdictional because, if it doesn't
20 apply to the president, then no violation of the
21 Constitution and therefore you wouldn't have
22 jurisdiction to hear it.

23 MS. WARYCHA: Mr. Chairman.

24 CHAIRMAN OKESON: Yeah.

25 MS. WARYCHA: When Ms. Bartlett handed me the

1 motion, she handed me both, I think, out of
2 convenience, but I really only heard her say
3 something about the first. So I do think that we
4 could move forward with the challenge and then they
5 could move to the second motion even though --

6 VICE CHAIRMAN OVERHOLT: And alternatively, if
7 we need to, couldn't we have a motion to table the
8 second motion, and then we can --

9 MS. WARYCHA: I think that would work, yes.

10 VICE CHAIRMAN OVERHOLT: If we need to clarify
11 things.

12 MR. WHEELER: I thought that's what the
13 Commission and I had --

14 MS. CELESTINO-HORSEMAN: Yes. I think we're
15 on the same page.

16 CHAIRMAN OKESON: So motion to?

17 VICE CHAIRMAN OVERHOLT: I'll change the
18 language. Yes. I move to table the second motion
19 to dismiss.

20 CHAIRMAN OKESON: Second?

21 MS. PYLE: Second.

22 CHAIRMAN OKESON: All those in favor signify
23 by saying "Aye."

24 VICE CHAIRMAN OVERHOLT: Aye.

25 MS. CELESTINO-HORSEMAN: Aye.

1 MS. PYLE: Aye.

2 CHAIRMAN OKESON: Thank you for your help.

3 Okay. Back on track. Where were we?

4 Mr. Kester?

5 MR. KESTER: I have a few documents.

6 CHAIRMAN OKESON: Would you please say your
7 name and spell it for the court record.

8 MR. KESTER: My name is Benjamin Kester,
9 B-e-n-j-a-m-i-n, K-e-s-t-e-r.

10 CHAIRMAN OKESON: Thank you.

11 MS. CELESTINO-HORSEMAN: Mr. Kester, has the
12 other side been given copies of the documents?

13 MR. KESTER: No. One of those copies is for
14 them. I'm sorry.

15 CHAIRMAN OKESON: We can share. Go ahead.

16 MR. KESTER: Thank you for agreeing to hear
17 this challenge today. So I'll try to stick to the
18 facts here. He already referenced the challenge
19 under Indiana Code 3-8-1-2, that the Election
20 Commission shall deny a filing if you determine
21 that the candidate has not complied with the
22 applicable requirements for the candidate set forth
23 in the Constitution.

24 So a few facts here. I believe that Mr. Trump
25 has failed to meet the qualifications to serve

1 under the Constitution of the United States,
2 Section 3 of the 14th Amendment, that "No person
3 shall be a Senator or Representative in Congress,
4 or elector of President and Vice President, or hold
5 any office, civil or military, under the United
6 States, or under any State, who, having previously
7 taken an oath, as a member of Congress, or as an
8 officer of the United States, or as a member of any
9 state legislature, or as an executive or judicial
10 officer of any State, to support the Constitution
11 of the United States, shall have engaged in
12 insurrection or rebellion against the same, or
13 given aid or comfort to the enemies thereof. But
14 Congress may vote by two-thirds of each House
15 remove such disability."

16 Congress has, in fact, conducted a vote, so on
17 January 13th, the House of Representatives voted on
18 House Resolution 24, which you have in front of
19 you, the 117th Congress, that in a bipartisan
20 majority, in a vote of 232 to 197, found that
21 President Trump incited an insurrection against the
22 Government of the United States. This went to the
23 Senate February 13th after Mr. Trump was out of
24 office, and, again, a majority, 57, found him
25 guilty, 43 did not. I recognize that this failed

1 to meet the bar for impeachment. Mr. Trump was out
2 of office at this time. So those are the facts.

3 I want to go on and read something from the
4 January 6th report that was referenced in the
5 Government Accountability report. You have
6 statements in here showing the statements that
7 Mr. Trump made to the crowd that was gathered, but
8 I want to speak about what that insurrection
9 detailed.

10 So over the course of about seven hours, more
11 than 2,000 protesters entered the U.S. Capitol on
12 January 6th, disrupting the peaceful transfer of
13 power and affecting the safety of the vice
14 president and members of Congress. The attack
15 resulted in assaults on at least 174 police
16 officers, including 114 Capitol Police and 60 D.C.
17 Metropolitan Police Department officers. These
18 events led to at least seven deaths and caused
19 about 2.7 billion in estimated costs.

20 During this insurrection, Mr. Trump gave aid
21 by withholding federal law enforcement and the
22 National Guard, which is detailed in the
23 January 6th report. The full title of that is
24 "Final Report of the Select Committee to
25 Investigate the January 6th Attack on the United

1 States Capitol." That's on page 67, and I've
2 provided it.

3 He also gave comfort to the insurrectionists
4 by public statement validating their chants as they
5 assaulted the Capitol. He posted this on Twitter
6 saying "Mike Pence didn't have the courage to do
7 what should have been done to protect our country
8 and our Constitution, giving states a chance to
9 certify a correct set of facts, not the fraudulent
10 or inaccurate ones which they were asked to
11 previously certify. USA demands the truth."
12 That's also quoted in the papers I've given you.

13 And he has continued after the insurrection to
14 advocate for those people who assaulted police
15 officers and entered the Capitol illegally.
16 Famously, right after these events, he said "These
17 are the things and events that happen when a sacred
18 landslide election victory is so unceremoniously
19 and viciously stripped away from the great patriots
20 who have been badly and unfairly treated for so
21 long. Go home with love and in peace. Remember
22 this day forever."

23 And more recently, his Truth Social account
24 has advocated to free all J6 political prisoners,
25 is how he refers to them.

1 So with that, I will take your questions or
2 yield to the candidate.

3 MS. WARYCHA: It just went five.

4 CHAIRMAN OKESON: Okay. Thank you. All
5 right. They have the right to question; correct?
6 Yeah.

7 Mr. Wheeler, do you have any questions?

8 MR. WHEELER: We have no questions. I'm
9 sorry.

10 CHAIRMAN OKESON: You're up.

11 MS. BARTLETT: Thank you, Mr. Chairman and
12 members of the Commission. My name is Ali
13 Bartlett, A-l-i, B-a-r-t-l-e-t-t, and I'm also with
14 Bose McKinney & Evans.

15 While we feel that the merits of the challenge
16 were not directly addressed by the challenger,
17 before we address the merits of our argument, we do
18 have one additional procedural motion that we'd
19 like to proceed with. This motion is a motion to
20 disqualify, and we'd like to proceed with this
21 ahead of our substantive argument.

22 Under Indiana Code Section 4-21.5-3-9(d), we
23 have a right to disqualify a commissioner who has
24 expressed personal bias, prejudice, or other
25 prejudice for anyone as a member of these

1 proceedings. And so under the law, the members of
2 the Commission, when hearing these challenges,
3 function as administrative law judges and therefore
4 cannot specifically express prejudice against any
5 of the parties.

6 As you'll see, we've provided an Exhibit A,
7 which we believe does illustrate prejudice by one
8 of the members of the Commission, and therefore we
9 would move to disqualify Commissioner
10 Celestino-Horseman prior to proceeding with the
11 substantive arguments.

12 CHAIRMAN OKESON: This is the Exhibit A?

13 MS. BARTLETT: Yes, this is the Exhibit A.
14 And we'll give you a second to review the motion.

15 We would like to note, under the same statute
16 and with all due respect, there was an opportunity
17 for Commissioner Celestino-Horseman to recuse
18 herself at the outset. Because the recusal did not
19 take place, therefore we're moving forward with
20 this motion to disqualify because we feel there is
21 a level of impartiality that's been publicized
22 ahead of this hearing. And while we hoped for a
23 recusal, we didn't have it, so we'd like to proceed
24 with the motion.

25 MS. CELESTINO-HORSEMAN: Mr. Chair, may I

1 respond to this motion?

2 CHAIRMAN OKESON: Go ahead.

3 MS. CELESTINO-HORSEMAN: Thank you. Since it
4 does involve me. They've attached one article.
5 For clarification for those in the audience who
6 aren't familiar with it, I do a monthly column for
7 the Indianapolis Business Journal, and in one of my
8 columns, I did an article that was titled
9 "Candidates should be judged by the company they
10 keep" and brought up the question about certain of
11 our candidates running for state offices and their
12 endorsement of Donald Trump.

13 Now, we are political appointees to this
14 Commission, Ms. Bartlett, so you may not be aware
15 of this. But what happens is that --

16 MS. BARTLETT: I'm aware.

17 MS. CELESTINO-HORSEMAN: -- our names are put
18 forward by the Democratic Party chairman --

19 MS. BARTLETT: Sure.

20 MS. CELESTINO-HORSEMAN: -- and their names --
21 please let me finish. Don't respond while I'm
22 talking. And their names are put forward by the
23 Republican Party chairman.

24 The overriding thing that we have going on
25 here -- and we work well together for the most

1 part. I'd say 99 percent of the time we work well
2 together. But the overriding thing that we all
3 have to do is we take an oath to protect and
4 support the Constitutions of Indiana and the United
5 States and protecting the voters and voter
6 integrity and all of that.

7 So, you know, I'm not quite sure what your
8 point is. In actuality, can I be looking at the
9 law -- I'm a lawyer; I do it all the time. And
10 you're a lawyer, and you know that we have many
11 personal opinions regarding the facts of our cases,
12 but we go forward and we follow the law because
13 that's what we are required to do. And that is the
14 same situation here.

15 So I would respectfully ask my fellow
16 commissioners to deny this motion for me to recuse
17 myself, because I don't intend to. And secondly, I
18 find it very peculiar that they wait until this
19 point in the process, after I have spoken up about
20 not granting your motion to dismiss, and just raise
21 this now, letting the other side go forward and
22 just raising this now, because it leads me to
23 conclude that they just didn't like what I said or
24 how I voted. So I would not encourage that kind of
25 behavior either. Thank you.

1 CHAIRMAN OKESON: This is new water for me.
2 Valerie.

3 MS. WARYCHA: Yeah. This is the first time
4 I've seen it come up as well, so I'm reading here
5 on the fly, but I do have some concerns for you,
6 Mr. Chairman. As I'm looking at 4-21.5-3-6, I'm
7 going to paraphrase here, but an individual as a
8 person presiding in a proceeding under, it's
9 referencing AOPA, 28 through 31 of this chapter and
10 knowingly or intentionally violates Section 11, 12
11 or 13 of this chapter commits a Class A
12 misdemeanor.

13 And let me tell you why I bring that up for
14 you. Bear with me as I flip around here too.
15 Indiana Code 4-21.5-3-12, administrative law judge
16 prohibited acts and disqualifications, this is
17 where it talks about an administrative law judge
18 who comments publicly, except in a hearing
19 scheduled or proceeding about pending or impending
20 proceedings, which I haven't read the article. I'm
21 just going off of what --

22 MS. CELESTINO-HORSEMAN: It doesn't have
23 any --

24 MS. WARYCHA: -- was just said a second ago.
25 I just want to bring that up so that you're aware

1 that it looks like, if a judge moves forward who
2 would be violating 12, you could have some issues
3 under 36 for letting that go on. I don't see a
4 mechanism for --

5 CHAIRMAN OKESON: And that applies to me as
6 the chair presiding over the proceeding.

7 MS. WARYCHA: As the chair. As I'm looking at
8 36, an individual presiding in a proceeding who
9 knowingly and intentionally. And I wouldn't say
10 that you violated 12, but if -- depending on what
11 the article says, I do have some concerns about --

12 VICE CHAIRMAN OVERHOLT: I guess I would point
13 out, so this article is dated December 8, 2023, so
14 it was before any challenge. I guess my -- I
15 understand what you're saying. I think that
16 this -- I mean, all of us -- well, I guess I'm
17 presuming that all of us engage in a certain level
18 of political activity on behalf of our parties or
19 we would not be sitting in these chairs, number
20 one, right? Well, I mean, we're affiliated with
21 our parties. I mean, that's the way it is. But
22 the other reason we're here is because we've
23 demonstrated that, despite our affiliations, we can
24 rule on these matters.

25 But anyway, to address your point, I just want

1 to point out this article is dated September 28,
2 2023, before this challenge was ever -- well, I
3 guess I don't know the date. I'm assuming that
4 Mr. Kester didn't file -- yeah, February 13, 2024,
5 was when he filed the challenge. So in terms of
6 this article, there was no challenge pending at the
7 time, and this is not commenting on the challenge.
8 It's not commenting on the proceeding pending --

9 MS. WARYCHA: I'm just going to --

10 VICE CHAIRMAN OVERHOLT: -- before the
11 Commission.

12 MS. WARYCHA: I apologize. I want to let you
13 finish.

14 I'm reading this as we're going here, but if
15 you keep going, an administrative law judge who
16 engages in financial or business dealings, and I
17 don't know if you're paid for that column or any of
18 those details, but it reflects on the judge's
19 administrative impartialities.

20 I would just encourage everybody to read
21 Section 12 before we go forward of Indiana Code
22 4-21.5-3-12 because that's giving -- that's, I
23 think, what everybody needs to review here with
24 this challenge. And then, like I said,
25 Mr. Chairman, I have some concerns under 36 for

1 you.

2 MS. CELESTINO-HORSEMAN: I will clarify. I
3 don't get paid any money, as much as I might like
4 to, for doing this, but I do get a one-year
5 subscription to the IBJ.

6 CHAIRMAN OKESON: Is that in trade for you
7 writing the column?

8 MS. CELESTINO-HORSEMAN: Yeah. They give that
9 to me as my compensation so I can read my own
10 publication.

11 CHAIRMAN OKESON: Co-Counsel Kochevar, out of
12 appropriateness, would you like to weigh in?

13 MR. KOCHEVAR: Yes, yes. Again, we're not
14 administrative -- we don't practice administrative
15 law except for at a Commission meeting, so these
16 are all relatively new. But first and foremost,
17 looking at 4-11-21.5-3-36 and looking at how it is
18 set out, it reads "An individual who (1) serving
19 alone or with others as an administrative law judge
20 or as a person presiding in a proceeding under
21 Sections 28 through 31 of this chapter and (2)
22 knowingly or intentionally violates Sections 11,
23 12, or 13 of this chapter commits a Class A
24 misdemeanor."

25 So that's two subdivisions separated by an

1 "and" clause, which under statutory construction,
2 as I understand it, means you have to meet those
3 two items.

4 So while the second item, which my co-counsel
5 has referred to in Sections 11, 12, and 13, may
6 touch on those things, we are not -- I don't
7 believe that this particular administrative law
8 hearing touches Sections 28 through 31, only to say
9 that because we explicitly exclude it from our
10 election code. We put in parts of the
11 Administrative Orders and Procedures Act. We, as a
12 matter of practice, even before I started at the
13 Commission ten years ago -- or sorry -- at the
14 Division ten years ago, have explicitly removed
15 those sections. I think those sections have to do
16 with specific agencies, but unfortunately, since I
17 don't have those sections in this book, I don't
18 remember what they are.

19 So I feel that for Section 38, I don't feel
20 that we do need to be worried about that since I
21 don't believe we're meeting that subdivision 1. We
22 are not dealing with anything that is covered under
23 Sections -- what was it? -- 28 through 31 of this
24 particular chapter.

25 Nonetheless, as for the other matters about

1 disqualification, ex parte communications, all
2 those things, the code is plain. I recognize that
3 this motion is something that is covered in
4 4-21.5-3-9, it has been brought forward, and it's
5 up to the administrative law judges, all of you, to
6 determine its merits and move forward.

7 CHAIRMAN OKESON: So what you're saying is the
8 motion filed to dismiss does follow those
9 guidelines? Is that what you're saying?

10 MR. KOICHEVAR: Yes, it would be. A motion has
11 been brought forward that an administrative law
12 judge, a member of this Commission, is
13 disqualified. Your action, you have to decide that
14 either you uphold the motion and you disqualify
15 same member or --

16 CHAIRMAN OKESON: And I do that singly?

17 MS. WARYCHA: I don't think so. No, I think
18 that would be a vote.

19 CHAIRMAN OKESON: Okay.

20 MS. WARYCHA: And just to comment on what 28,
21 29, and 30 is, those are final orders and authority
22 to issue for the ultimate authority, which in this
23 matter you all would be the ultimate authority at
24 the agency level.

25 So, Matthew, just so you know I do think 28

1 would apply. It's all about issuing orders, and I
2 think we just don't have it in our code book
3 because we don't issue a lot of final orders.

4 MR. KOICHEVAR: I'd have to study it a little
5 bit more, but I would just say, nonetheless, I
6 think the next step is clear is to handle this
7 motion as you would handle any other ones like the
8 first motion to dismiss and that we go from there.

9 I'll just say this: I mean, if there's any
10 disagreement here, there is an ability to appeal
11 these matters into Marion County court. And that's
12 all I have to say because I'd have to look at the
13 sections myself when I can get into my laptop.

14 MS. CELESTINO-HORSEMAN: Mr. Chairman, I --
15 okay.

16 VICE CHAIRMAN OVERHOLT: I have a question.

17 CHAIRMAN OKESON: Sure.

18 VICE CHAIRMAN OVERHOLT: Looking at
19 4-21.5-3-12 and what they're arguing has to do with
20 financial or business dealings, I guess my -- I
21 read that provision now and I'm wondering, so it
22 doesn't define what financial or business dealings
23 are. I'm wondering if, for example, campaign
24 contributions that we make fall into that.

25 MS. BARTLETT: May I?

1 VICE CHAIRMAN OVERHOLT: No. We're just
2 discussing up here. Just wait.

3 CHAIRMAN OKESON: Does anyone have an opinion?

4 VICE CHAIRMAN OVERHOLT: So I'm asking the
5 attorneys because I'm thinking, you know, we don't
6 recuse ourselves because of the fact that we've
7 made campaign contributions to candidates, and our
8 campaign records are public. I mean, I just --

9 MS. WARYCHA: Mr. Chairman, I think at this
10 point I agree with Counsel Kochevar that it would
11 be proper for the four commissioners to take a vote
12 on how they want to handle this motion to
13 disqualify Commissioner Celestino-Horseman.

14 CHAIRMAN OKESON: Remind me, there are certain
15 things that require a majority; there are certain
16 things that require unanimity. Where does this
17 fall?

18 MS. WARYCHA: If this was to go two-two, you
19 would deadlock. You would need a majority of three
20 to make that change.

21 CHAIRMAN OKESON: Okay.

22 VICE CHAIRMAN OVERHOLT: So it needs the
23 majority to pass.

24 CHAIRMAN OKESON: Okay. So moving back, that
25 did not count against your five minutes.

1 MS. BARTLETT: No.

2 CHAIRMAN OKESON: We have a motion from you.
3 Is there anything you'd like to add before we
4 consider that motion?

5 MS. BARTLETT: Yes. And just to be clear, the
6 basis for the motion does not have anything to do
7 with financial compensation or anything of that
8 nature, and this motion is made with all due
9 respect. Under the law, it brings about the
10 question of a judge's personal bias or prejudice,
11 and the details in the article that struck us were
12 related to the comments on January 6th, the
13 insurrection, et cetera, and, with all due respect,
14 not related to the financial or business interests.

15 And so, you know, the motion is made on the
16 basis of the personal bias or prejudice. That's
17 why we brought about the motion. Obviously yield
18 to the Commission's discretion. Just bringing it
19 forth as part of the procedure.

20 CHAIRMAN OKESON: And just another
21 clarification. If the motion were upheld, what
22 happens next?

23 MS. WARYCHA: I believe you would go forward
24 with the challenge.

25 CHAIRMAN OKESON: With three members?

1 MS. WARYCHA: Yes, if that was the way -- if
2 it was upheld, yeah, you would move forward with
3 the three members and still have the hearing.

4 VICE CHAIRMAN OVERHOLT: So we don't have to
5 have four to proceed?

6 CHAIRMAN OKESON: Which always struck me as
7 odd because doesn't the challenge require a
8 unanimous vote of four?

9 MS. WARYCHA: No. You have to have three.

10 CHAIRMAN OKESON: Okay.

11 MR. KOCHEVAR: Yes. To provide context here,
12 the statutory requirement for action by this
13 Commission is three. It's not a majority. So if
14 you were to uphold and Ms. Celestino-Horseman had
15 to step out, you still need three votes on whatever
16 motions you take.

17 MR. WHEELER: Just one point of clarification,
18 and I apologize. I believe when I was sitting in
19 that chair, wouldn't they be able to appoint a
20 proxy if she recused?

21 MS. WARYCHA: Yes.

22 MR. WHEELER: So you would have four members.
23 I assume you've got proxies in the back ready to go
24 when people do -- all right. Maybe not. But
25 typically in situations like this where someone

1 would recuse, you would appoint a proxy, so I
2 assume that --

3 CHAIRMAN OKESON: Well, at running the risk of
4 looking too far down the road, why don't we just
5 tackle this motion to disqualify Member Karen
6 Celestino-Horseman. We'll vote on that and we'll
7 kind of go from there, if that's all the same.

8 Do we need a second? So is there a motion to
9 accept the respondent's motion to disqualify?

10 Okay. So is there a motion to deny the
11 request to disqualify?

12 VICE CHAIRMAN OVERHOLT: So moved.

13 CHAIRMAN OKESON: So we have a motion. Is
14 there a second?

15 MS. CELESTINO-HORSEMAN: Second.

16 CHAIRMAN OKESON: We have a motion and a
17 second. So that motion is to deny your petition to
18 dismiss.

19 VICE CHAIRMAN OVERHOLT: No, to disqualify.

20 CHAIRMAN OKESON: To disqualify. Sorry.
21 Motion upon motion. So we have a motion to deny
22 the request. We have a second. All those in favor
23 of that motion signify by saying "Aye."

24 VICE CHAIRMAN OVERHOLT: Aye.

25 MS. CELESTINO-HORSEMAN: Aye.

1 CHAIRMAN OKESON: Those not in favor signify
2 by saying "No."

3 No.

4 MS. PYLE: No.

5 CHAIRMAN OKESON: So the motion to deny does
6 not pass. So where does that leave us?

7 MR. KING: Move on with business.

8 MS. WARYCHA: I'll start the clock when you're
9 ready, Mr. Chairman.

10 MS. CELESTINO-HORSEMAN: I'm sorry. I didn't
11 hear. Where --

12 CHAIRMAN OKESON: We proceed.

13 MS. WARYCHA: Are you ready for me to start
14 the clock?

15 CHAIRMAN OKESON: Yes.

16 MS. BARTLETT: Thank you, Mr. Chairman,
17 members of the Commission. I appreciate your
18 consideration of our procedural motions.

19 While we don't feel that Mr. Kester's
20 presentation of the challenge hits on the
21 substantive basis of his argument, we will respond
22 with five points that largely mirror the initial
23 motion to dismiss and is centered around a
24 jurisdictional argument at its core.

25 First and foremost, the petitioner's challenge

1 is legally defective on its face. Presidential
2 qualification disputes are nonjudicial political
3 questions under the Constitution of the United
4 States. Under the United States Constitution,
5 political questions are, quote, beyond the court's
6 jurisdiction and, likewise, beyond the jurisdiction
7 of state election boards.

8 In other states where we've heard similar
9 challenges and otherwise, courts have observed
10 that, quote, the vast weight of authority has held
11 that the Constitution commits to Congress and the
12 electors the responsibility of determining matters
13 of presidential candidates' qualifications.

14 Similar decisions involving presidential
15 candidate John McCain, Barack Obama, Ted Cruz, and
16 Kamala Harris, quote, the Constitution assigns to
17 Congress, and not to the courts, the responsibility
18 of determining whether a person is qualified to
19 serve as president. So whether a candidate may
20 legitimately run for office is a political question
21 that the Court may not answer.

22 Further, the constitutional authority of the
23 Electoral College in Congress is specifically
24 highlighted as it comes to the qualifications for
25 the office of president of the United States. The

1 political question doctrine instructs the Court to
2 refrain from superseding the judgments of the
3 nation's voters and those federal government
4 entities the Constitution designates as the proper
5 forums to determine the eligibility of presidential
6 candidates. That's a quote from a case out of the
7 New York Supreme Court.

8 As these courts have continually observed, the
9 Constitution contains a host of provisions
10 specifying how electors for president are
11 appointed, how the electoral votes are cast and
12 counted, what happens if the result is unqualified
13 presidential candidate, and how Congress may
14 respond if the voters choose someone who may be
15 disqualified under Section 3 of the 14th Amendment.
16 So the Constitution specifically addresses what
17 happens but specifically refrains from granting
18 jurisdiction over presidential qualifications to
19 the Election Commission here today or judicial
20 proceedings in general.

21 On top of that, presidential qualification
22 disputes are not properly decided in state and
23 local proceedings because of, quote, the
24 potentiality of embarrassment from multifarious
25 pronouncements by various departments on one

1 question. Basically we can't -- we do not have the
2 jurisdiction to make this type of determination at
3 the Election Commission level here today.

4 CHAIRMAN OKESON: Any questions?

5 MS. BARTLETT: Sorry. I have a couple
6 additional points here.

7 VICE CHAIRMAN OVERHOLT: Just took a breath.

8 CHAIRMAN OKESON: Sorry.

9 MS. BARTLETT: The petitioner is asking the
10 Commission to revisit a decision that's already
11 expressly made by the United States Senate. The
12 articles of impeachment that were brought against
13 President Trump by the House of Representatives
14 specifically and prominently invoke Section 3 of
15 the 14th Amendment. President Trump's alleged
16 incitement of insurrection on January 6th were
17 brought about before the Senate and the House trial
18 manager specifically asked the Senate to disqualify
19 President Trump from future federal office holding.
20 They did not, and they acquitted President Trump.

21 The petitioner asks the Commission to
22 second-guess and undo that decision that was made
23 by the United States Senate already. This cannot
24 be done without expressing lack of the respect due
25 to coordinate branches of government. Presidential

1 qualification disputes are political questions and
2 they belong in Congress.

3 Number two, Section 3 of the 14th Amendment
4 can easily be enforced only as prescribed by
5 Congress. The petitioner before you today asks the
6 Commission to determine that someone, the
7 president, is disqualified from holding office
8 under Section 3 of the 14th Amendment by virtue of
9 having engaged in insurrection against the United
10 States.

11 But just months after the 14th Amendment
12 itself was enacted, the chief justice of the
13 Supreme Court of the United States at that time
14 himself held that this determination can only be
15 made in proceedings prescribed by Congress. And I
16 quote, the intention of the people of the United
17 States in adopting the 14th Amendment was to create
18 a disability to be made operative by the
19 legislation of Congress in the ordinary course.
20 For 150 years after Section 3's enactment, that's
21 exactly how it was enforced, only as prescribed by
22 Congress.

23 Now, after January 6th --

24 CHAIRMAN OKESON: Is there a motion to grant
25 any further time?

1 How much do you have left?

2 MS. BARTLETT: I can summarize the last few
3 points quickly, if you'd like.

4 MS. PYLE: I would move to allow that.

5 CHAIRMAN OKESON: Second.

6 Any discussion?

7 Hearing none, all those in favor.

8 VICE CHAIRMAN OVERHOLT: Aye.

9 MS. CELESTINO-HORSEMAN: Aye.

10 MS. PYLE: Aye.

11 MS. BARTLETT: Sure. Thank you. So
12 generally, Congress has not said anything to
13 require or authorize this board before us today to
14 investigate whether anyone is disqualified under
15 Section 3.

16 Finally, Section 3 does not apply to the
17 president, which is largely reflective of the
18 argument that my colleague previously set forth.
19 But reading the phrases in harmony with the rest of
20 the Constitution makes it quite clear that this
21 does not apply to the president, and, again, my
22 colleague previously made that argument.

23 So, again, it does not bar anyone from the
24 presidency. Section 3 does not specifically bar
25 anyone from the presidency. Again, it's reflective

1 of the arguments previously made by my colleague.
2 And it actually does not bar running for office in
3 general. By its plain language, a disqualification
4 under Section 3 of the 14th Amendment prohibits an
5 individual only from holding office, quote/unquote,
6 not from appearing on a ballot or being elected.

7 So for all of the foregoing reasons, we hold
8 that not only does the Commission before us today
9 not have jurisdiction over the matter, but the
10 matter itself is not specifically addressed under
11 Section 3 of the 14th Amendment.

12 CHAIRMAN OKESON: Thank you. Two-minute
13 cross-examination. And please keep it only to the
14 questions -- your questions raised to the material
15 that she provided -- they provided. Sorry.

16 MR. KESTER: Yeah. I don't have much here.
17 But did I understand right that your first claim is
18 that only presidents can be insurrectionists but
19 any other office insurrectionists are barred from
20 serving?

21 MS. BARTLETT: No. I said that Section 3 of
22 the 14th Amendment does not apply to the office of
23 the president of the United States specifically.

24 MR. KESTER: Okay. Let's see. That might be
25 the only question that I have for you.

1 Do I get two more minutes at the end?

2 CHAIRMAN OKESON: I don't believe so. I
3 believe those two minutes were cross-examination.
4 Let me go back to my procedures. I don't think
5 there was afforded a closing argument.

6 No. I think your two minutes for
7 cross-examination on each side and rest your case.

8 MR. KESTER: Okay. May I address the
9 Commission real quick?

10 CHAIRMAN OKESON: Unfortunately, your time to
11 do that was prior to this, unless you have any
12 further questions for the challenger.

13 MS. CELESTINO-HORSEMAN: I would move that,
14 since we extended the time for the other side and
15 he got up and thought he meant to do
16 cross-examination rather than conclude his response
17 to this, I would move that we give him --

18 How much time do you need, two minutes?

19 MR. KESTER: One minute.

20 MS. CELESTINO-HORSEMAN: Take two.

21 I would move that we give him two minutes to
22 allow him to make his statement.

23 CHAIRMAN OKESON: There's a motion.

24 VICE CHAIRMAN OVERHOLT: Second.

25 CHAIRMAN OKESON: A second. Any questions?

1 MS. PYLE: I don't have any questions.

2 CHAIRMAN OKESON: All those in favor signify
3 by saying "Aye."

4 VICE CHAIRMAN OVERHOLT: Aye.

5 MS. CELESTINO-HORSEMAN: Aye.

6 MS. PYLE: Aye.

7 CHAIRMAN OKESON: Aye.

8 All those not in favor.

9 MS. PYLE: I said "Aye."

10 CHAIRMAN OKESON: Oh, you said "Aye." The
11 motion passes.

12 MR. KESTER: Thank you. My kids asked me last
13 night how I got selected to do this, and I thought
14 about it while I was sitting here. The framers of
15 our Constitution put it in the hands of the people
16 to bring challenges. Indiana's Constitution has
17 graciously allowed this mechanism for any voter to
18 bring these challenges, so I appreciate the
19 opportunity.

20 And I believe today you have the opportunity
21 to affirm what Congress affirmed and that many
22 Hoosiers observed on live television on January 6,
23 2021, that Mr. Trump incited an insurrection
24 against the United States Government and is
25 constitutionally ineligible to serve. So thank you

1 for your time.

2 CHAIRMAN OKESON: I'd like to ask you a
3 question along those lines.

4 MR. KESTER: Sure.

5 CHAIRMAN OKESON: You just said it in a way
6 that resonated with me. But it should be in the
7 hands of the voters, so why would you want to deny
8 the voters the chance to vote on the presidency
9 with Donald J. Trump on the ballot?

10 MR. KESTER: Well, we're here today to hear
11 challenges to the ballot. There are a lot of
12 voters that may feel disenfranchised, if that's the
13 right word to use, that their chosen politician
14 isn't going to be on the ballot. Some people
15 aren't going to qualify for various reasons, so
16 this is the rule.

17 CHAIRMAN OKESON: I was just echoing your
18 statement in the form of a question.

19 Okay. So where are we?

20 MS. WARYCHA: You're ready to make a motion to
21 vote on the matter or you can have more discussion.

22 CHAIRMAN OKESON: Sure.

23 MS. PYLE: Ms. Bartlett, quick question. You
24 were saying that the 14th Amendment, that it was
25 about holding office and not being on the ballot,

1 so is the argument there this isn't ripe?

2 MS. BARTLETT: Sure, yes. Correct.

3 MS. PYLE: I just wanted to clarify.

4 MS. BARTLETT: That Section 3 of Article 14
5 does not -- or sorry -- the 14th Amendment does not
6 specifically apply to being on the ballot as a
7 candidate, but rather holding office and
8 technically not the office of the presidency in
9 general.

10 MS. PYLE: Okay. Thank you.

11 CHAIRMAN OKESON: Anyone else?

12 So is there a motion to be offered? We have a
13 challenge to Trump being on the ballot. Anyone
14 want to offer a motion?

15 MS. PYLE: I would move to deny the challenge.

16 CHAIRMAN OKESON: We have a motion to deny.
17 Is there a second?

18 I'll second it.

19 Any discussion?

20 MS. CELESTINO-HORSEMAN: Mr. Chairman.

21 CHAIRMAN OKESON: Yes.

22 MS. CELESTINO-HORSEMAN: Thank you. Contrary
23 to what's been presented today regarding my
24 position, I take this very seriously. I have
25 practiced election law for years. I have practiced

1 constitutional law. And I take my responsibilities
2 in that regard very, very seriously.

3 And contrary to what was represented
4 previously, I didn't label Donald Trump an
5 insurrectionist in my article. I questioned his
6 actions on the day of January 6th, but I did not
7 attach that label.

8 Now I find myself today having to sit here and
9 actually decide the issue. And I'm going to tell
10 you, as a lawyer looking at it with my head, as an
11 American looking at it with my heart, this is a
12 terrible decision to have to make.

13 When I accepted this appointment, I did -- as
14 I stated earlier, I did take an oath to protect and
15 uphold the Indiana and U.S. Constitutions, and I
16 take that very, very seriously. The Constitution
17 says that someone who has committed -- who is an
18 insurrectionist cannot serve as president. But no
19 courts -- and Ms. Bartlett capably outlined the
20 law, of which I have read so much on all of this
21 now, but as she outlined, those are the positions
22 that the Trump campaign has taken. But there has
23 been no uniform decision made by our courts of all
24 the various points that she raised, and that is
25 what is ultimately resting with the United States

1 Supreme Court. And as we are sitting here today,
2 we do not have that direction. So, again, I am
3 left to make my own decision.

4 So here are my conclusions: Immediately after
5 the November 2020 election, Donald Trump began
6 making claims of fraud. He began to deliberately
7 and intentionally undermine people's faith in our
8 electoral process. As we know, he was never able
9 to secure proof of such fraud, and he knew at the
10 time that he was making those misrepresentations
11 that they were untrue. We've heard this from his
12 own staff attorneys and his staff members.

13 Now, Donald Trump was also well aware of the
14 impact this information was having upon his
15 supporters. He watched daily as the anger grew and
16 ultimately issued a call to action. His call was,
17 "Come to Washington, D.C., on January 6th, where
18 like-minded people are going to gather and we're
19 going to let our leaders know that we didn't like
20 this election result."

21 Once they gathered at the Capitol, Donald J.
22 Trump told them, "Let's march on down there and let
23 Congress know how you feel. I will be there with
24 you." He stood up there and said that. We all
25 watched it on TV. He dangled himself as the

1 proverbial carrot from the stick to get those folks
2 down there to the Capitol.

3 Now, for several hours after -- and he told
4 them he would be there, but, as we know, he did not
5 show up. And for several hours afterwards, no one
6 heard anything from Donald Trump. We know he was
7 sitting in the White House watching the violence,
8 watching what was happening, and he took no action,
9 despite pleas from his own daughter, he took no
10 action to try and stop this. He didn't ask them to
11 stop. He didn't do anything in that regard.

12 Instead, what he was hoping, what he intended when
13 he started all of this was to somehow stop the
14 transfer of power. And that constitutes
15 insurrection, as far I'm concerned.

16 Now, while Donald Trump didn't storm the steps
17 of the Capitol, he is the one who aimed and pulled
18 the trigger on the violence that occurred on
19 January 6th, is the one who delayed and stopped the
20 transition of power, and the only reason he spoke
21 out later was because he saw that it was not going
22 to succeed.

23 So now I am left to decide what to do. My
24 vote today will likely not make a difference, and
25 my life will probably be much easier if I had just

1 kept my mouth shut. But those who know me know
2 that I am not one who keeps my mouth shut when I
3 think something needs to be said.

4 So in support of our U.S. Constitution, in
5 support of America, and as an American who loves
6 her country and the law, I vote to grant the
7 challenge. I am going to vote to grant the
8 challenge.

9 CHAIRMAN OKESON: So there's a -- the motion
10 is to deny the challenge. And I appreciate your
11 opinion and your comments offered.

12 For the record, I would want to ensure that
13 those are not the comments of this body but those
14 of Member Karen Celestino-Horseman alone. Whether
15 I agree or disagree with much or all of it is
16 probably not relevant, but as I stated before, I
17 think it's up to the people of Indiana to decide
18 how Indiana elects its next president. And I find
19 nothing sufficient in what's been offered today or
20 at any other time to deny Donald Trump access to
21 the ballot.

22 But we have a motion and a second.

23 VICE CHAIRMAN OVERHOLT: I'd like to comment.

24 CHAIRMAN OKESON: Please.

25 VICE CHAIRMAN OVERHOLT: Sorry. I would just

1 say I wanted to comment because, while I in no way
2 approve of the actions of Donald Trump on
3 January 6th, the thing that I find odd about our
4 situation here is, in reading very carefully
5 Indiana's laws regarding what it takes to be a
6 candidate for president on the ballot, before I was
7 looking at the constitutional provision that's
8 referenced in 3-8-1-6 with respect to presidents,
9 all it has to do with is electors. So it seems
10 really odd to me that Indiana law says, well, as
11 long as you can get enough electors, you can be on
12 the ballot in the general election, which seems to
13 be missing a whole lot of steps.

14 So I guess, no, I'm not going to go to the
15 General Assembly and ask them to make changes. But
16 anyway -- I wish I thought that would be a
17 reasonable and productive thing to do. But anyway,
18 so looking at that, it's just strange to me that
19 Indiana law doesn't incorporate even the very basic
20 provisions about what it should take to be a
21 president.

22 And I also -- I know that this issue is
23 currently pending before the United States Supreme
24 Court, and I just -- much as I wish I felt like we
25 could do something about it here, I don't. I think

1 there are issues out there that need to be resolved
2 by entities other than us.

3 CHAIRMAN OKESON: Got to follow what the law
4 says here in Indiana.

5 Litany?

6 MS. PYLE: Our duty here is to defend Indiana
7 law, and I don't think that we've had any judicial
8 rulings or anything else that have showed us that
9 Indiana law has been violated here, so I would call
10 for a vote, Mr. Chairman.

11 CHAIRMAN OKESON: So we have a motion and a
12 second to deny the challenge. All those in favor
13 signify by saying "Aye."

14 Aye.

15 VICE CHAIRMAN OVERHOLT: Aye.

16 MS. PYLE: Aye.

17 CHAIRMAN OKESON: Those opposed.

18 MS. CELESTINO-HORSEMAN: Nay.

19 CHAIRMAN OKESON: We have one nay. The
20 majority carries. The motion to deny
21 disqualification of Donald Trump prevails, and I
22 would direct the Election Division to include the
23 name of Mr. Donald J. Trump on the certified list
24 of candidates sent to all county election boards.
25 Thank you.

1 MS. WARYCHA: Mr. Chair.

2 CHAIRMAN OKESON: Yes.

3 MS. WARYCHA: Just so we exhaust
4 administrative remedies in case somebody does want
5 to go to court, we need to have a motion made the
6 other way so we can show it exhausted.

7 CHAIRMAN OKESON: Actually, technically, I
8 think Karen did make that motion, didn't she?

9 MS. WARYCHA: Okay. Perfect.

10 CHAIRMAN OKESON: And I apologize.

11 MS. CELESTINO-HORSEMAN: What?

12 CHAIRMAN OKESON: Technically, at the end of
13 your conveyance of thoughts there, you did move.

14 MS. CELESTINO-HORSEMAN: I corrected myself
15 and said I would vote to grant the challenge, and
16 that was what was said.

17 CHAIRMAN OKESON: What I hear you saying, for
18 AOPA purposes, we need to have a motion to uphold.

19 MS. CELESTINO-HORSEMAN: I didn't make a
20 motion.

21 MS. WARYCHA: You didn't.

22 MR. KOCHEVAR: May I?

23 CHAIRMAN OKESON: Sure.

24 MR. KOCHEVAR: So usually during candidate
25 challenge hearings, the huge one that I'm recalling

1 back in 2016 with the challenge to Todd Young, the
2 two motions that have been most common have been
3 motion to uphold the challenge, motion to dismiss
4 the challenge. But since the motion that was made
5 was that motion to deny the challenge, that is
6 final action by this Commission. I would advise
7 that there's no other motion to be made. This
8 matter is now concluded.

9 CHAIRMAN OKESON: Would you agree with that?

10 MS. WARYCHA: I agree with Matthew, yes.
11 Thank you. I just wanted to make sure we were
12 fully exhausted. I appreciate that.

13 CHAIRMAN OKESON: All right. Moving on.
14 Thank you.

15 Next case I have is Whitley v. Biden
16 challenge, Cause No. 2024-03, in the matter of the
17 challenge to Joseph Robinette Biden, Jr., candidate
18 for Democratic Party nomination for President of
19 the United States.

20 The Election Division has provided copies of
21 the candidate filing challenge form, with
22 attachments, and a copy of the notice given in this
23 matter in your binders.

24 Anything from the co-directors before we
25 proceed?

1 MS. WARYCHA: All right. Just to give --

2 MR. KOCHEVAR: Oh, Valerie?

3 MS. WARYCHA: Yeah, Matthew.

4 MR. KOCHEVAR: This is against a democrat one,
5 so I'll --

6 CHAIRMAN OKESON: Yeah.

7 MR. KOCHEVAR: So members of the Commission,
8 what are in your binders are as follows: It is a
9 copy of the challenge filed by the challenger,
10 Gabriel M. Whitley, including his statement in
11 paragraph No. 6 of the matter of his challenge.
12 Also before you is an appearance form filed by
13 David Ziemba here representing Joseph Biden in this
14 matter, as well as a copy of the CAN-7 request for
15 presidential primary ballot placement in 2024 filed
16 by Candidate Biden, as well as a copy of the
17 hearing and information that we did send the
18 hearing out timely to both parties.

19 CHAIRMAN OKESON: Thank you.

20 Valerie, anything?

21 MS. WARYCHA: I don't have anything to add.
22 Thank you.

23 CHAIRMAN OKESON: I recognize Mr. Whitley, the
24 challenger, for your presentation. Going once,
25 Mr. Whitley? Going twice. No Mr. Whitley?

1 Okay. I guess we want to proceed. The
2 challenger isn't here.

3 MS. CELESTINO-HORSEMAN: Don't the rules
4 provide that if the challenger doesn't show --

5 VICE CHAIRMAN OVERHOLT: Based on the
6 challenger's failure to appear, I would move that
7 we dismiss the challenge or deny the challenge or
8 whatever, dismiss.

9 CHAIRMAN OKESON: Would it be dismiss or deny?
10 Either.

11 VICE CHAIRMAN OVERHOLT: Apparently dismiss.

12 CHAIRMAN OKESON: So we have a motion to
13 dismiss the challenge based on a lack of presence
14 from the challenger. Is there a second?

15 MS. CELESTINO-HORSEMAN: Second.

16 CHAIRMAN OKESON: Any questions, comments?

17 MS. PYLE: No.

18 CHAIRMAN OKESON: Concerns?

19 I'll take the matter to a vote. All those in
20 favor signify by saying "Aye."

21 VICE CHAIRMAN OVERHOLT: Aye.

22 MS. CELESTINO-HORSEMAN: Aye.

23 MS. PYLE: Aye.

24 CHAIRMAN OKESON: Aye.

25 The "ayes" have it. The matter is closed.

1 The challenge is dismissed.

2 MR. ZIEMBA: Thank you very much.

3 CHAIRMAN OKESON: I am going to call for about
4 a five-minute recess.

5 MS. WARYCHA: Say whenever we're going to come
6 back. That's the key under AOPA. So if you want a
7 five-minute recess, we'll be back at 11:20.

8 CHAIRMAN OKESON: 11:20 at this same location.

9 (Recess taken.)

10 CHAIRMAN OKESON: All right. We're ready to
11 proceed. Resuming the meeting, on my agenda I have
12 next Wittman v. Dixon-Tatum challenge, Cause
13 No. 2024-04, in the matter of the challenge to
14 Tamie Dixon-Tatum, candidate for the Democratic
15 Party nomination for governor.

16 Again, the Election Division has provided
17 copies of the candidate filing challenge form, with
18 attachments, and a copy of notice given in this
19 matter in your binders.

20 Anything?

21 MR. KOCHEVAR: This is for a Democratic
22 candidate, so just to summarize, in your binder is
23 a copy of the candidate challenge filed by the
24 challenger. It includes an attachment titled
25 "Candidate Filing Challenge." Also in there is an

1 appearance form for counsel for the challenger; a
2 copy of their declaration -- the copy of the
3 challenged candidate's declaration of candidacy,
4 the CAN-2; along with attachment of their statement
5 of economic interest required by law to be filed by
6 the candidate when they file their CAN-2; the
7 notice of the hearing; documentation that the
8 notice of the hearing was sent to both parties.

9 In addition, I will note that counsel
10 appearance notice was filed for the challenged
11 candidate, and there wasn't time to have it
12 three-hole punched and added to the binder, but it
13 was distributed before the meeting, so that is also
14 part of this hearing.

15 CHAIRMAN OKESON: Thank you, Mr. Kochevar.

16 With that, I recognize Ms. Wittman, the
17 challenger, for presentation.

18 MR. ZIEMBA: Thank you very much, Mr. Chairman
19 and Commissioners. My name is David Ziemba. I'm
20 representing Ms. Wittman. I entered my appearance
21 last week.

22 CHAIRMAN OKESON: That was filed
23 appropriately?

24 MR. ZIEMBA: That's correct. The spelling is
25 D-a-v-i-d, last name is Z, as in zebra, -i-e-m, as

1 in Mary, -b, as in boy, -a, as in apple. Again,
2 I'm representing Ms. Wittman.

3 CHAIRMAN OKESON: Did you get that?

4 THE REPORTER: Could you speak up just a
5 little bit. You faded at the end.

6 MR. ZIEMBA: Absolutely. I'm sorry. Z, as in
7 zebra, -i-e-m, as in Mary, -b, as in boy, -a, as in
8 apple. Again, I'm representing Ms. Wittman in this
9 matter, and as just a point of personal privilege,
10 it's an honor to be in front of Associate Horseman.
11 She inspired me to enter the law 15 years ago when
12 I saw her take a case in the United States Supreme
13 Court. It was an election matter, so it's an honor
14 to be in front of her.

15 CHAIRMAN OKESON: And here you are.

16 MR. ZIEMBA: And here I am. All right.

17 So this was timely filed. Ms. Wittman is
18 challenging the candidacy of Ms. Dixon-Tatum
19 primarily on Indiana Code 3-8-2-8 that she has
20 failed to obtain and submit the necessary 4,500
21 signatures, 500 in each congressional district.

22 To summarize before I call Ms. Wittman as a
23 witness, Ms. Dixon-Tatum has received the following
24 in each of the nine districts that have been
25 certified by county clerks as well as accepted by

1 the secretary of state's office: In the 1st
2 District, she has zero certified signatures; in the
3 2nd, she has one; in the 3rd, she has 356; in the
4 4th, she has 25; in the 5th, she has 749; in the
5 6th, she has 187; in the 7th, she has 463; in the
6 8th, she has 27; and in the 9th, she has 88.

7 Collectively put together, that is 1,896
8 signatures, which falls well below the 4,500
9 requirement. Again, the only congressional
10 district that the county clerks have certified and
11 the secretary of state's office has accepted is the
12 5th District, which is 749 signatures.

13 At this time we would call Ms. Wittman up to
14 the stand to testify.

15 CHAIRMAN OKESON: This all goes under the
16 five-minute presentation, I assume, so just to make
17 you aware.

18 MS. WARYCHA: We're at three minutes.

19 MR. ZIEMBA: Ms. Wittman, can you please state
20 your name and spell it for us.

21 MS. WITTMAN: Before I do that, thank you very
22 much for hearing this challenge. I appreciate your
23 time and your efforts to maintain election
24 integrity in the state of Indiana.

25 My name is Kelly B. Wittman, K-e-l-l-y, B.,

1 Wittman, W-i-t-t-m-a-n.

2 MR. ZIEMBA: Ms. Wittman, are you a registered
3 voter here in Indiana?

4 MS. WITTMAN: Yes, sir, I am.

5 MR. ZIEMBA: Where are you registered to vote?

6 MS. WITTMAN: I am registered in Precinct
7 WY045, which is in the township of Wayne in
8 Speedway.

9 MR. ZIEMBA: Did you file a challenge against
10 Ms. Dixon-Tatum?

11 MS. WITTMAN: Yes, sir, I did. I filed the
12 challenge on February 14th.

13 MR. ZIEMBA: And that falls within the
14 statutory period beforehand?

15 MS. WITTMAN: Yes, sir.

16 MR. ZIEMBA: Why did you file the challenge?

17 MS. WITTMAN: I filed the challenge because in
18 Indiana, as I have worked on a campaign, the
19 requirement to get three things to be on the ballot
20 is in statute. Those three things are you have to
21 file your declaration of candidacy, you have to
22 file your financial affidavit, and you are required
23 to get petitions from registered voters to the tune
24 of 4,500, 500 in each of the congressional
25 districts.

1 As I tracked petitions on all the candidates
2 throughout that time period, and that time period
3 is January 10th to -- I'm sorry -- prior to
4 January 10th. Once you get to that point, you
5 should have your signatures submitted. You have an
6 open window to start submitting your signatures to
7 each of the 92 clerks' offices. As I monitored
8 petitions that were being turned in through a
9 report that is sent out to party leaders -- it's
10 the Indiana petition signature count by
11 congressional district -- I tracked that
12 Ms. Dixon-Tatum did not have the required 4,500.

13 I believe election integrity matters. I
14 believe that the rules are the rules, and you have
15 to work hard, whether you disagree with the rules
16 or not. And it's incumbent upon us to make sure we
17 follow the law if we're going to be an elected
18 official.

19 MR. ZIEMBA: Now, Ms. Wittman, did you request
20 the signatures, the complete file from the
21 secretary of state's office for Ms. Dixon-Tatum?

22 MS. WITTMAN: Yes. On Monday, February 12th,
23 I filed a request for records with the Election
24 Commission office, reviewed that digitally, and
25 then came in on the 13th and went through every one

1 of the petitions that were submitted by
2 Ms. Dixon-Tatum, came back in on the next day and
3 completed a second count.

4 I did bring a copy of the digital record that
5 was provided as a records request for you. So in
6 that box are the petitions that were submitted by
7 Ms. Tamie Dixon-Tatum.

8 MR. ZIEMBA: And based on your personal
9 review, did you confirm the counts from the
10 secretary of state's office?

11 MS. WITTMAN: Yes.

12 MR. ZIEMBA: And were they short, except for
13 Congressional District 5, of the 500 requirement?

14 MS. WITTMAN: Yes.

15 MR. ZIEMBA: No further questions of
16 Ms. Wittman from me.

17 CHAIRMAN OKESON: Yeah. If you have any
18 evidence that you referred to and you want to enter
19 it into the record, please give it to Valerie.

20 MR. ZIEMBA: It's a box. Thank you very much
21 for that. We would submit that as Exhibit 1.

22 MS. CELESTINO-HORSEMAN: Does opposing counsel
23 need to take a look at that?

24 MS. HARTER: I'll take a quick peek.

25 MR. ZIEMBA: Thank you,

1 Ms. Celestino-Horseman.

2 There is one caveat obviously.

3 MS. CELESTINO-HORSEMAN: Wait a minute. Your
4 time is up.

5 CHAIRMAN OKESON: Yes.

6 MR. ZIEMBA: Can I have an additional
7 30 seconds?

8 MS. CELESTINO-HORSEMAN: I move that he have
9 an additional minute.

10 CHAIRMAN OKESON: Second? Is there a second?

11 VICE CHAIRMAN OVERHOLT: Oh, second. Sorry.
12 I thought you were seconding it. Second.

13 CHAIRMAN OKESON: Any concern or questions?
14 All those in favor signify by saying "Aye."
15 Aye.

16 VICE CHAIRMAN OVERHOLT: Aye.

17 MS. CELESTINO-HORSEMAN: Aye.

18 MS. PYLE: Aye.

19 MR. ZIEMBA: One caveat to the box, because
20 it's in the record, there is a portion of the box
21 that signatures are actually separated. If you see
22 it and it's vertical instead of horizontal in the
23 box, Ms. Wittman, if you could tell us why that's
24 vertical.

25 MS. WITTMAN: Upon examining all of the

1 petitions that were in the election clerk's office,
2 I noticed 394 blank forms. They had no signature,
3 and they also therefore had no certification by the
4 county clerk's office. So 394 pages I counted
5 twice, actually three times because I wanted to
6 make sure, and then those are flipped up because
7 they would not be considered valid petitions for
8 the purpose of...

9 MS. CELESTINO-HORSEMAN: I have a quick
10 question. So when you say "blank" pages, you mean
11 there was absolutely nothing written on them?

12 MS. WITTMAN: Correct. If you look at the
13 affidavit that I submitted, you'll see a
14 screenshot. Most of them had her name, Tamie
15 Dixon-Tatum for governor, at the top part that
16 you're required to fill out with the office that
17 you're running for, but then there are no sections
18 in lines 1 through 10; therefore, those weren't
19 submitted to the county clerks' offices to be
20 verified because there are no signatures on them.

21 So blank forms were submitted as part of her
22 record, and, again, when you fill out your CAN-2,
23 you certify that you've met the requirements. So
24 394 pages were submitted knowingly that they were
25 blank.

1 MR. ZIEMBA: Any other questions?

2 CHAIRMAN OKESON: What's at the bottom of that
3 CAN-2 when you sign it?

4 MS. WARYCHA: The affidavit.

5 CHAIRMAN OKESON: Yeah. You sign knowingly
6 what?

7 MS. WARYCHA: That the information is
8 accurate.

9 CHAIRMAN OKESON: Cross-examination for
10 two minutes, and, again, please keep it to the
11 material that was offered in the presentation.

12 MR. ZIEMBA: She's got to come up.

13 MS. HARTER: Yeah. I just have a couple of
14 quick questions. So --

15 CHAIRMAN OKESON: Please state your name and
16 spell it.

17 MS. HARTER: Oh, I'm sorry. Michelle Harter,
18 M-i-c-h-e-l-l-e, and then Harter is H-a-r-t-e-r.
19 And I represent Tamie. I'm counsel.

20 Just one quick question I want to follow up
21 on. During your testimony, you testified that, you
22 know, you believe in election integrity and that
23 candidates need to work hard. And I just want to
24 ask you, is that some sort of assertion of fact
25 that Tamie did not work hard to secure signatures?

1 MS. WITTMAN: No.

2 MS. HARTER: Okay. Just wanted to clear that
3 up. I didn't think that that's what you were
4 implying, but I wanted to get that on the record.
5 Thank you.

6 MS. WITTMAN: I would say that the
7 candidate -- other candidate for governor for whom
8 I supervise those petitions, signature collections,
9 did work hard, so I can speak to that.

10 MS. HARTER: Okay. All right.

11 CHAIRMAN OKESON: Anything further on your
12 cross-examination?

13 MS. HARTER: No. I'm going to have Tamie
14 testify in a minute. I just want to make sort of a
15 threshold statement here. So Tamie gathered many
16 more signatures than what were certified. And
17 we're going to talk about some of the
18 irregularities that she experienced with submitting
19 her petitions and then having them totally rejected
20 for reasons that are -- you know, she doesn't
21 really have a lot of recourse with the counties on
22 that.

23 And then generally, Indiana is 50 out of 50
24 for voter turnout, which is an embarrassing
25 statistic. It came out through our Indiana Bar

1 Foundation just a few weeks ago. One of the
2 reasons is we have a lot of candidates in Indiana
3 who run unopposed, and so if Tamie is not on the
4 ballot, we will have a single candidate for
5 democratic governor.

6 So here Tamie submitted signatures in all of
7 the districts. Each page has about ten lines. She
8 submitted approximately 3,700 signatures, but there
9 were some extra in Marion County, a few over, so
10 over 3,200 of 4,500, or 71 percent.

11 Previously, a prior version of this Commission
12 let Todd Young on the ballot. He was just a few
13 signatures short. It was a split vote. Todd Young
14 had significant resources. He had party leadership
15 backing. It was surprising and embarrassing that
16 he was not compliant with the signature
17 requirement. And at the time when his challenge
18 was in motion, we had our lawmakers saying, hey, we
19 need to do something about this signature
20 requirement, we're one of the most restrictive
21 states, it's time to change it. But then he was
22 let on the ballot, and all of a sudden that quieted
23 down really quick, hasn't been mentioned since.

24 I know that this Commission is not inclined to
25 hear constitutional or equitable arguments here,

1 but I'm going to make one because I think it's
2 important. It's important to note that Tamie
3 substantially complied with the signature
4 requirement to the best of her ability. She is not
5 independently wealthy. She has to work a job. She
6 can't quit her job to collect signatures. She does
7 not have the party leadership backing; whereas, her
8 opponent had the party leadership gathering
9 signatures for her. Tamie did not have that
10 luxury. It's very expensive and it's very cost --
11 cost for time to get these signatures. We all know
12 this.

13 Tamie will tell you about the irregularities
14 where her signatures were submitted and they sat in
15 an office and weren't certified, which is
16 completely out of her control, very demoralizing.

17 Without Tamie on the ballot, we have
18 McCormick, who recently switched parties. So she
19 was a Republican; now she's a Democrat. She's the
20 party leadership's choice. Tamie is a consistent,
21 lifelong Democrat. If we're looking at what voters
22 want, voters want someone who is consistent, right,
23 with the party. And they should at least have a
24 choice. McCormick can change her mind about her
25 party, but maybe some voters want someone who has

1 been consistent about their party. If McCormick
2 runs unopposed, like I said, Democratic voters have
3 no choices.

4 And then we know that, in 2022, we had two
5 African-American candidates who were removed from
6 the ballot because they could not comply with the
7 signature requirement. And I know this Commission
8 said that didn't matter about race or gender or
9 personal circumstances, but I don't want to get to
10 2026 and again be standing here representing
11 another African-American woman who is being told
12 you have no recourse, you can't appear, when it's
13 clear we have historical evidence that this
14 requirement disparately treats certain groups of
15 people.

16 And it's not a solution to say legislature can
17 fix it. They have no incentive to do so. This
18 system helps the incumbents keep their seats. It's
19 also not a solution to tell Tamie, who can't afford
20 to hire signature gatherers, that she can entertain
21 an expensive lawsuit to fight this. I'm asking
22 that this Commission, we stop kicking the can down
23 the road and pushing the burden onto someone else
24 and we solve the problem now.

25 That concludes what I need to say. I don't

1 know if you want to hear Tamie's testimony about
2 what happened with her signatures. We know she
3 didn't get exactly 4,500. We also know that to get
4 4,500, right, you need to collect, like, 7,000.
5 They reject so many. They reject them for strange
6 things like not putting four-year dates, so instead
7 of putting 1982, you put 82, they'll reject it.
8 They'll reject it if someone didn't sign a
9 signature with handwriting. But students aren't
10 even being taught handwriting anymore, so some
11 younger folks, they don't know how to sign their
12 names.

13 So there's so many different irregularities.
14 There's really no way to go back to the county and
15 contest these things. When this happens, as it did
16 to Tamie, and she got all of her signatures
17 rejected after they sat in an office for ten days,
18 she has no control.

19 So I guess that concludes my time.

20 MS. CELESTINO-HORSEMAN: Could we let
21 Ms. Dixon-Tatum here know how much time she has,
22 because it was her counsel took --

23 CHAIRMAN OKESON: The five minutes expired.

24 MS. CELESTINO-HORSEMAN: Oh, the five minutes
25 expired.

1 CHAIRMAN OKESON: Yeah. Would you like to
2 offer a motion to extend?

3 MS. CELESTINO-HORSEMAN: All right. I'll make
4 a motion to extend for two minutes.

5 VICE CHAIRMAN OVERHOLT: Second.

6 CHAIRMAN OKESON: All those in favor signify
7 by saying "Aye."

8 VICE CHAIRMAN OVERHOLT: Aye.

9 MS. CELESTINO-HORSEMAN: Aye.

10 MS. PYLE: Aye.

11 CHAIRMAN OKESON: Aye.

12 We'll give you two more minutes.

13 MS. HARTER: Tamie, would you just tell us
14 about what happened in District 1 with your
15 signatures.

16 MS. DIXON-TATUM: Yes. What happened in
17 District 1, I was called by someone out of the
18 voter registration office, and I was told that the
19 stamp, the postage stamp mark was January 30th.
20 But she was calling me on February, I want to say,
21 the 11th, and she was saying, "Your signatures,
22 they're not going to be counted because they didn't
23 get in on time."

24 And so I asked her, "What does the envelope
25 say?"

1 And she said, "It says January 30th."

2 And I said, "Now what's today?"

3 And she told me, "The 11th."

4 And so I said, "Well, what happened?"

5 She said, "I don't know, but I can't count
6 them."

7 So that happened in District 1, where there
8 was 45 pages.

9 It also happened in District 2, which is,
10 like, the South Bend area. Again, the State should
11 have those because when I last spoke with
12 South Bend, they said they mailed those petitions
13 to all of you. But, again, it was postmarked on
14 one date, but then ten days later those signatures
15 couldn't be counted and then eventually were sent
16 back to the State.

17 So there's a few other instances where things
18 like that were happening, and, again, those were
19 out of my control. And one person said, "Well, why
20 didn't you just drive them in like other people?"

21 And I said, "Well, I thought that the mail
22 still works." It only takes three days to mail
23 anything across the state, anything across the
24 U.S., so I don't understand why it would take ten
25 days for something to go from Anderson, Indiana, to

1 South Bend or to Crown Point, Indiana.

2 So, again, those are two of the major
3 instances, but there were other instances across
4 the state that happened in the same fashion, so I
5 just wanted to make that point and be clear on
6 that.

7 VICE CHAIRMAN OVERHOLT: I just have a couple
8 questions.

9 CHAIRMAN OKESON: Sure.

10 VICE CHAIRMAN OVERHOLT: So I just want to --
11 so with respect to District 1, did you submit 500
12 signatures.

13 MS. DIXON-TATUM: No, ma'am. I don't believe
14 that all 500 were there. It was close but not 500.

15 VICE CHAIRMAN OVERHOLT: That's all I have.

16 MS. DIXON-TATUM: And that was also because
17 some were obviously thrown out. About 28 to
18 30 percent of signatures are thrown out for the
19 various reasons that were spoke of, be it that --

20 VICE CHAIRMAN OVERHOLT: My question was --
21 so, I guess, to clarify, did you submit 500
22 signatures for District 1?

23 MS. DIXON-TATUM: I submitted the 45 pages
24 to --

25 VICE CHAIRMAN OVERHOLT: It's not pages.

1 What's the number of signatures that you submitted?

2 MS. DIXON-TATUM: About 450.

3 VICE CHAIRMAN OVERHOLT: Nothing further.

4 MS. CELESTINO-HORSEMAN: A question.

5 CHAIRMAN OKESON: Sure.

6 MS. CELESTINO-HORSEMAN: So you never called
7 the clerk's office in District 1 there to verify
8 that they had received your signatures?

9 MS. DIXON-TATUM: Well, I had other people,
10 volunteers because I didn't have a paid staff, so I
11 had volunteers who were helping me, and they were
12 doing follow-up calls. I'm not sure what happened
13 there.

14 MS. CELESTINO-HORSEMAN: Okay. So you didn't
15 check to see if anyone had called to verify that
16 the signatures had been received?

17 MS. DIXON-TATUM: Yes, yes. I was working
18 with my volunteers to follow up.

19 MS. CELESTINO-HORSEMAN: No. That wasn't my
20 question. My question was, you didn't know your
21 signatures -- let's make it easier. You didn't
22 know your signatures had not been received until
23 they called you to tell you that?

24 MS. DIXON-TATUM: Yes, ma'am. That is
25 correct.

1 MS. CELESTINO-HORSEMAN: Okay. And there is
2 nothing that prohibits you from making calls to
3 these clerks' offices to check. Are you aware of
4 that?

5 MS. DIXON-TATUM: I am aware of that, and --

6 MS. CELESTINO-HORSEMAN: And are you also
7 aware that you can call the clerk's office and ask
8 them what the status is on the review of your
9 signatures and they will tell you, okay, well, it
10 looks like you've got these. This number was
11 knocked out or these were knocked out.

12 And you can go in and you can say, oh, wait a
13 minute, you shouldn't have knocked that out
14 because, and show them why it shouldn't have been
15 knocked out. Were you aware of any of that?

16 MS. DIXON-TATUM: Yes, ma'am. And also I'm
17 also aware that I'm not wealthy, and I had to work,
18 and so I do have volunteers. And we did the best
19 that we could under the circumstances that we were.
20 Again, if I would have had paid staff, then that
21 would set the tone a little bit different. But I
22 had to work 40 hours plus a week.

23 And so as much as I am qualified and wanting
24 to run for governor of Indiana, I was faced with a
25 number of challenges that many people do not have

1 to face because, again, I'm not wealthy, I'm not
2 the party favorite. So I had to do triple,
3 quadruple time work that most people in this
4 position would not have to do. Again, if they're
5 wealthy, Mr. Rust paid over 300-something-thousand
6 dollars just to help him collect signatures, and he
7 failed to get that done. And he had to quit his
8 full-time job, and he is also a wealthy person.

9 So this whole signature piece is unfair and
10 unconstitutional because that it really knocks out
11 the candidates who are wanting to represent Indiana
12 for the people and serve the people. So, yes,
13 ma'am, I did my best, and I am aware of all of
14 those things, but please consider the position that
15 I'm also in.

16 MS. CELESTINO-HORSEMAN: Well, I'll wait until
17 we have our discussion.

18 CHAIRMAN OKESON: So I have a quick question.
19 Certainly in our long history as a state with
20 elections, not every candidate that gets on the
21 ballot is considered wealthy or privileged in some
22 way. So what would you say to a candidate who,
23 under similar circumstances and similar
24 disadvantages or hurdles as you're espousing, who
25 does meet the signature requirement, who does

1 successfully get on the ballot? How would you
2 create equity there?

3 MS. DIXON-TATUM: So if you're speaking of
4 Ms. Jamie --

5 CHAIRMAN OKESON: I'm speaking generally.

6 MS. DIXON-TATUM: Okay. Well, in general or
7 with regards to Ms. Jamie, she was able to raise
8 \$17,000. She did have one paid staff. And it also
9 appears that she had some sort of party support
10 because, again, kudos to her, she made it.

11 So, again, when you have that type of party
12 support, when you have that type of money, you can
13 do those things. But when you work a full job and
14 then I am an African-American person, and so
15 there's some special hurdles that come along with
16 the signature gathering piece as well. And so I'm
17 asking you to consider all of those elements as
18 well.

19 MS. CELESTINO-HORSEMAN: I guess my problem
20 here is you keep saying that you didn't have these
21 resources.

22 MS. DIXON-TATUM: Yes, ma'am.

23 MS. CELESTINO-HORSEMAN: I don't think it's
24 too much for the State to say, okay, you don't have
25 a lot of money, but at least you've got to get

1 these signatures to show us that you have some
2 support amongst the people.

3 And to get those signatures, as our chair was
4 asking, you have to have volunteers who support you
5 and are willing to go out and do that. And all
6 these candidates still also use volunteers to do
7 that. And the Republican candidate that you are
8 talking about, as far as I know, she had no party
9 support, but she had a heck of a network of people
10 that supported her, and she was able to do it.

11 So it's not a matter of discrimination or
12 anything else. It's a matter of, when you file to
13 represent the entire state of Indiana and all its
14 people, the State is essentially, the way I
15 interpret the signature requirement, is essentially
16 saying, look, we just want to know that you have
17 some kind of base of support, some kind of
18 groundswell that will support your candidacy,
19 because if everybody could run for governor, then
20 our elections would be such chaos and it would cost
21 us so much to do an election. So --

22 MS. HARTER: I want to jump in. So it's not
23 that Tamie didn't have support. She had, you know,
24 substantial compliance with it if her signatures
25 would have been accepted and certified.

1 And she's not saying that there's
2 discrimination on the face of this signature
3 requirement. It's we can't ignore the disparate
4 treatment in the way that it actually plays out.
5 We know she's not the first. It seems that very
6 consistently that we're excluding African-American
7 candidates.

8 And in terms of election integrity, the
9 system, I believe it's 3-1-2-10 or some -- I'm
10 sorry if I'm misstating it, but there's a statute
11 that says that the Republican and the Democratic
12 parties shall hold a primary election. And if you
13 have one candidate, it's a very hollow -- it
14 doesn't really fulfill that. Right? So one
15 candidate isn't really an election. Okay? So
16 they're going to win no matter what.

17 So it's not like we have this ballot
18 overcrowding issue in Indiana, right, and, oh, we
19 need to get rid of frivolous candidacies. That may
20 be true in other places, but it's not true in
21 Indiana. We can barely find people who are willing
22 to run.

23 So it's not that we're flooded with candidates
24 who have support, and it's not that Tamie didn't
25 have support, and it's not that we're saying that

1 the actual requirement on its face is
2 discriminatory because we know it applies to
3 everyone. It's just we have to look at what we
4 know, the actual evidence of who is being excluded
5 by these things, and there seems to be a race and a
6 socioeconomic piece here. Sure, there's people who
7 are able to achieve it anyway, but those are the
8 exception. Those are the rare cases. It's not --

9 MS. CELESTINO-HORSEMAN: I'm sorry to
10 interrupt, but the bottom line to all this is that
11 you said that Ms. Wittman acknowledged that she
12 only got about 3,700 signatures, which is --

13 CHAIRMAN OKESON: 3,200.

14 MS. CELESTINO-HORSEMAN: 3,200, which is far
15 less than what was required. Even if you go back
16 and look at the Todd Young, which I was not on the
17 Election Commission, I think that was a matter of,
18 what, three or four votes? So it was very minimal.
19 Now, in this case, it is much bigger than that.

20 And I also have to address something else that
21 you said, which I really kind of found offensive.
22 You stood up there and said something to the effect
23 that they were only applying this law as to -- it's
24 only being applied to African-American candidates,
25 and that is not true. That is not true in any

1 sense of the word. We have many African-American
2 candidates who are going to be on the ballot this
3 year who have not been challenged. It's a very
4 simple requirement to get the signatures, and so
5 I -- but I do want to make that clarification. I
6 mean, I did find that rather offensive.

7 CHAIRMAN OKESON: I would echo that. I think
8 we've been pretty consistent in the application.
9 Right, wrong, or indifferent, we're not lawmakers
10 here.

11 MS. HARTER: I understand. I want to just
12 address something. I was not saying that this
13 Commission did anything untoward. I'm just saying
14 that the practical reality is that the folks that
15 are subject to challenges and end up being excluded
16 do tend to be African-American women. I'm not
17 saying you did anything wrong. I'm not saying that
18 you did that purposefully. I'm just saying if we
19 look at what actually happens, not what you're
20 doing, but the statutory requirement itself works
21 to disparately treat people.

22 So I'm not saying that this Commission -- I
23 think this Commission works overtime to do what is
24 fair within the confines of what you do. I'm not
25 criticizing this Commission. I want to be really

1 clear about that.

2 VICE CHAIRMAN OVERHOLT: If I could, so I was
3 on the Commission for the Todd Young issue, and I
4 was on the Commission dealing with the two female
5 African-American candidates. I think that was
6 two years ago or four years ago.

7 And I will say that, with the Todd Young
8 issue, it was not a matter that he had not -- he
9 had submitted submission signatures. There were --
10 the discussion was over it was questioning some of
11 those signatures. So, number one, he had met the
12 threshold requirement of at least submitting the
13 minimum number of signatures, and it became a
14 question of whether any of those signatures were
15 not going to be counted.

16 The unfortunate circumstance with the other
17 two African-American female candidates you've been
18 discussing is that, unfortunately, they just, as
19 with your client, did not even meet -- that's why I
20 asked my very pointed question about did you submit
21 at least the 500 signatures, and the answer was no
22 for District 1, because that's -- it is a different
23 story, a different situation, I think, if we at
24 least get the minimum number of signatures
25 submitted because, again, that is the statutory

1 requirement that we apply across the board.

2 The very unfortunate circumstance that has
3 occurred now in these past two election cycles is
4 that we have had three female African-American
5 candidates disqualified because they didn't meet
6 that threshold requirement, along with other
7 individuals who did not meet that threshold
8 requirement. They're not the only ones who have
9 not been granted to have their names appear on the
10 ballot. There are other individuals too that
11 haven't met the requirement.

12 CHAIRMAN OKESON: There were several in that
13 last round.

14 VICE CHAIRMAN OVERHOLT: Yeah. So, again, we
15 are applying the law that has been determined. It
16 is not up to us to change the law. And I see --
17 and I don't see any basis for any claim that it
18 is -- that the impact, that it has a discriminatory
19 impact. I mean, the impact it has, I think, is
20 across the board. If you don't have the support to
21 get the signatures, I mean, you don't meet the
22 requirements.

23 CHAIRMAN OKESON: I think you were afforded a
24 two-minute cross-examination. In light of the time
25 that we've afforded, I think we should move towards

1 that, if you'd like to do so.

2 MR. ZIEMBA: We would forego
3 cross-examination. I think the points by the --
4 the questions by the Commission have covered what I
5 would ask. We would just reserve any time for
6 rebuttal.

7 CHAIRMAN OKESON: There's no rebuttal time.

8 MR. ZIEMBA: Oh, well, then never mind. Fine
9 by me.

10 CHAIRMAN OKESON: Okay.

11 MS. CELESTINO-HORSEMAN: And, Mr. Chair, I
12 would like to note that Valerie McCray, who was one
13 of the African-American candidates you were talking
14 about that did not meet the signature requirement
15 the last time, met it successfully this time and
16 exceeded the requirement.

17 MS. DIXON-TATUM: And she had two years to do
18 so.

19 MS. CELESTINO-HORSEMAN: No, she did not.

20 MS. DIXON-TATUM: From the last time --

21 MS. CELESTINO-HORSEMAN: She did not. She
22 learned. She took from this session and she went
23 and she put together an organization, and she had a
24 group of people who supported her, and she learned
25 from it. I would strongly encourage you to do the

1 same should you wish to run for office again like
2 this.

3 CHAIRMAN OKESON: Thank you.

4 MS. DIXON-TATUM: Thank you.

5 CHAIRMAN OKESON: So we have a challenge to
6 Tamie Dixon-Tatum to be on the ballot candidate for
7 Democratic Party nomination for governor. Do we
8 need a motion?

9 VICE CHAIRMAN OVERHOLT: I would move to
10 dismiss the challenge -- or no, grant. No, no, no,
11 grant the challenge.

12 MS. DIXON-TATUM: Thank you, thank you, thank
13 you.

14 VICE CHAIRMAN OVERHOLT: Grant the challenge.
15 Sorry.

16 MS. CELESTINO-HORSEMAN: And I'll second.

17 CHAIRMAN OKESON: We have a second. So we
18 have a motion to grant the challenge to ballot
19 access for Tamie Dixon-Tatum. We have a second.

20 Any discussion? Any questions?

21 All those in favor signify by saying "Aye."

22 VICE CHAIRMAN OVERHOLT: Aye.

23 MS. CELESTINO-HORSEMAN: Aye.

24 MS. PYLE: Aye.

25 CHAIRMAN OKESON: Aye.

1 The "ayes" have it. That being said, the
2 challenge is upheld. The Election Division is
3 directed to not include Tamie Dixon-Tatum on the
4 certified list of primary candidates sent to the
5 county election boards and to indicate that the
6 name of this candidate is not to be printed on the
7 ballot.

8 MR. ZIEMBA: Thank you very much.

9 CHAIRMAN OKESON: Next we have Martin v.
10 Nicholson, Cause 2024-05, in the matter of the
11 challenge to David L. Nicholson, candidate for
12 Democratic Party nomination for State Senate
13 District 32.

14 MR. KOCHEVAR: Mr. Chairman, members of the
15 Commission, in your binders you will find under
16 this cause a copy of the candidate challenge that
17 was filed by the challenger along with an
18 attachment to that challenge. In addition, you'll
19 find a copy of the candidate's declaration of
20 candidacy, their CAN-2, along with a receipt
21 showing that a statement of economic interest has
22 been filed, a copy of the notice hearing and copy
23 showing that that notice hearing was sent to both
24 the challenger and the challenged candidate.

25 CHAIRMAN OKESON: With that, I'll recognize

1 Ms. Martin, challenger, for your presentation.

2 MS. MARTIN: Good morning.

3 CHAIRMAN OKESON: Good morning.

4 MS. MARTIN: Yes. My name is Myrna Martin.

5 CHAIRMAN OKESON: We've got a couple minutes
6 of the morning left.

7 MS. MARTIN: Right. M-y-r-n-a, Martin,
8 M-a-r-t-i-n.

9 This is a simple challenge. The statute
10 states that a candidate must file the proper
11 paperwork for a Senate or House seat. Therefore,
12 the issue here is that, after scanning all new
13 candidates and names on the ballots for the primary
14 election slated for May 7, 2024, in comparison to
15 statements of economic interest statements, did not
16 see that Mr. Nicholson listed under the chamber of
17 Senate in year 2024.

18 On primary ballot listing for Senate, has
19 defendant's name, Mr. Nicholson name, listed on
20 Senate side District 32. However, on the Indiana
21 General Assembly side for statements of economic
22 interest, his statement is not there on the chamber
23 side of the House of Representatives, and it
24 appears that Mr. Nicholson submitted this document
25 instead.

1 So I am questioning how a person running for a
2 seat with the House of Representatives
3 documentation submitted. This is concerning who
4 would be serving in office to represent and uphold
5 public policy who does not choose the correct
6 paperwork. Each candidate listed on both the
7 members and candidates side understand it's
8 submitted a statement of economic interest for
9 Senate.

10 As a voter myself, I thought this person was
11 listed in a previous election, so knowing that he
12 could not submit the proper paperwork as he has
13 done before in a previous election, that's my
14 challenge.

15 CHAIRMAN OKESON: Would you like to
16 cross-examine? And please limit it to questions
17 related to the testimony given.

18 MR. NICHOLSON: I'd just like to make a
19 statement.

20 CHAIRMAN OKESON: Well, you'll get that chance
21 in a moment. This is your opportunity to
22 cross-examine Ms. Martin.

23 MR. NICHOLSON: Okay. I have no questions.

24 MS. MARTIN: Should I have a seat?

25 CHAIRMAN OKESON: Yes.

1 MR. NICHOLSON: Let me just give a brief
2 chronology.

3 CHAIRMAN OKESON: Your name.

4 MR. NICHOLSON: Oh, my name is Dave Nicholson,
5 D-a-v-i-d, N-i-c-h-o-l-s-o-n.

6 Just a brief chronology of the situation. On
7 February the 8th, I showed up at the secretary of
8 state's office to file for secretary -- or file for
9 State Senate, and I knew I had to file an economic
10 interest statement. And the gentleman who was
11 waiting on me at that point in time directed me to
12 the House Secretary's office.

13 I went to the House Secretary's office, filed
14 my economic interest statement, got my receipt,
15 brought it back down. A young lady waited on me,
16 checked the documents, filed me, and I assumed
17 everything was okay until I received the notice in
18 the mail of this challenge. At that point -- that
19 was on Saturday, January -- or February 17th.

20 February 20th, Tuesday, I came in. I went to
21 the secretary of state's office to see what I could
22 do to rectify the situation. They directed me to
23 go to the Election Division office. I went to the
24 Election Division office, and they directed me to
25 go to the secretary of state's office. And from

1 there I went to the secretary of the Senate's
2 office and told her the situation. And she wasn't
3 sure what she could do, but she did allow me to go
4 ahead and file the economic interest statement with
5 the secretary of state's -- or with the secretary
6 of the Senate's office, which I have. I booked my
7 original and a copy for you.

8 CHAIRMAN OKESON: Please give it to her.

9 MS. NUSSMEYER: When was it filed?

10 MS. WARYCHA: The 20th of February.

11 MR. NICHOLSON: So at this point, I know
12 nothing else I could do to rectify the situation,
13 and I see no reason why I should not be allowed to
14 continue being a State Senate candidate.

15 MS. CELESTINO-HORSEMAN: Go back and explain
16 to me again how the secretary of state's office --
17 what did you say happened there?

18 MR. NICHOLSON: I went in to file for State
19 Senate, and I knew I had to file an economic
20 interest statement. And I asked the gentleman who
21 was waiting on me at that point in time where I
22 needed to go to do that, and he sent me to the
23 secretary of the House. And I assumed that's the
24 way the procedure was at this point in time.

25 MS. CELESTINO-HORSEMAN: Did you read the

1 forms that you were filling out?

2 MR. NICHOLSON: Yes.

3 MS. CELESTINO-HORSEMAN: And were you at all
4 surprised that it said House of Representatives
5 instead of Senate.

6 MR. NICHOLSON: Like I said, I assumed I was
7 being directed appropriately.

8 MS. CELESTINO-HORSEMAN: I guess, I mean, it's
9 unfortunate that it happened, but part of the
10 reason why you're required to file these is so that
11 people can see them to see what your economic
12 interests are since you want to be an elected
13 officeholder. And by filing it in the wrong
14 office -- as far as you know, did the House of
15 Representatives forward it over to the State
16 Senate, say, oh, this was mistakenly filed with us?

17 MR. NICHOLSON: They accepted my form. They
18 gave me my form that I had to take down to the
19 secretary of state's office, which it clearly said
20 the House, and people in the secretary of state's
21 office looked at it, said okay, and filed me.

22 MS. CELESTINO-HORSEMAN: And so but you -- you
23 get instructions when you file for office, correct,
24 written instructions that tell you what's needed?
25 And the secretary of state, the website page for

1 the Election Division and everything, there's a
2 whole great, big handbook, and it sets forth all
3 the things you have to do to be a candidate. Did
4 you take a look at that before you filed?

5 MR. NICHOLSON: Not in detail, no.

6 MS. CELESTINO-HORSEMAN: Well, in the future,
7 no matter what happens here today, I strongly
8 suggest that you take a look at that candidate
9 handbook before you do anything. It becomes --
10 when you're running for office, it becomes your
11 bible, so to speak.

12 MR. NICHOLSON: Yes, I understand that.

13 VICE CHAIRMAN OVERHOLT: I have a question for
14 our counsel, when we're ready, about the statute.
15 So the statutes regarding statement of economic
16 interests say -- so I'm looking at 2-2.2-2-1.
17 Wait, no, I'm looking at 2-2.2-2-2 that says the --
18 subsection B in that says that you have to file --
19 the candidate has to file with the principal
20 administrative officer. And then there's 2-2.2-7-7
21 that talks about the duties of the principal
22 administrative officer. Is the principal
23 administrative officer defined anywhere?

24 MR. KOCHEVAR: No.

25 VICE CHAIRMAN OVERHOLT: So it's -- go ahead.

1 MR. KOCHEVAR: Yes. I anticipated this
2 particular question, so I believe that in the
3 Title 2 chapter that is being referred to, the
4 principal administrative officer is defined in
5 Indiana Code 2-2.2-1-16. And that essentially
6 means that, in the House chamber, that is the clerk
7 of the Indiana House of Representatives. In the
8 State Senate chamber, that is the secretary of the
9 State Senate.

10 CHAIRMAN OKESON: So you would interpret that
11 that was filed with the inappropriate
12 administrative --

13 MR. KOCHEVAR: So there are various sections.
14 For Title 2, which created the statement of
15 economic interest, there is a section of law that
16 provides that, when you are not an incumbent member
17 but you wish to become a candidate, under law, you
18 must file the statement of economic interest form
19 that was created by the General Assembly with the
20 principal administrative officer, which means that,
21 as I read that particular statute, when you want to
22 become a candidate for State Senate, you must file
23 that statement of economic interest with the
24 secretary of the State Senate. That's how at least
25 I read Title 2. I'll defer to others to --

1 CHAIRMAN OKESON: So what I hear you saying
2 is, in this case, they have not accurately filed,
3 legitimately filed the statement of economic
4 interest.

5 MR. KOICHEVAR: Based on the record before us
6 and the filing that we have, we have a receipt
7 showing that a statement of economic interest was
8 filed with the House and not the Senate, so that
9 would be the case that we have the wrong receipt.

10 MS. WARYCHA: I would agree with Mr. Kochevar
11 and would add, in addition to the statute,
12 Commissioner Karen Celestino-Horseman has said we
13 put together candidate guides. And in those
14 candidate guides it specifically -- we do not use
15 the term "principal administrative officer." I
16 believe we say the House of the clerk -- or the
17 principal clerk of the House and principal
18 secretary of the Senate, so that is spelled out in
19 the guides as well.

20 CHAIRMAN OKESON: So I guess my question is,
21 is filing your statement of economic interest in
22 the wrong place the equivalent of not filing it at
23 all?

24 MS. WARYCHA: I would say it's not compliant
25 with the law.

1 MR. KOCHEVAR: Yes, that is correct. Just
2 I'll refer you over to Indiana Code 3-8-1-33 and
3 Indiana Code 3-8-2-11. These both speak to
4 statement of economic interest in regards to state
5 legislative candidates. The requirement placed on
6 both candidates and upon our office and the
7 secretary of state's office is clear that you must
8 have the proper documentation showing that the
9 proper statement of economic interest, as required
10 under that section in Title 2, must be filed. We
11 must have evidence that. That is that receipt.

12 I will also tell you, as you've seen and now
13 it's been entered into the record, the receipts
14 that are used by the House and the Senate are
15 distinctly different. The House uses a quarter
16 sheet as their receipt showing that they're filed
17 and signed by a representative of the House clerk's
18 office. The State Senate uses a very small slip of
19 paper that can be very hard to scan sometimes, and
20 it's signed by a representative of the secretary of
21 the State Senate.

22 CHAIRMAN OKESON: And there's nothing
23 statutorily or by rule or policy that allows for
24 some erroneous filings to be corrected?

25 MS. WARYCHA: No. I would say the statute is

1 quite clear that, after the deadline for the
2 declaration of candidacies, we cannot amend. And
3 so based on the filings that came before us today,
4 that date says February 20th that it was filed with
5 the Senate. That's after the filing deadline for a
6 declaration of candidacy, and we, being the
7 Election Division or the secretary of state, would
8 be prohibited from taking it after that deadline.

9 VICE CHAIRMAN OVERHOLT: Do you have the
10 language --

11 CHAIRMAN OKESON: Do you agree with that?

12 MR. KOICHEVAR: Yes, just so much to say that,
13 yes, before we hit the candidate deadline, if there
14 is an error, the candidate, if the candidate knows
15 about it, is informed, or otherwise learns it, we
16 do accept amendments to the filing. So there are a
17 chance to correct it but up to the deadline for
18 filing as a candidate. After that deadline, our
19 office does not accept any more filings, as
20 required by law.

21 CHAIRMAN OKESON: Okay. Sorry.

22 VICE CHAIRMAN OVERHOLT: Well, do we have --
23 unless I'm blind to it, but I don't see 2-2.2-1-16
24 in our book.

25 MS. WARYCHA: It's not, but I can give it to

1 you right here.

2 VICE CHAIRMAN OVERHOLT: Yeah, because I'm
3 really curious because I don't -- the statutes
4 aren't saying what you guys are saying they're
5 saying. Oh, so there it does say that. Okay.

6 MS. WARYCHA: Our code books are selective on
7 these statutes.

8 VICE CHAIRMAN OVERHOLT: Yeah, apparently.

9 MS. WARYCHA: We can only print so much.

10 VICE CHAIRMAN OVERHOLT: We're on a
11 need-to-know basis online here.

12 CHAIRMAN OKESON: I have not been paying
13 attention on time. Have we concluded?

14 MS. WARYCHA: We are done. I stopped the time
15 once we started asking questions.

16 CHAIRMAN OKESON: You have a two-minute
17 opportunity to cross-examine Mr. Nicholson, if
18 you'd like to do so.

19 MS. MARTIN: The Commission asked the
20 questions that I wanted to cross-examine.

21 CHAIRMAN OKESON: Okay. Thank you.

22 MR. NICHOLSON: Can I ask one question? Since
23 my candidacy was accepted by the secretary of
24 state's office, does that mean that the secretary
25 of state's office violated the law?

1 CHAIRMAN OKESON: That's not a matter before
2 this board to consider, I don't believe.

3 MS. WARYCHA: Agreed.

4 CHAIRMAN OKESON: Okay. So we have a
5 challenge presented. Is there a motion?

6 MS. CELESTINO-HORSEMAN: Okay. It is with
7 great reluctance, but the law is the law, that I
8 make a motion that we grant the challenge.

9 CHAIRMAN OKESON: Is there a second?

10 MS. PYLE: Second.

11 CHAIRMAN OKESON: So we have a motion to
12 uphold the challenge and we have a second.

13 Any further discussion, contemplation?

14 MS. CELESTINO-HORSEMAN: I will say that it's
15 unfortunate, but we can't -- because we have our
16 election code -- this is the election code, and as
17 she said, this is just the selected provisions. So
18 if we say, well, you were just a little bit out of
19 whack on that, we'll let you slide by, then we open
20 up a whole other can of worms. So we try, as best
21 we can, to follow it.

22 So next time you want to run, get that
23 candidate handbook. It will tell you everything
24 that you have to do, and you don't need to rely on
25 anybody else. These folks have put it in writing

1 for you, and you've got it right in front of you.

2 CHAIRMAN OKESON: I think I tend to lean in
3 that -- I mean, we just got done hearing a matter
4 where the application of the standards needs to
5 apply, and I feel like we're kind of faced with a
6 similar question in a slightly different manner.
7 But I don't know.

8 VICE CHAIRMAN OVERHOLT: Well, and, see, to
9 me, this is a little bit different because the last
10 one I was asking did you at least submit the 500
11 signatures. So we've got a candidate who
12 followed -- I mean, he was directed to someone's
13 office to file the -- to get the economic interest
14 form. It was the wrong office, but that's what is
15 kind of giving me pause is that he did file a
16 statement of economic interest. It was with the
17 wrong office in the right building.

18 And that's what concerns me because I'm
19 thinking, well, he's saying he was told to go to
20 the House clerk or whatever, and he went there and
21 no one there said you're in the wrong place. And
22 so he fills it out, takes it back to the secretary
23 of state's office, no one there catches it. Now,
24 granted, I guess if it were me, I would said why am
25 I filling out a statement for the House of

1 Representatives if I'm running for Senate.

2 CHAIRMAN OKESON: Well, and I go to Valerie's
3 comment about the adequate materials that are
4 provided by the Election Division for candidate
5 filings.

6 MS. WARYCHA: And if I could, I'll just read
7 out of Indiana Code 3-8-2-7. This would be
8 subsection, I think, A(7). The following statement
9 is required with the declaration of candidacy: A
10 statement that the candidate has attached either of
11 the following to the declaration: A copy of the
12 statement of economic interest file stamped by the
13 office required to receive the statement of
14 economic interest. A receipt or photocopy is also
15 acceptable. So just wanted to give that statute as
16 well for consideration.

17 MS. CELESTINO-HORSEMAN: So, Valerie, if --
18 so, you know, he did raise a question that I kind
19 of wondered about. Should the secretary of state
20 have accepted his filing since he didn't have --

21 MS. WARYCHA: Well, I would say the secretary
22 of state's office is ministerial in their
23 responsibility, meaning that they accept what they
24 get on face value. It's kind of like the
25 two-primary rule. If they get one that someone

1 didn't mark or they did mark, they are instructed
2 to accept it in that they are ministerial, and it's
3 up to a voter of the district to challenge it. So
4 that is the guidance given to staff.

5 CHAIRMAN OKESON: The secretary of state
6 accepted the qualified form filed with the House
7 irrespective of whether --

8 MS. WARYCHA: Yeah.

9 MR. KOCHEVAR: To provide a response, I would
10 just add, in a perfect world, yes. We're all
11 experts here, speaking for the Election Division
12 staff. We created the forms. We've been doing
13 this for a long time. But, again, in a perfect
14 world, yes, this would have been caught, as a
15 candidate, no, this is the wrong receipt, you may
16 want to fix this before accepting for filing, or
17 even if it came to our office and we would have
18 caught it on the back end.

19 But speaking for myself, we are not perfect,
20 and if you look at our candidate list, we have
21 hundreds of candidates who file with us alone that
22 we certify down to the counties. But I will say
23 this: It is not out of the question that a filing,
24 it gets accepted, gets file stamped, it's received
25 in our office and it's processed even though

1 something statutorily may be missing.

2 CHAIRMAN OKESON: And it's not for the
3 secretary of state to make that determination at
4 the time of accepting the filing?

5 MS. WARYCHA: No. Ministerial is the legal
6 term that they accept the filing as they get it.

7 CHAIRMAN OKESON: Okay. One last question for
8 me, Mr. Kochevar or Valerie. Has anything like
9 this come up before? Do we have any past precedent
10 on an erroneous filing of an economic interest
11 statement for a candidate that's been dealt with
12 before?

13 MS. WARYCHA: Not in my time here. I would
14 defer to Brad. He's our historian.

15 MR. KING: Mr. Chairman, no, I don't recall a
16 situation exactly paralleling the facts of this
17 one.

18 CHAIRMAN OKESON: Okay. We have a motion and
19 a second to uphold the challenge.

20 MS. CELESTINO-HORSEMAN: Yeah. There was a
21 second.

22 CHAIRMAN OKESON: Let's do it by roll call.
23 Those in favor. Karen Celestino-Horseman -- we'll
24 go left to right -- how do you vote?

25 VICE CHAIRMAN OVERHOLT: So the motion is to

1 uphold the challenge?

2 CHAIRMAN OKESON: To uphold the challenge.

3 MS. CELESTINO-HORSEMAN: Because of the way
4 the law is written, I feel like I have to follow
5 that, so I'm going to say grant the challenge.

6 CHAIRMAN OKESON: You vote for the motion?

7 MS. CELESTINO-HORSEMAN: Yes.

8 CHAIRMAN OKESON: Suzannah Wilson Overholt?

9 VICE CHAIRMAN OVERHOLT: This is very
10 difficult, but I feel like I need to vote to uphold
11 the challenge based on law.

12 CHAIRMAN OKESON: Okay. I too will vote in
13 support of the motion.

14 Litany?

15 MS. PYLE: I would vote to uphold the
16 challenge as well. I think the law is pretty
17 clear, although unfortunate.

18 CHAIRMAN OKESON: That being said, the
19 challenge is upheld. The Election Division is
20 directed not to include David L. Nicholson in the
21 certified list of primary candidates sent to county
22 election boards and to indicate that the name of
23 this candidate is not to be printed on the ballot.
24 Thank you.

25 MS. MARTIN: Thank you.

1 CHAIRMAN OKESON: Next on the list I have
2 Crooks v. Moore, Cause 2024-06, in the matter of
3 the challenge to Kellie Moore, candidate for the
4 Democratic Party nomination for United States
5 Representative, District 8.

6 Mr. Kochevar.

7 MR. KOCHEVAR: Mr. Chairman, members of the
8 Commission, in your binders you will find a copy of
9 the CAN-1 candidate challenge that's been filed by
10 the challenger, along with the CAN-2 declaration of
11 candidacy, a notice of hearing that was sent to
12 both the challenger and challenged candidate, as
13 well as documentation showing that that notice of
14 hearing was sent to both parties.

15 CHAIRMAN OKESON: Okay. With that, I
16 recognize Mr. Crooks, the challenger, for your five
17 minutes of presentation.

18 MR. CROOKS: To help speed up your meeting,
19 rules are rules. That's all I've got to say.

20 CHAIRMAN OKESON: Will you at least state your
21 name and spell it, sir.

22 MR. CROOKS: Sorry. David Crooks. And rules
23 are rules, and I hope you'll --

24 MS. WARYCHA: Spell it, please.

25 MR. CROOKS: C-r-o-o-k-s. Been a while since

1 I've been up here.

2 CHAIRMAN OKESON: Is Ms. Moore present? Would
3 Ms. Moore like to -- do you want to proceed or does
4 anyone want to make a motion based on the absence
5 of Ms. Moore?

6 VICE CHAIRMAN OVERHOLT: Well, I guess I
7 would -- well, I would like to acknowledge for the
8 record that it appears that she did -- I mean, her
9 CAN-2 is indeed not notarized. At least the one
10 we've got here in the file is not notarized.

11 CHAIRMAN OKESON: Would you affirm that,
12 Valerie?

13 MS. WARYCHA: Yes, yes.

14 CHAIRMAN OKESON: Matt, is that correct?

15 MR. KOCHEVAR: Yes. And I will also tell you
16 that I was the one who put the file stamp on this.

17 VICE CHAIRMAN OVERHOLT: Based on that, I
18 would move that we uphold the challenge.

19 CHAIRMAN OKESON: Okay.

20 MS. CELESTINO-HORSEMAN: Second.

21 CHAIRMAN OKESON: Having a second, any
22 questions, comments?

23 So we have a motion to uphold the challenge
24 presented by Mr. Crooks and a second. All those in
25 favor signify by saying "Aye."

1 VICE CHAIRMAN OVERHOLT: Aye.

2 MS. CELESTINO-HORSEMAN: Aye.

3 MS. PYLE: Aye.

4 CHAIRMAN OKESON: Aye.

5 The "ayes" have it. The motion carries. The
6 challenge is upheld. The Election Division is
7 directed not to include Kellie Moore in the
8 certified list of primary candidates sent to county
9 election boards and indicate the name of this
10 candidate not to be printed on the ballot.

11 MR. CROOKS: Thank you.

12 MS. CELESTINO-HORSEMAN: Thank you for your
13 brevity, Mr. Crooks.

14 MR. CROOKS: Just trying to get home.

15 CHAIRMAN OKESON: We appreciate it.

16 I hope I'm pronouncing this right. Bohm v.
17 Schrader, Cause No. 2024-07, in the matter of the
18 challenge to Thomas A. Schrader, candidate for the
19 Democratic Party nomination for United States
20 Representative, District 3.

21 Mr. Kochevar.

22 MR. KOCHEVAR: Yes. Mr. Chairman, members of
23 the Commission, in your meeting binder is a copy of
24 the CAN-1 candidate challenge filed by the
25 challenger as well as attached documents that came

1 along with that challenge. And also in here, once
2 I get through everything, though it was part of the
3 documentation that was filed by the challenger,
4 there is another copy of the candidate's CAN-2
5 declaration of candidacy form. There is the notice
6 of hearing that was sent to both parties as well as
7 documentation showing that that notice was sent to
8 both parties by the Election Division.

9 CHAIRMAN OKESON: Thank you.

10 Ms. Bohm.

11 MS. BOHM: Good morning. Christine Bohm,
12 C-h-r-i-s-t-i-n-e, Bohm, B-o-h-m.

13 I am here for the second time. In 2022, I
14 came through with the exact same challenge against
15 Mr. Schrader. Basically he has run seven times and
16 has never filed a single financial form. He has
17 run for the federal office. I believe this will be
18 his fifth turn. And he has run for local office
19 twice.

20 You have copies of where we are trying to
21 prove the negative, which, as you know, is
22 difficult to do. You have printouts from the Allen
23 County Election Board that shows in 2015 and 2019
24 where his name should have been had he filed his
25 financial paperwork, and then you also have copies

1 from the FEC website that show no records found for
2 Mr. Schrader.

3 There are some other minor issues on the CAN,
4 one of them being that he's not actually a
5 registered Democrat under that name. I know under
6 federal office you only have to be a resident of
7 that district, but he is signing as a registered
8 voter. In 2022, he used an alias to file his CAN-2
9 forms.

10 So I am asking that he be removed from the
11 ballot simply because, in the last approximately
12 20 years, he has not upheld any federal nor state
13 finance records.

14 CHAIRMAN OKESON: Is Mr. Schrader present?
15 Mr. Schrader? Anyone representing Mr. Schrader?

16 MS. CELESTINO-HORSEMAN: I would move that the
17 challenge be upheld.

18 CHAIRMAN OKESON: We have a motion. Is there
19 a second?

20 VICE CHAIRMAN OVERHOLT: Second.

21 CHAIRMAN OKESON: So we have a motion to
22 uphold the challenge and a second.

23 Any discussion, any questions, Litany?

24 MS. PYLE: No.

25 CHAIRMAN OKESON: Valerie.

1 MS. WARYCHA: Mr. Chairman, I agree that
2 Mr. Schrader, based off his evidence, looks like,
3 hasn't filed any campaign finance reports under
4 3-9, and I'll defer to Matthew. I'm struggling
5 here to find a way we can disqualify someone simply
6 off of the campaign finance filings.

7 MR. KOICHEVAR: I don't -- well, yes, as
8 Co-Director Nussmeyer reminds me and as I remember
9 the record and as testimony has revealed, this
10 exact same challenge on a number, if not all, of
11 these grounds was brought before this Commission in
12 2022. This Commission upheld that challenge, and
13 this person was not a candidate in the Democratic
14 primary for a federal office. So our own
15 precedence says that we have.

16 Another thing that you can, just to answer
17 substantively what my co-counsel has brought up, is
18 that parts of challenges, they all have to do with
19 qualifications, but they also have to do with
20 statutorily completing, in this case, the candidate
21 form as required by law. These have been brought
22 up in many of the candidate challenge hearings
23 before you. There are a number of other grounds
24 that are in the record right now that are in your
25 meeting binder.

1 CHAIRMAN OKESON: So this is a qualified
2 challenge?

3 MR. KOICHEVAR: I believe this is a qualified
4 challenge. Mostly -- and, for me, I would cite on
5 the precedence, but there's enough here on the
6 written record also on other grounds that I believe
7 this Commission can also rely on when they vote.

8 CHAIRMAN OKESON: Valerie.

9 MS. WARYCHA: Thank you, Mr. Kochevar. That's
10 helpful. So would you say the grounds, then, for
11 the challenge would be perjury of the name or the
12 information about the name?

13 MR. KOICHEVAR: Oh, I will not go -- just
14 speaking for myself, yeah, I will not go so far as
15 perjury. I'm not a criminal attorney or whatnot.
16 But I think there's also -- putting perjury aside,
17 we also can take the statement that is above the
18 person's signature on the back of this CAN-2 that
19 was notarized. We also can take into effect
20 whether or not by signing this form and it not
21 being completed as provided by law, that is
22 something that -- I'm trying to find the words --
23 essentially that this Commission can be taken up,
24 that I think basically that it was not completed as
25 required by law.

1 CHAIRMAN OKESON: You're referring to the
2 statement "I certify the information in this
3 Declaration of Candidacy is true and complete, and
4 that I meet the specific requirements of this
5 office"?

6 MR. KOICHEVAR: Yes. It can be taken in two
7 ways, perjury, but that's for the other side.
8 That's putting that aside. But also by my saying
9 that, if you find anything that's in the record
10 that makes this not, I'm going to say, factual,
11 then that definitely is something that you can take
12 into consideration.

13 And that's why I'm referring you over to
14 3-2-7, which is the statutory provision that
15 requires, one, what needs to be in this declaration
16 of candidacy, this CAN-2, as well as instructions
17 to the candidates on how they need to be completed.

18 MS. CELESTINO-HORSEMAN: And you have to
19 complete this CAN accurately and factually too.
20 And so he was asked specifically if he had filed
21 his prior campaign finance reports, and he said
22 yes, but we know that's not true.

23 So we're not actually using his campaign
24 finance stuff to say that's the basis. What we're
25 saying is that his misrepresentations about filing

1 his campaign finance reports is what's gotten him
2 in trouble.

3 VICE CHAIRMAN OVERHOLT: Well, the campaign
4 finance -- never mind. Sorry.

5 CHAIRMAN OKESON: Well, the fact that
6 Mr. Schrader is not here to respond to any of this
7 is problematic. But we do have a motion and a
8 second to uphold the challenge.

9 Any other comments or input?

10 MS. WARYCHA: I was curious for Ms. Bohm, what
11 does it mean when it says under No. 6 on the CAN-1
12 challenge, you put "office sought invalid"?

13 MS. BOHM: Check the spelling. It's minor.
14 It's a typo, but it matters. Representative.

15 MS. WARYCHA: Oh, okay.

16 CHAIRMAN OKESON: Well, I guess we'll call the
17 vote here. We have a motion and a second to uphold
18 the challenge excluding Mr. Schrader from the
19 ballot. All those in favor signify by saying
20 "Aye."

21 VICE CHAIRMAN OVERHOLT: Aye.

22 MS. CELESTINO-HORSEMAN: Aye.

23 MS. PYLE: Aye.

24 CHAIRMAN OKESON: Aye.

25 The "ayes" have it. The motion carries. The

1 challenge is upheld. The Election Division is
2 directed not to include Thomas A. Schrader in the
3 certified list of primary candidates sent to county
4 election boards and to indicate that the name of
5 this candidate is not to be printed on the ballot.

6 MS. BOHM: Thank you.

7 CHAIRMAN OKESON: Next we have Urick v.
8 Shydale, Cause 2024-08, also Eldridge v. Shydale,
9 Cause 2024-30, in the matter of the challenge to
10 Sarah Shydale -- I hope I'm pronouncing that
11 correctly -- candidate for the Democratic Party
12 nomination for Indiana State Representative,
13 District 97. And also 2024-30, the challenge to
14 Sarah Shydale, candidate for Democratic Party,
15 District 97, is an identical matter.

16 Are the representatives of both present?

17 Are we taking these together? Yeah. We want
18 to take these sort of concurrently.

19 VICE CHAIRMAN OVERHOLT: I would think so.

20 CHAIRMAN OKESON: Do we have to make a motion
21 to that effect?

22 VICE CHAIRMAN OVERHOLT: I would move that we
23 consolidate these two challenges.

24 MS. PYLE: Second.

25 CHAIRMAN OKESON: We have a motion and a

1 second to consolidate 2024-08 and 2024-30.

2 Any discussion or questions?

3 Hearing none, all those in favor signify by
4 saying "Aye."

5 VICE CHAIRMAN OVERHOLT: Aye.

6 MS. CELESTINO-HORSEMAN: Aye.

7 MS. PYLE: Aye.

8 CHAIRMAN OKESON: Aye.

9 The "ayes" have it. The matters are
10 consolidated.

11 Mr. Kochevar.

12 MR. KOCHEVAR: Yes. Mr. Chairman, members of
13 the Commission, looking at your tab for Cause
14 No. 2024-08, you will find a copy of the CAN-1
15 candidate challenge filed by the challenger along
16 with attached documents, a copy of the candidate's
17 declaration of candidacy and attached statement of
18 economic interest that was filed with the State, as
19 well as a notice of hearing and documentation
20 showing that that notice of hearing was sent to
21 both parties by the Election Division.

22 And then if you look at Tab 30, same thing,
23 CAN-1 candidate challenge along with an attachment,
24 a copy of the candidate's CAN-2 and attached
25 statement of economic interest receipt that was

1 filed with the State, and notice of hearing and
2 documentation that the notice of hearing was sent
3 by the Division to the parties.

4 There was also earlier -- closer to the
5 Commission hearing today, there was an appearance
6 notice filed on behalf of the challenger, Myla
7 Eldridge, that she would be represented by counsel.
8 That's in Cause No. 2024-30, so that is also part
9 of the record. I don't know if there was time to
10 get it into your binders, but it was received.

11 CHAIRMAN OKESON: No, it's here.

12 MR. KOICHEVAR: Okay. Great. Thank you.

13 CHAIRMAN OKESON: With that --

14 MS. CELESTINO-HORSEMAN: Mr. Chair, I'm sorry
15 to interrupt you, but Mr. Hahn has appeared on
16 behalf of Ms. Eldridge, correct?

17 MR. HAHN: Correct.

18 MS. CELESTINO-HORSEMAN: But you have not
19 appeared on behalf of Mr. Urick, right?

20 MR. HAHN: No. Have we?

21 MS. BARTLETT: Our appearance was just filed
22 for Myla Eldridge.

23 MS. CELESTINO-HORSEMAN: Okay. Just for Myla.
24 So is Mr. Urick here?

25 CHAIRMAN OKESON: Mr. Urick?

1 MS. CELESTINO-HORSEMAN: So if he's not here,
2 he can't present the challenge, correct?

3 CHAIRMAN OKESON: That's correct. He can't
4 present on Cause 2024-08.

5 MS. CELESTINO-HORSEMAN: So should we just
6 dismiss that challenge?

7 CHAIRMAN OKESON: We consolidated.

8 MS. CELESTINO-HORSEMAN: I know, but if he's
9 not here to present evidence on it and they're not
10 representing him anyway --

11 VICE CHAIRMAN OVERHOLT: I would move that we
12 now bifurcate the challenges.

13 MS. CELESTINO-HORSEMAN: I'll second that.

14 CHAIRMAN OKESON: We're going to separate
15 these matters by a vote here. We have a motion to
16 do so and a second.

17 Any questions, thoughts?

18 All those in favor signify by saying "Aye."

19 VICE CHAIRMAN OVERHOLT: Aye.

20 MS. CELESTINO-HORSEMAN: Aye.

21 MS. PYLE: Aye.

22 CHAIRMAN OKESON: Aye.

23 The "ayes" have it. The matters are now
24 separated.

25 MS. CELESTINO-HORSEMAN: Now I move to dismiss

1 the Urick challenge.

2 CHAIRMAN OKESON: So it would be a motion to
3 dismiss Cause 2024-08.

4 VICE CHAIRMAN OVERHOLT: Second that.

5 CHAIRMAN OKESON: We have a motion and a
6 second.

7 Any discussion?

8 Hearing none, all those in favor signify by
9 saying "Aye."

10 VICE CHAIRMAN OVERHOLT: Aye.

11 MS. CELESTINO-HORSEMAN: Aye.

12 MS. PYLE: Aye.

13 CHAIRMAN OKESON: Aye.

14 The "ayes" have it. That matter -- I mean --

15 MS. PYLE: I guess I would move to take this
16 one out of order, as we've already discussed it, in
17 the Shydale matter.

18 VICE CHAIRMAN OVERHOLT: I'd second that.

19 CHAIRMAN OKESON: So we have a motion to
20 consider Cause 2024-30 out of order and a second.

21 Any questions, comments, concerns?

22 Hearing none, all those in favor signify by
23 saying "Aye."

24 VICE CHAIRMAN OVERHOLT: Aye.

25 MS. CELESTINO-HORSEMAN: Aye.

1 MS. PYLE: Aye.

2 CHAIRMAN OKESON: Aye.

3 The "ayes" have it.

4 MS. CELESTINO-HORSEMAN: Mr. Chair, aren't you
5 glad you're serving with three attorneys?

6 CHAIRMAN OKESON: It helps a lot.

7 So with that, we'll recognize Eldridge.

8 MR. HAHN: Thank you. My name is Greg Hahn.
9 I'm with Bose McKinney & Evans law firm here in
10 Indianapolis.

11 CHAIRMAN OKESON: Would you spell that for us,
12 please.

13 MR. HAHN: Sure. Which part, Hahn? H-a-h-n
14 with Bose, B-o-s-e, McKinney, M-c-K-i-n-n-e-y, &
15 Evans, E-v-a-n-s.

16 CHAIRMAN OKESON: Thank you, sir.

17 MR. HAHN: You are welcome. And we're here --
18 I'm here with my partner Alexandra Bartlett, who is
19 also with Bose. And thank you for this
20 opportunity, Mr. Chairman, members of the
21 Commission, to be here and present to present our
22 challenge.

23 First and foremost, you'll note that the facts
24 we present here today have been updated since the
25 time of the filing of the original challenge as

1 additional information was gathered. However, the
2 outcome remains the same. Based upon all available
3 information that we have and have reviewed,
4 Ms. Shydale did not reside in House District 97,
5 and that's the seat that she is seeking to run.

6 MS. CELESTINO-HORSEMAN: Counselor, you said
7 the information has been updated. Is there
8 something we should be looking at?

9 MR. HAHN: No. It's the same. It doesn't
10 make any difference.

11 MS. CELESTINO-HORSEMAN: Okay.

12 MR. HAHN: Thank you. And she did not live in
13 the district prior to the date of the election for
14 this office. And then Ms. Bartlett is going to go
15 through the legal aspects of this and answer any
16 questions as far as that goes.

17 CHAIRMAN OKESON: Thank you.

18 MS. BARTLETT: Thank you, Mr. Chairman,
19 members of the Commission. Obviously here to show
20 my bipartisanism today, I guess. Like Greg said,
21 my name is Ali Bartlett, B-a-r-t-l-e-t-t, with Bose
22 McKinney & Evans.

23 As Greg mentioned, after reviewing all
24 available information, under Indiana Code
25 3-8-1-14-2, that code requires that in order to be

1 eligible for election as a representative to the
2 Indiana General Assembly, a candidate must reside
3 within the House district they seek to represent
4 for at least one year prior to the election for
5 such an office.

6 Ms. Shydale filed a provisional ballot and
7 request to change her voter registration to her
8 current registration address, which is within House
9 District 97, but she filed that change on
10 November 7, 2023. That date is more than one year
11 prior to the 2024 general election, and as a
12 result, we request that Ms. Shydale be deemed
13 ineligible for placement on the primary ballot.
14 And we'll be happy to answer any questions.

15 MS. CELESTINO-HORSEMAN: So you're saying that
16 on November 7, 2023, she asked -- she went to the
17 polling place and changed her address.

18 MS. BARTLETT: That's our understanding, yes,
19 based on the materials we have.

20 MS. CELESTINO-HORSEMAN: And she changed her
21 address to the address that she filed for her
22 candidacy on?

23 MS. BARTLETT: Correct.

24 MS. CELESTINO-HORSEMAN: And you're saying
25 then that that falls a year -- is not a year till

1 this election.

2 MS. BARTLETT: Right. So this election is
3 November 5, 2024.

4 CHAIRMAN OKESON: Falls short by two days.

5 VICE CHAIRMAN OVERHOLT: So you're basing this
6 on the date that she went to voter registration and
7 asked for it to be changed?

8 MS. BARTLETT: So that was the first date that
9 her voter registration was updated and the address
10 was changed.

11 MS. CELESTINO-HORSEMAN: So do you know what
12 date she actually moved to the new address?

13 MS. BARTLETT: No. The only information
14 that's publicly available on the address change is
15 the voter registration, so obviously that's all we
16 have access to.

17 MS. CELESTINO-HORSEMAN: And she -- when she
18 cast a provisional, she went to her old precinct?

19 MS. BARTLETT: I don't know.

20 MS. CELESTINO-HORSEMAN: Because you are
21 entitled to vote at your old precinct for a year.

22 MS. BARTLETT: Sure. Yes. I don't know. I
23 don't have that information. Apologies.

24 MS. CELESTINO-HORSEMAN: All right. And
25 welcome to the light side.

1 MS. BARTLETT: I like to help all of my law
2 partners.

3 CHAIRMAN OKESON: Is it pronounced Shydale?

4 MS. SHYDALE: Shydale.

5 CHAIRMAN OKESON: You have two minutes to
6 cross-examine if you'd like to.

7 MS. SHYDALE: I have no questions.

8 CHAIRMAN OKESON: You have five minutes to
9 present.

10 MS. CELESTINO-HORSEMAN: Ms. Shydale, can I
11 just make this real easy. When did you move to
12 this new address?

13 MS. SHYDALE: I have my lease right here. I
14 signed the lease in September, and I moved in
15 October.

16 MS. CELESTINO-HORSEMAN: Okay. Could you give
17 your full name and spell it, please.

18 MS. SHYDALE: Sarah Shydale. It's S-a-r-a-h,
19 S-h-y-d-a-l-e.

20 MS. CELESTINO-HORSEMAN: And could you show
21 that lease to counsel over here.

22 MS. SHYDALE: Yes. I'm sorry.

23 CHAIRMAN OKESON: And, Ms. Warycha, please.

24 MS. CELESTINO-HORSEMAN: We realize you did
25 not have the benefit of having those before.

1 MS. SHYDALE: I'm sorry. I didn't bring
2 enough copies of it.

3 MS. CELESTINO-HORSEMAN: While they're looking
4 that over, did you want to make a presentation?

5 CHAIRMAN OKESON: You have five minutes.

6 MS. SHYDALE: Of course. I was going to point
7 out, as the challenger did, that in 3-8-1-14-2 that
8 I have to reside within the district for one year
9 prior to the election. According to Indiana Code
10 3-8-1-1.7, "As used in this chapter, 'before the
11 election' refers to a general, municipal, or
12 special election."

13 And as per Indiana Code 3-5-5-10, "Subject to
14 Section 6 of this chapter, if a person is
15 physically present within another precinct in
16 Indiana with the intention of making that precinct
17 the person's residence, the person loses residency
18 in the precinct that the person left."

19 And as I moved in October, I believe I should
20 be valid to run in this election.

21 MS. PYLE: Question for you. Did you update
22 your driver's license?

23 MS. SHYDALE: I haven't done that in several
24 years. I'm waiting for it to expire.

25 MS. PYLE: And you know that Indiana statute

1 gives you a time limit to do that, right?

2 MS. SHYDALE: No.

3 MS. PYLE: Is there anything else that shows
4 that you actually moved or intended to move a year
5 before this election besides just this lease?

6 MS. SHYDALE: Intended to?

7 MS. PYLE: Yes. That's what the law says,
8 intended.

9 MS. SHYDALE: It depends on what you consider
10 intended, I suppose.

11 MS. PYLE: Anything that you can tell us that
12 you had the intention to live inside district?

13 MS. SHYDALE: Prior to a year before the
14 election?

15 MS. PYLE: Yes.

16 MS. SHYDALE: Aside from just seeking the new
17 place to live before my current lease -- at least
18 the previous lease ran out, I had communications
19 with the leasing office. I don't have much in that
20 regard, but I fully intended to before September,
21 as I was talking to the leasing agency -- not the
22 leasing agency, the apartment agency for months
23 prior to when I actually signed the lease.

24 MS. PYLE: When did all of your belongings get
25 into this property?

1 MS. SHYDALE: October 15th, I want to say, at
2 the latest.

3 MS. PYLE: All right.

4 MS. CELESTINO-HORSEMAN: So this lease took
5 effect October 1st? You signed it September 22nd.

6 MS. SHYDALE: And I believe it took effect
7 October 11th. That was when I first paid rent.

8 MS. CELESTINO-HORSEMAN: Okay. And at that
9 point in time you became obligated to pay money,
10 correct?

11 MS. SHYDALE: Yes.

12 MS. CELESTINO-HORSEMAN: That's pretty good
13 manifestation of intent to me.

14 VICE CHAIRMAN OVERHOLT: And do you reside in
15 that apartment now?

16 MS. SHYDALE: Yeah. I have since the move-in
17 date that's on the lease.

18 CHAIRMAN OKESON: You didn't bring any utility
19 bills or any other supporting documentation to that
20 effect?

21 MS. SHYDALE: I have some letters at my desk
22 upstairs. I work here. But I didn't think to
23 bring them. Also, of course, I do get my utilities
24 through AES, and they send me electric bills with
25 my address on them and such.

1 MS. CELESTINO-HORSEMAN: Do you all have any
2 evidence that would rebut the fact that she moved
3 into this address in October?

4 MS. BARTLETT: I guess, my only question
5 would be, because the lease was signed in
6 September, is there a reason that you didn't then
7 update your voter registration and driver's
8 license? Because there's typically a 30-day
9 requirement to do so. So obviously the only
10 evidence that we had access to was the voter
11 registration update, which occurred when you voted.

12 MS. SHYDALE: It was a very hectic time for
13 me, and with the insanity of moving, I didn't have
14 time or the opportunity to update my voter
15 registration until we got to the polls,
16 unfortunately.

17 MS. BARTLETT: While it's not applicable under
18 state law, there is a rule in Marion County that
19 you update your voter registration within 30 days
20 if you have the opportunity.

21 MS. CELESTINO-HORSEMAN: Well, but let me ask
22 you this: If she took residence on October 11th
23 and the election was November 7th and she went into
24 the polling place and updated her voter
25 registration, then she did it within the 30 days,

1 correct?

2 MS. BARTLETT: Sure.

3 MS. CELESTINO-HORSEMAN: I just want to make
4 sure I'm correct. Okay.

5 CHAIRMAN OKESON: So to that point, clearly
6 the standard here is the intent to reside. Are we
7 in agreement there?

8 MS. WARYCHA: Yes.

9 CHAIRMAN OKESON: Okay. Would anyone like to
10 make a motion?

11 MS. CELESTINO-HORSEMAN: Okay. So when you
12 changed your voter address at the polling place,
13 you had to sign a form for them, correct?

14 MS. SHYDALE: Yes.

15 MS. CELESTINO-HORSEMAN: And that was under
16 penalties of perjury?

17 MS. SHYDALE: I believe so, yes.

18 MS. CELESTINO-HORSEMAN: So I would note that
19 IC 3-5-5-6 states "An individual who makes a
20 statement regarding the residence of the
21 individual, under the penalties for perjury, is
22 presumed to reside at the location specified by the
23 individual."

24 So at a bare minimum, he's presumed -- she is
25 presumed to have lived there for -- as of

1 November 7th, and so -- and she is saying that she
2 moved in October 11th, so although it's not
3 determinative, totally determinative, I think it --

4 VICE CHAIRMAN OVERHOLT: Well, I would move to
5 deny the challenge. I mean, we've had challenges
6 like this before based on different residence
7 things, and it's the intent to reside. And I think
8 this is an electronically signed lease. In this
9 day and age, to me, that's sufficient. I think
10 we've accepted evidence equivalent to that in the
11 past, and I think it predates the one-year cut-off
12 requirement, so I would move to deny the challenge.

13 CHAIRMAN OKESON: We have a motion. Is there
14 a second?

15 MS. CELESTINO-HORSEMAN: Second.

16 CHAIRMAN OKESON: Any discussion, questions?

17 MS. PYLE: While I agree, I don't think the
18 presumption gets us there because that's
19 November 7th and we're looking at the 5th. But I
20 agree as far as the intent goes.

21 CHAIRMAN OKESON: Yeah. Again, affirming that
22 that's sort of where the element of the law was
23 that there was proven intent to reside there prior,
24 I would agree with my colleagues, my counterparts.

25 So with that, we have a motion to deny the

1 challenge and a second going to the vote. All
2 those in favor signify by saying "Aye."

3 VICE CHAIRMAN OVERHOLT: Aye.

4 MS. CELESTINO-HORSEMAN: Aye.

5 MS. PYLE: Aye.

6 CHAIRMAN OKESON: Aye.

7 Those opposed?

8 The "ayes" have it. The challenge is denied.
9 Therefore, I direct the co-division -- or excuse
10 me. The Election Division is directed to include
11 the name of Sarah Shydale in the certified list of
12 candidates to be printed on the ballot.

13 Thank you.

14 MR. HAHN: Thank you.

15 CHAIRMAN OKESON: And I hate to do this, but I
16 am going to take another five-minute recess. So
17 we'll be back at 12:55 in this same location.

18 (Recess taken.)

19 CHAIRMAN OKESON: We're going to get back into
20 it. I apologize for drifting a few minutes over my
21 commitment.

22 Moving on, it looks like we have Cause
23 2024-09, Willis v. Braun, in the matter of the
24 challenge to Jonathan D. -- I'm sorry -- Willis v.
25 Brown, in the matter of the challenge to Jonathan

1 D. Brown, candidate for the Republican Party
2 nomination for United States Representative,
3 District 5.

4 I also see that we have Heuer v. Brown, Cause
5 2024-13, also a challenge to Jonathan D. Brown for
6 District 5.

7 Do we have representatives for all parties in
8 attendance?

9 MR. WILLIS: Willis and Heuer.

10 CHAIRMAN OKESON: Does it make sense to
11 consolidate these as well?

12 VICE CHAIRMAN OVERHOLT: So Willis and Heuer
13 are here?

14 MR. WILLIS: Yes.

15 CHAIRMAN OKESON: Yeah.

16 MS. WARYCHA: I would say that just so you
17 know, Mr. Chair, we have noticed that the
18 challenged candidate, Jonathan Brown, I believe,
19 sent Ms. Nussmeyer an email this morning saying he
20 would not be present at today's hearing.

21 MS. NUSSMEYER: He called the office this
22 morning and said that he would not be present and
23 just wanted to tell somebody, and I documented it
24 in an email to the board.

25 CHAIRMAN OKESON: Okay.

1 MS. WARYCHA: Thank you.

2 VICE CHAIRMAN OVERHOLT: I'd move to
3 consolidate the challenges.

4 CHAIRMAN OKESON: Is there a second?

5 MS. CELESTINO-HORSEMAN: Second.

6 CHAIRMAN OKESON: So we have a motion to
7 consolidate Cause 2024-09 and Cause 2024-13 and a
8 second.

9 Any questions?

10 Hearing none, all those in favor signify by
11 saying "Aye."

12 VICE CHAIRMAN OVERHOLT: Aye.

13 MS. CELESTINO-HORSEMAN: Aye.

14 MS. PYLE: Aye.

15 CHAIRMAN OKESON: Aye.

16 The "ayes" have it. The matters are now
17 consolidated.

18 Mr. King.

19 MS. WARYCHA: I'll take this one. So this
20 matter in the challenge of the candidate Jonathan
21 D. Brown, the challenge is that Mr. Brown does not
22 have two consecutive same party affiliation primary
23 votes as required by Indiana Code 3-8-2-7. For
24 a -- in this record, in your binder, you have the
25 CAN-1 challenge, you have the candidate's CAN-2, as

1 well as documentation that notice was served in
2 addition to the record that Ms. Nussmeyer spoke of
3 earlier that Mr. Brown had called the office to say
4 he would not be present today.

5 CHAIRMAN OKESON: Okay. Thank you. With
6 that, I'll recognize Mr. Willis. Please state your
7 full name and spell it for the record.

8 MR. WILLIS: Good morning. Russell Willis,
9 R-u-s-s-e-l-l, W-i-l-l-i-s.

10 Very quickly, as outlined, Mr. Brown does not
11 have the two primaries required to run in the
12 Republican primary as required by the IC code she
13 listed. I included in my filing the printout of
14 his SVRS showing only a general election ballot
15 cast in 2020. He has zero primaries.

16 CHAIRMAN OKESON: What's the other -- a letter
17 from the chairman, is that the other?

18 MS. WARYCHA: Yes. There is the opportunity
19 to have a letter from the chairman as your other
20 for Indiana Code --

21 CHAIRMAN OKESON: That's not been provided?

22 MS. WARYCHA: No, we do not. With your
23 declaration of candidacy, you could provide that if
24 you did not have the two-primary vote history.

25 MR. WILLIS: I am the county chairman of

1 Madison County, and I did not provide a letter.

2 CHAIRMAN OKESON: Okay. Thank you.

3 Given that Mr. Brown is not present to
4 cross-examine, do we need to hear from Heuer too
5 since they're consolidated?

6 MS. WARYCHA: I believe that would be accurate
7 to give Ms. Heuer the opportunity to make her case
8 as well.

9 CHAIRMAN OKESON: I'm sorry. Ms. Heuer, is
10 she present? Ah.

11 MS. HEUER: Yes. Good afternoon. My name is
12 Kelli Heuer, K-e-l-l-i, last name H-e-u-e-r.

13 And I am here challenging Mr. Jonathan D.
14 Brown on the fact that he does not have the two
15 primaries for this office.

16 CHAIRMAN OKESON: Same challenge. Okay.
17 Thank you.

18 VICE CHAIRMAN OVERHOLT: I actually have a
19 question about the law since we're reading our
20 statutes more carefully. Well, I always read them
21 carefully. So the interesting thing about the --
22 and I'm going to just ask you for how you interpret
23 it. Something that I noticed is that we know that
24 there's the two-primary rule, but the statute
25 doesn't say -- and this is a situation where the

1 candidate hasn't voted in a primary, period, so do
2 we interpret the law to mean, if they haven't voted
3 and want to be one of the major party nominees, are
4 we reading the statute to mean that your only
5 avenue, then, is to get certification from the
6 party chair?

7 MS. WARYCHA: Yes, that is how I would read
8 it. As Indiana Code 3-8-2-7(A)(4), it says "A
9 statement of the candidate's party affiliation.
10 For purposes of this subdivision, a candidate is
11 considered to be affiliated with a political party
12 only if any of the following applies," and that
13 being the two most recent primaries or the
14 certification of the chair. So that is how I would
15 interpret it.

16 CHAIRMAN OKESON: Okay.

17 VICE CHAIRMAN OVERHOLT: I guess it doesn't
18 say if they didn't vote, but that's what I noticed.
19 It doesn't say what -- it talks about two most
20 recent primaries. So I think by default you have
21 to have the party chair certification, but, again,
22 a point where it's not abundantly clear. We've had
23 a few of these come up.

24 CHAIRMAN OKESON: But in this case we have
25 neither.

1 VICE CHAIRMAN OVERHOLT: Right, right.

2 CHAIRMAN OKESON: Anyone want to make a
3 motion?

4 MS. PYLE: I would move to uphold the
5 challenges.

6 CHAIRMAN OKESON: Okay. Is there a second?

7 MS. CELESTINO-HORSEMAN: Second.

8 CHAIRMAN OKESON: Seconded.

9 Any further discussion, questions?

10 Hearing none, all those in favor signify by
11 saying "Aye."

12 VICE CHAIRMAN OVERHOLT: Aye.

13 MS. CELESTINO-HORSEMAN: Aye.

14 MS. PYLE: Aye.

15 CHAIRMAN OKESON: Aye.

16 The "ayes" have it. The motion to uphold the
17 challenge is affirmed. The Election Division is
18 directed not to include Jonathan D. Brown in the
19 certified list of primary candidates sent to county
20 election boards and indicate the name of this
21 candidate not be printed on the ballot.

22 Thank you. Appreciate it.

23 Welcome back. Next is Willis v. King,
24 Cause 2024-10, in the matter of the challenge to
25 Scott A. King, candidate for Republican Party

1 nomination for United States Representative,
2 District 5.

3 MS. WARYCHA: Mr. Chairman, this is --

4 CHAIRMAN OKESON: Are there two in this one as
5 well?

6 MS. WARYCHA: Yes, there are. Mr. Willis and
7 Ms. Heuer have both challenged this candidate as
8 well, so wanted to bring that up in case you wanted
9 to --

10 CHAIRMAN OKESON: Yeah. I'll note the other
11 cause number is 2024-14, and that's Heuer v. King
12 again, correct?

13 MS. HEUER: Yes.

14 CHAIRMAN OKESON: Is there a motion to
15 consolidate those as well?

16 MS. PYLE: So moved.

17 CHAIRMAN OKESON: Is there a second?

18 VICE CHAIRMAN OVERHOLT: Second.

19 CHAIRMAN OKESON: A second.

20 Any discussion?

21 Hearing none, all those in favor signify by
22 saying "Aye."

23 VICE CHAIRMAN OVERHOLT: Aye.

24 MS. CELESTINO-HORSEMAN: Aye.

25 MS. PYLE: Aye.

1 CHAIRMAN OKESON: Aye.

2 The "ayes" have it. The causes are now
3 consolidated.

4 Valerie.

5 MS. WARYCHA: Yes. Mr. Willis and Ms. Heuer
6 brought a challenge against candidate Scott A. King
7 for U.S. Representative, District 5. The CAN-1
8 challenge is in your binder. The challenge is
9 because the candidate does not have two consecutive
10 same party -- does not have the most recent primary
11 votes as far as the two votes or the county chair
12 sign-off. And that was in your binder on both of
13 them as well as notice to the candidates.

14 CHAIRMAN OKESON: Okay. And by the way, is
15 Mr. King present?

16 Okay. Mr. Willis.

17 MR. WILLIS: Russell Willis, R-u-s-s-e-l-l,
18 W-i-l-l-i-s.

19 And as outlined, he does not have the two
20 primary votes. Included in my documents that I
21 turned in for Mr. King, he has one primary in 2022
22 and that is all.

23 CHAIRMAN OKESON: Ms. Heuer, would you like to
24 make any statements?

25 MS. HEUER: Again, my name, for the record,

1 Kelli Heuer, K-e-l-l-i, last name H-e-u-e-r.

2 To just reiterate, Mr. Scott King, I filed
3 this challenge because he only has the one primary
4 and not the two.

5 CHAIRMAN OKESON: Okay. So exact same
6 circumstances as the prior cases. Mr. King is not
7 present. Is there any motions?

8 MS. PYLE: I would move to uphold the
9 challenges.

10 CHAIRMAN OKESON: Is there a second?

11 VICE CHAIRMAN OVERHOLT: Second.

12 CHAIRMAN OKESON: Having a motion and a second
13 to uphold the challenges in Cause 2024-10
14 consolidated with 2024-14.

15 Any discussion, questions?

16 Hearing none, all those in favor signify by
17 saying "Aye."

18 VICE CHAIRMAN OVERHOLT: Aye.

19 MS. CELESTINO-HORSEMAN: Aye.

20 MS. PYLE: Aye.

21 CHAIRMAN OKESON: Aye.

22 The "ayes" have it. The motions carry. The
23 Election Division is instructed to direct not to
24 include Scott A. King in the certified list of
25 primary candidates sent to the county election

1 boards and to indicate that the name of this
2 candidate is not to be printed on the ballot.

3 Thank you.

4 Moving on.

5 MS. WARYCHA: Mr. Chairman, if I might,
6 Mr. Willis and Ms. Heuer have also challenged --
7 and I apologize; I'm not sure I'm going to say his
8 name correctly -- a Mr. --

9 CHAIRMAN OKESON: Pfenninger.

10 MS. WARYCHA: -- Pfenninger. Thank you.
11 Mr. Willis has asked to have that challenge
12 withdrawn. I do not have that same notice from
13 Ms. Heuer.

14 CHAIRMAN OKESON: Okay. So we have --

15 MS. NUSSMEYER: If I may, Mr. Chairman, in the
16 binder it actually does have the withdrawal -- or
17 the dismissal from Ms. Heuer. It's in the very
18 back of the book.

19 MS. WARYCHA: Thank you.

20 MS. NUSSMEYER: She actually sent the email, I
21 think, before Mr. Willis did.

22 CHAIRMAN OKESON: So we have Willis v.
23 Pfenninger, Cause 2024-11, and Heuer v. Pfenninger,
24 Cause 2024-25. So move to consolidate these?

25 VICE CHAIRMAN OVERHOLT: I move to

1 consolidate.

2 MS. PYLE: Second.

3 CHAIRMAN OKESON: Having a motion to
4 consolidate and a second, all those in favor
5 signify by saying "Aye."

6 VICE CHAIRMAN OVERHOLT: Aye.

7 MS. CELESTINO-HORSEMAN: Aye.

8 MS. PYLE: Aye.

9 CHAIRMAN OKESON: Aye.

10 The "ayes" have it, the motions are
11 consolidated -- or sorry -- the causes are
12 consolidated. And in each case, we have -- you
13 both agree to withdraw your contest?

14 MR. WILLIS: Yes.

15 MS. HEUER: Yes.

16 CHAIRMAN OKESON: So can we just take a motion
17 to dismiss?

18 VICE CHAIRMAN OVERHOLT: So I would move to
19 dismiss the challenges -- or accept their motions
20 to dismiss. It seems odd. Move to dismiss --

21 CHAIRMAN OKESON: Move to dismiss, yeah. Move
22 to dismiss.

23 VICE CHAIRMAN OVERHOLT: -- the challenges.

24 MS. PYLE: Second.

25 CHAIRMAN OKESON: So we have a motion to

1 dismiss Causes 2024-11 and 2024-25 and a second.

2 Any discussion, questions?

3 Hearing none, all those in favor signify by
4 saying "Aye."

5 VICE CHAIRMAN OVERHOLT: Aye.

6 MS. CELESTINO-HORSEMAN: Aye.

7 MS. PYLE: Aye.

8 CHAIRMAN OKESON: Aye.

9 The "ayes" have it. The matter is dismissed.
10 Thank you.

11 MR. WILLIS: Thank you.

12 CHAIRMAN OKESON: Next we have Dixon-Tatum v.
13 McCormick, Cause 2024-12, in the matter of the
14 challenge to Jennifer McCormick, candidate for the
15 Democratic Party nomination for governor.

16 MR. KOICHEVAR: Mr. Chairman, members of the
17 Commission, you'll find in your binder for this
18 cause a copy of the CAN-1 candidate challenge filed
19 by the challenger as well as an appearance for
20 counsel for the challenged candidate, Jennifer G.
21 McCormick; a copy of candidate McCormick's
22 declaration of candidacy, the CAN-2 that was filed
23 with the State, along with an attachment of their
24 required statement of economic interest filing; a
25 copy of the notice of hearing that was sent to both

1 parties as well as documentation that we did send
2 that notice of hearing to both parties.

3 CHAIRMAN OKESON: Is Ms. Dixon-Tatum still
4 present?

5 Okay.

6 VICE CHAIRMAN OVERHOLT: I would move to
7 dismiss the challenge since the challenger is not
8 present.

9 CHAIRMAN OKESON: Is there a second?

10 MS. PYLE: Second.

11 CHAIRMAN OKESON: Okay. We have a motion to
12 dismiss the Cause 2024-12 and we have a second.

13 Any conversation, concerns, questions?

14 All those in favor signify by saying "Aye."

15 VICE CHAIRMAN OVERHOLT: Aye.

16 MS. CELESTINO-HORSEMAN: Aye.

17 MS. PYLE: Aye.

18 CHAIRMAN OKESON: Aye.

19 The "ayes" have it. The matter is dismissed.
20 Thank you.

21 MR. ZIEMBA: Thank you.

22 CHAIRMAN OKESON: Okay. Looks like we have
23 several causes here for the Rust matter. I'm glad
24 to read them off individually. We have Neal v.
25 Rust, Cause 2024-15; Shickles v. Rust, Cause

1 2024-16; Williams v. Rust, Cause 2024-17; Shields
2 v. Rust, Cause 2024-18; Stafford v. Rust, Cause
3 2024-19; and Babcock v. Rust, Cause 2024-26.

4 MS. HARTER: Mr. Rust just ran to the restroom
5 because we thought we were going to have that one
6 challenge buffer, so he'll be sure back.

7 CHAIRMAN OKESON: Sure.

8 MS. WARYCHA: I'll summarize, Mr. Chairman.

9 CHAIRMAN OKESON: Yeah, please do. Or do we
10 need to consolidate first?

11 MS. WARYCHA: Well, I was going to say that we
12 have six challenges in the case to Mr. Rust, so
13 that would be my recommendation if you would like
14 to consider consolidation.

15 CHAIRMAN OKESON: Yeah. They all sort of are
16 along the same lines.

17 MS. WARYCHA: Yes, yes. The challenge is
18 under that Indiana Code 3-8-2-7(a)(4) that Mr. Rust
19 does not have the primary vote history as required
20 by statute or a letter from the chairman. And then
21 under each of these filings, you will find exhibits
22 from the attorneys as well as appearances for each
23 party. Exhibits include -- let's see here. We've
24 got depositions, vote history. That pretty well
25 covers it, I believe, as well as notice that was

1 served on both parties.

2 CHAIRMAN OKESON: Okay. So I guess first up
3 we have Mr. Neal --

4 MS. WARYCHA: Do you want to move to
5 consolidate?

6 CHAIRMAN OKESON: Oh, sorry. Is there a
7 motion to consolidate the six causes?

8 MS. PYLE: So moved.

9 CHAIRMAN OKESON: Is there a second?

10 VICE CHAIRMAN OVERHOLT: Second.

11 CHAIRMAN OKESON: So we have a motion to
12 consolidate six causes and a second.

13 All those in favor signify by saying "Aye."

14 VICE CHAIRMAN OVERHOLT: Aye.

15 MS. CELESTINO-HORSEMAN: Aye.

16 MS. PYLE: Aye.

17 CHAIRMAN OKESON: Aye.

18 The "ayes" have it. These causes are now
19 consolidated.

20 Sorry. With that, Mr. Neal.

21 MR. SHOUSE: Mr. Chairman and members of the
22 Commission, my name is Ryan Shouse, attorney on
23 behalf of Mr. Neal and others. That's R-y-a-n,
24 S-h-o-u-s-e. Myself and Paul Mullin, M-u-l-l-i-n,
25 and Will Young, Y-o-u-n-g, represent Michael Neal

1 from Hamilton County, Larry Shickles from Harrison
2 County, Cameron Williams from Marion County, Danny
3 Shields from Monroe County, and Damien Stafford
4 from Whitley County. I will note for the
5 Commission we do not represent Kyle Babcock. But
6 all the individuals who I represent are here today
7 in the crowd.

8 MS. CELESTINO-HORSEMAN: Excuse me one moment.
9 Is Mr. Babcock here today?

10 MR. BABCOCK: Yes, I'm here.

11 CHAIRMAN OKESON: Yeah. Sorry. He approached
12 earlier.

13 MS. CELESTINO-HORSEMAN: Okay.

14 MR. SHOUSE: Okay. This is a straightforward
15 application of the affiliation statute we just saw
16 two individuals struck under this same statute.
17 Mr. Rust is not eligible under the affiliation
18 statute to run as a Republican for the United
19 States Senate in the 2024 primary. Mr. Rust did
20 not vote as a Republican in the last two -- in the
21 two most recent primaries in which he voted. He
22 voted Republican, and the time before that he voted
23 in the Democratic primary. Four of the last five
24 he's voted in were Democratic primaries.

25 And then on subsection (b), Mr. Rust did not

1 receive certification that he is a member of the
2 Republican party from the Jackson County Republican
3 chairperson.

4 We have included Mr. Rust's voting history as
5 an exhibit to the challenge and an exhibit to our
6 memorandum. And I'll refer -- I won't belabor the
7 memorandum, but I will note that we did draft a
8 full memorandum on these issues for you guys along
9 with exhibits.

10 Mr. Rust filed a declaration of candidacy, and
11 both boxes -- the CAN-2, both boxes are unchecked.
12 The affiliation statute applies to Mr. Rust just
13 like it applies to all other candidates in the
14 state, and we ask the Commission to uphold the
15 challenges to Mr. Rust and direct the court not to
16 include him on the certified list of primary
17 candidates sent to the county election boards and
18 indicate the name Mr. Rust not be printed on the
19 ballot. Thank you.

20 CHAIRMAN OKESON: Would you like to
21 cross-examine?

22 MS. HARTER: No.

23 MS. CELESTINO-HORSEMAN: Should Mr. Babcock
24 be --

25 CHAIRMAN OKESON: Mr. Babcock, would you like

1 to make any comments?

2 MS. CELESTINO-HORSEMAN: Or do you want to
3 adopt and incorporate what was just said?

4 MR. BABCOCK: Would you like me to make my
5 presentation now or not?

6 MS. WARYCHA: Since you consolidated.

7 CHAIRMAN OKESON: Yeah.

8 MR. BABCOCK: Okay. First of all, thank you
9 everybody for being here as an important part of
10 the process.

11 MS. WARYCHA: Spell and say your name.

12 MR. BABCOCK: Kyle, K-y-l-e, Babcock, B, as in
13 boy, -a, as in apple, -b, as in boy, -c-o-c-k.

14 And thank you. I know you're not here for the
15 high pay, so thank you.

16 I'm going to start here, I've got some
17 documents. I made copies. Do I give them to you?

18 CHAIRMAN OKESON: To Valerie.

19 MR. BABCOCK: There are four here plus one.

20 MS. HARTER: And I don't have a copy.

21 MR. BABCOCK: I made a copy.

22 MS. CELESTINO-HORSEMAN: Mr. Babcock, I just
23 have a question.

24 MR. BABCOCK: Yes, ma'am.

25 MS. CELESTINO-HORSEMAN: Do you have -- one of

1 the things that you can do is adopt and incorporate
2 what these gentlemen just presented. Is there
3 something further that you want to add?

4 MR. BABCOCK: I appreciate your advice, but I
5 think my three or four minutes may be a little bit
6 different than theirs. So I appreciate your
7 advice. Thank you for that.

8 CHAIRMAN OKESON: Please proceed.

9 MR. BABCOCK: So one of the reasons I'm here
10 is I've read in the press, and that was my
11 complaint, that Mr. Rust has not met the
12 requirements. My understanding is from press
13 reports. I looked at the Indianapolis Star, I
14 looked at the Capital Chronicle, and the AP, three
15 trusted publications. I have not done any other
16 research on his voting record or anything like
17 that.

18 But as a long-time Republican Party person,
19 elected, nonelected, I take offense and I'm
20 challenging Mr. Rust for his constant challenging
21 of he's involved in the process and he wants to
22 challenge the establishment. I have been on the
23 state platform committee since 2008. I have
24 attended hearings all over the state. Mr. Rust had
25 plenty of opportunities to come and express his

1 concern about any process in the Republican Party.
2 I've traveled around the state. I've been in every
3 convention since 2008 as an elected delegate. I've
4 never seen him there. So when he says he wants to
5 shake up the process, I just have one thing: The
6 rules are the rules.

7 And so I look at this and look back, and even
8 looking at his 2018 voting record, the primary that
9 he is running in right now for United States
10 Senate, he failed to vote in the 2018 primary, one
11 of the most hotly contested Republican primaries in
12 history, Mike Braun, Todd Rokita, Luke Messer. If
13 he can't even vote in that primary, that's a
14 problem to me. We have rules. The legislature
15 established the statutes, and that is my point.

16 I see him talking frequently that he is a
17 Republican. Well, I'm an optimist. I've been an
18 optimist my whole life, just like maybe he's a
19 Republican his whole life, but that doesn't mean I
20 can go to the Optimist Club and file and run. They
21 have rules too. The Republican Party has rules.

22 Thank you for your time.

23 CHAIRMAN OKESON: Would you like to
24 cross-examine on anything Mr. Babcock had to offer?

25 MS. HARTER: No.

1 CHAIRMAN OKESON: You have five minutes.

2 MS. HARTER: I don't get ten because he had
3 five and he had five? Just because he didn't use
4 it, I mean. Please.

5 CHAIRMAN OKESON: Sure. Since there were two
6 presentations, we don't have to vote on it. She
7 should be afforded ten minutes.

8 MS. WARYCHA: Are these all one document
9 together for the Commissioners?

10 MS. HARTER: They're separate documents.
11 Those are documents I'll reference. Ready?

12 CHAIRMAN OKESON: Yes.

13 MS. HARTER: So as this Commission knows,
14 there's currently pending before the Indiana
15 Supreme Court a case challenging the
16 constitutionality of Indiana Code 3-8-2-7(a)(4).
17 The Indiana Supreme Court has not yet issued an
18 opinion on the matter yet. And in any case, win or
19 lose, we hope the Indiana Supreme Court gets it
20 right, but Rust will seek intervention from SCOTUS
21 if we --

22 MS. CELESTINO-HORSEMAN: I have a question for
23 you.

24 MS. HARTER: Yes.

25 MS. CELESTINO-HORSEMAN: So as an attorney, we

1 realize that you had a very -- and I thought it was
2 extremely well written actually. Judge Dietrick
3 had written an opinion that granted you the
4 injunction that would put Mr. Rust on the ballot.
5 The Indiana Supreme Court had the issue before it
6 of whether it should stay that decision or whether
7 it should go ahead and uphold it. What they did
8 was to stay it and said that they would be issuing
9 an opinion shortly to explain that.

10 Now, as a practitioner, when a court does
11 something like that, they knew that it was going to
12 make us go back and revert to the law as it stood
13 before Judge Dietrick's opinion. So how do you get
14 around the fact that the Supreme Court, albeit
15 indirectly, has spoken and says that we are to
16 apply the law as it currently stands until they
17 tell us otherwise?

18 MS. HARTER: That's a great question, and I'm
19 going to explain that as part of my presentation.

20 So first, I want to point to a case that is in
21 the record. It's a week before. Or actually, so
22 January 18, you might be familiar with the Richard
23 Allen case for the Delphi murders. Okay? So there
24 was oral argument on that case, and that same day
25 the Court issued an order, not a full opinion,

1 saying this is what we're going to do in the case
2 and here is our order in the interim. And they
3 said very specifically how they were going to rule
4 and what their order was.

5 In the Rust case, they didn't say anything
6 about their ultimate order. They said they were
7 going to grant the stay. They didn't say their
8 ultimate order was in favor of either party. And
9 that's important because the Indiana Supreme Court
10 will tell in its order if it has made a final
11 decision. We don't know that the justices have
12 come to rest on this. If you watch the oral
13 argument --

14 MS. CELESTINO-HORSEMAN: But, Counselor,
15 here's my question: The Supreme Court knew that we
16 would be having this hearing, that the deadline for
17 us to rule on challenges was by noon on the 29th.
18 So they knew that, and they told us by giving this
19 stay that we are to proceed under the law as it is
20 written. And so how can we -- I mean, they've told
21 us that, we are to proceed under the law as written
22 and we can't sit as a court, so how can we
23 possibly --

24 MS. HARTER: I'm getting there.

25 MS. CELESTINO-HORSEMAN: And I apologize,

1 Mr. Rust. I'd love to see you on the ballot.

2 MS. HARTER: So I'm going to explain how the
3 timing here is kind of significant and unique. So
4 the state defendants filed their motion for stay
5 contemporaneously with their notice of appeal on
6 December 8th. The trial court order, which you
7 have a copy of, was December 7th, if you recall.
8 So there's two things here.

9 So first of all, under the appellate rules,
10 they're supposed to file their motion to stay with
11 the trial court unless there's extraordinary
12 circumstances. They've alleged there's
13 extraordinary circumstances because they thought
14 the trial court judge would rule against them.
15 That's not extraordinary. That's true when any
16 trial court judge issues an order that he doesn't
17 want to revisit.

18 MS. PYLE: Just a quick question. Is that
19 what they actually alleged or is that what you're
20 assuming they alleged?

21 MS. HARTER: It's in their filings if you read
22 them.

23 MS. PYLE: Okay. Just checking.

24 MS. HARTER: They said that that was part of
25 the emergency that the trial court judge was

1 certainly not going to rule for them, which is
2 interesting because the attorney general's office
3 had another case where there was the dollar law.
4 And a building was about to be sold, and there was
5 a three-day window, and they still filed in the
6 trial court. And that wasn't extraordinary, but
7 this is.

8 So in any case, we had two months, okay, where
9 the Indiana Supreme Court could have ruled that it
10 granted the stay, and it didn't grant it until
11 23 hours before the challenge deadline. Why is
12 this significant? Because from December 7th
13 through February 13th, at approximately 1 o'clock,
14 Indiana Code 3-8-2-7(a)(4) was enjoined. The
15 candidacy filing period here ran from January 10th
16 to February 9th at noon. During the entirety of
17 the candidate filing period, the statute was
18 enjoined. Okay? This is important.

19 Rust and I both went to the secretary of
20 state's office together, where we confirmed that
21 the form, even though it had an affiliation
22 section -- it's Part 3 on the CAN-2 -- even though
23 it was there, it's because they don't update the
24 forms but annually and that, at that period, it
25 shouldn't have even been on the form for you to

1 have to check a box because the statute was
2 enjoined. And furthermore, they confirmed that
3 Mr. Rust did not have to check the box. This was
4 true the entire candidacy period. So --

5 MS. CELESTINO-HORSEMAN: Counselor, but if
6 you -- let's say that your argument is correct and
7 that box shouldn't have been on there. But
8 isn't -- while that stay is pending and if it had
9 held, the fact that they say okay, disregard this
10 because you don't have to worry about it because
11 you voted one primary instead of two, that's the
12 same equivalent, isn't it? Do you see what I'm
13 saying?

14 MS. HARTER: It's unique because here Rust,
15 had he known of this -- so had the statute been in
16 effect at any point during that candidacy filing
17 period from January 10 to February 9, if he had
18 known, he could have done one of two things that is
19 very important here.

20 First, he could have went back to his party
21 chair and asked again for certification. This
22 Commission, through its counsel -- and it's in the
23 materials I provided -- wrote in a brief that
24 Mr. Rust's assertion that he would not be certified
25 was speculative and that there was no way to know

1 if she would change her mind.

2 MS. CELESTINO-HORSEMAN: First, I would just
3 tell you that there were two members of this
4 Commission who expressed no opinion regarding the
5 position that was taken by the attorney general,
6 who felt it was not proper.

7 MS. HARTER: Yeah.

8 MS. CELESTINO-HORSEMAN: But that aside, you
9 know, the Court, the Indiana Supreme Court, knew
10 all of this. The fact that Mr. Rust was able to go
11 on, that's fine. I mean, I've listened to the
12 appellate arguments. I've read your briefs. I've
13 read Judge Dietrick's opinion and all of that. And
14 I certainly have sympathy for him because I think,
15 as applied to him, there was -- as applied to him,
16 he could not have voted, was it the 2022 municipal
17 elections?

18 MS. HARTER: He can't vote in any municipal
19 election because he lives outside the city limits.

20 MS. CELESTINO-HORSEMAN: Right. And so as
21 applied to him, he gets put into a special
22 circumstance that is not applied to people who live
23 within the town limits of Seymour, who all have the
24 opportunity to be able to get to elections.

25 MS. HARTER: He could have just complied this

1 past election cycle.

2 MS. CELESTINO-HORSEMAN: But I didn't hear
3 that argument made. It was very briefly touched
4 upon. And the Indiana Supreme Court, we'll see if
5 they address it. If they don't, then possibly it
6 could be raised again in the future for something,
7 but --

8 MS. HARTER: It was briefed, and we didn't --
9 obviously oral arguments are 20 minutes. We don't
10 get to touch everything.

11 But there's a second part to this. So the
12 Commission, which is you guys, through counsel -- I
13 understand you might not agree with counsel --
14 asserted that he could have sought certification
15 and maybe gotten it later, that the party chair
16 could have changed her mind.

17 What I'm saying is, if the statute had not
18 been in place during that candidate challenge
19 hearing, he would have then had two options. He
20 could have looked for her to certify him, which
21 there's a judicial admission that that was a
22 possibility. And then, secondly, he's running for
23 State Senate. He could live anywhere in the
24 Indiana, which means he could have relocated to --

25 MS. CELESTINO-HORSEMAN: Counselor, I'm sorry,

1 but he could have also -- the stay was in place.
2 He knew that -- I mean, the stay was not in place.
3 The decision was there. The stay hadn't been
4 decided. He knew there was a request for a stay.
5 So if he knew that there was a request for a stay
6 that could come any day, then he could have gone
7 back and asked for the certification then. He had
8 reason to, wouldn't he?

9 MS. HARTER: Well, no not necessarily. When
10 the stay remained in place -- I mean, we were
11 watching and waiting the entire candidate filing
12 period. The appropriate time for the Court to have
13 done something would have been in that window
14 because, after that window, he has the opportunity
15 to do nothing.

16 The other option was he could have relocated.
17 In the materials I provided, we have the affidavit
18 from LaPorte County party chair Al Stevens, who
19 would have certified Rust had he moved to LaPorte
20 County. Moving, relocating your residence when you
21 grew up in Seymour is a big deal. You don't want
22 to have to do that if you don't really have to.

23 We got through the candidate filing period,
24 and it seemed like things were going well. We
25 couldn't have anticipated that 23 hours before the

1 close of the challenge hearing that there would be
2 a stay when for two months the Indiana Supreme
3 Court sat on it. And just like they might have
4 anticipated that you all would be hearing a
5 challenge, they also had to anticipate that I would
6 be making these equitable arguments about that
7 window, and they didn't act in that window.

8 They could have acted in December. They could
9 have acted in January. They could have acted in
10 the middle of the window. They could have acted
11 23 hours before the close of the candidate filing
12 period, but they did not. We do not know how they
13 are going to rule, and pending right now, also in
14 the materials, is our motion for relief from the
15 stay at least as to Mr. Rust, which they haven't
16 ruled on yet.

17 So there's a lot of things at play here. He
18 did not have an opportunity to reevaluate his
19 position and seek certification or relocate. We
20 have a pending motion. And the trial court order,
21 you know, it's still out there factually about what
22 happened. The other side has tendered a brief
23 where it challenges Mr. Rust's statistics about the
24 impact of the statute. But the Court found them as
25 a matter of fact, and those factual findings, as

1 you attorneys know, are reviewed with a deferential
2 standard.

3 So while the Supreme Court can take issue with
4 the legal findings and review those de novo, the
5 factual issues about the statistics and how this
6 statute makes it so that the majority of Hoosiers
7 cannot run for office for the party of their
8 choosing, those remain and will likely be deferred
9 to. So --

10 VICE CHAIRMAN OVERHOLT: Well, Ms. Harter, I
11 mean, so, number one, your client could have done
12 all kinds of things to protect his interests. Like
13 he could have played by the rules in existence
14 hoping -- you know, hope is not a strategy, hope is
15 not a plan, whatever the phrase is. You can always
16 hope that the Supreme Court is going to find a
17 state statute unconstitutional. But all of us in
18 the legal profession, all of us in this state, know
19 that that rarely happens. So putting all his eggs,
20 to draw from your basket, in one basket seems a
21 little risky. Right?

22 So he could have taken -- he could have
23 relocated, yeah, because it's one of those things,
24 when you're wanting to do something like run for
25 U.S. Senate, which is a really big deal, you might

1 decide, if you want it that badly, that you make
2 the decision, the big decision, to move somewhere
3 else where you might get certified. Now, that
4 brings to mind carpetbaggers and all that kind of
5 stuff. But anyway, that is something that could be
6 done. Right? He could have done that. He could
7 have said --

8 MS. HARTER: He started the process.

9 VICE CHAIRMAN OVERHOLT: Well, you know, but
10 it didn't happen. Right? It didn't happen. And,
11 I mean, I agree with what my colleague was saying.
12 The Supreme Court stayed Judge Dietrick's order
13 without any comment, which to most of us is a
14 signal that his order, as well written as it might
15 have been, is probably going to go down the tubes.
16 Right? The Supreme Court is probably not going to
17 be upholding that order.

18 And, I mean, so the theme of the day has been
19 playing by the rules, and that's the issue. We've
20 got the same issue here that all these other folks
21 have had, which is that, you know, if you want to
22 run as a candidate in this state, there are rules
23 that you have to follow.

24 And I think too, you know, as part of the --
25 because there are other court cases that talk about

1 the fact that the parties have the -- the political
2 parties themselves have the constitutional right to
3 determine who gets to associate with them. There's
4 a 7th Circuit case, a 7th Circuit decision that
5 talks about that.

6 And so this concept of, well, you don't have
7 the -- you either have to have the two primary
8 votes for the party, which is something you can do,
9 so you don't even have to know who your party chair
10 is. As long as you vote with that party two times
11 the most recent two primaries, you're good to go.
12 Or you need to be friendlier with the party chair
13 of your county. Right? Or find a friendly -- you
14 can forum shop and find someone who is friendly to
15 you.

16 But, I mean, those are just the rules, and the
17 political parties have -- or the courts have
18 recognized that they have a constitutional right to
19 control, to a certain extent, who gets to be
20 affiliated with them in terms of being a nominee
21 for the primary. And that's -- I mean, none of
22 these arguments overcome that. They just don't
23 overcome it.

24 CHAIRMAN OKESON: Well, I completely agree,
25 and I think to the point made, the option, being a

1 U.S. Senate candidate, to relocate is an option not
2 afforded some of these others that have come before
3 me and had great latitude to remedy your own
4 situation potentially, albeit not a decision that
5 would have been made lightly. But there were paths
6 to success there you failed to take advantage of.

7 MS. HARTER: Well, he was in the process of
8 it, but because the entire candidate challenge
9 period -- or filing period we had an injunction in
10 place, it just wasn't necessary. There's nothing
11 we can do to undo --

12 CHAIRMAN OKESON: Clearly, that's not right.
13 At this point, it clearly would be necessary.

14 MS. CELESTINO-HORSEMAN: Sorry, but I think
15 you need to -- let's move on from that point
16 because obviously we don't agree with your position
17 saying that he couldn't do anything because --

18 CHAIRMAN OKESON: He could have.

19 MS. CELESTINO-HORSEMAN: -- he could have.

20 MS. HARTER: But he didn't have to.

21 MS. CELESTINO-HORSEMAN: Well, it doesn't
22 matter. He could have. Protect your interests as
23 a lawyer. So let's just move on from that.

24 I still don't see how we can get around the
25 Indiana Supreme Court. Previously, when I was

1 talking about with the Trump challenge and
2 everything, there was no direction from the U.S.
3 Supreme Court. Still hasn't happened. Indiana
4 Supreme Court has spoken to us, and they've told us
5 to enforce the law as it was originally written.

6 And, Mr. Rust, I'm serious when I say I would
7 love to see you on the ballot. But as far as I'm
8 concerned, our hands are tied, so you tell me how
9 we untie them.

10 MS. HARTER: The practical reality is the
11 Indiana Supreme Court is the last word on the
12 Indiana constitutional issues that we've raised,
13 and we did raise those. But we also raised several
14 federal constitution issues, and for those issues,
15 not only is the Indiana Supreme Court not the last
16 word, SCOTUS is, but we have -- we're not running
17 on a clean slate. We have lots of case law that
18 has never upheld a ballot access restriction for
19 longer than 12 months. This statute is up to four
20 years, maybe more, depending on --

21 MS. CELESTINO-HORSEMAN: But you made that
22 argument to the Indiana Supreme Court.

23 MS. HARTER: I did, and I'm just trying to
24 answer a question here. We do have some guidance
25 from SCOTUS regardless of what our Indiana Supreme

1 Court does. We hope they follow that guidance, but
2 if they don't, they're not the last word. A 7th
3 Circuit case doesn't overrule U.S. Supreme Court
4 precedent. And that's really what the other side
5 kind of hinges their whole argument on is that case
6 from the 7th Circuit, Hero. Sorry. Slipped my
7 mind for a minute.

8 So we do have, we do have case law that
9 supports our position from the U.S. Supreme Court
10 regardless of what our Indiana Supreme Court does.
11 I mean, they haven't issued a ruling yet, but if
12 they don't, we're obviously going to take it up.
13 So we do have some guidance. The guidance is
14 pretty clear. There's never been a ballot access
15 restriction for as long as what we have presented
16 by this statute here.

17 And the parties of voters -- or the parties.
18 The rights of voters and the rights of candidates
19 are corollary to each other. So here we have a
20 situation where John Rust has tendered over 11,000
21 petitions and has a lot of support in Indiana.
22 We're going to disenfranchise all of those voters
23 if he can't be on the ballot, and we're going to
24 have a U.S. Senate race with one candidate. And
25 it's fine that the party leadership has endorsed

1 him, but the party is made of not just the
2 leadership, but all of the party members. So the
3 party leadership has some rights, but they don't
4 supersede the rights of the individuals that
5 comprise the entire party.

6 (Background noise.)

7 Is that me?

8 VICE CHAIRMAN OVERHOLT: I don't know what
9 that was.

10 MS. HARTER: So there's that issue as well.
11 There's a great voter disenfranchisement issue.

12 It's very unfortunate that they issued the
13 stay 23 hours. He's already campaigned. He
14 already has a following. If this challenge is
15 upheld, we have no choices on the ballot. We have
16 to just adopt Jim Banks, who, interestingly, was
17 endorsed by the party even before Mr. Rust entered
18 the race, which is sort of an unprecedented move
19 and it's sort of scary. It moves us towards sort
20 of Soviet-style elections where here's a candidate,
21 take him or leave him. Right? We have no choices.

22 So this is a big deal, and I understand that
23 we don't have a final ruling from the Indiana
24 Supreme Court, but they haven't spoken. It seems
25 like they're split, if I had to guess, based on

1 their behavior because they didn't put in an order.
2 They could have and they do often if you follow
3 them. They will put we're ordering -- we're going
4 to do it this way with reasons to follow. They did
5 grant the stay, but they didn't ultimately indicate
6 an outcome. And we know it was a split ruling
7 because it says the majority of the court, which
8 could be three-two or four-one.

9 So I don't think we can assume what the
10 Indiana Supreme Court is going to do. And I
11 understand and appreciate that they lifted the
12 stay, and they might have done so for any number of
13 reasons, perhaps to not tip their hand about what
14 way they were going to come out because, if they
15 had denied it, then it would seem to be a pretty
16 strong signal that they would go for Mr. Rust. I
17 think they're still figuring it out. They seemed
18 very split in oral arguments.

19 So I don't think we have clear guidance from
20 the Indiana Supreme Court. We do have some U.S.
21 Supreme Court guidance on this issue. There's lots
22 of things at play. I attached the trial court's
23 order, which I'm sure you're familiar with, as well
24 as some briefing. I don't know if there's any
25 other questions you have.

1 MS. WARYCHA: You have 37 seconds left.

2 CHAIRMAN OKESON: Well, we did use some of it
3 with some of the engagement.

4 MR. KOCHEVAR: No. I've been pausing it.

5 MS. WARYCHA: I have too.

6 CHAIRMAN OKESON: Would you like to
7 cross-examine?

8 MR. SHOUSE: No.

9 CHAIRMAN OKESON: Does that apply to you,
10 Mr. Babcock? Would you like to cross-examine?

11 MR. BABCOCK: No. I'm fine.

12 CHAIRMAN OKESON: Okay. Is there a motion?

13 MS. PYLE: Just as a comment, I guess, I know
14 we're talking about all these federal cases here,
15 and you seem to think that they're very clear to
16 establish things and that they take precedence over
17 the Indiana Supreme Court. And I guess my opinion
18 there is, if it was that clear, they would have
19 made a final opinion for you. So I guess that's
20 where I stand on that.

21 I'm going to move to uphold the challenge.

22 CHAIRMAN OKESON: Is there a second?

23 I'll second it.

24 So we have a motion to uphold the challenges
25 in the six consolidated causes and a second.

1 Any further discussion? Any questions,
2 comments?

3 Hearing none, moving to a vote. All those in
4 favor signify by saying "Aye."

5 VICE CHAIRMAN OVERHOLT: Aye.

6 MS. CELESTINO-HORSEMAN: Aye.

7 MS. PYLE: Aye.

8 CHAIRMAN OKESON: Aye.

9 The "ayes" have it. The motions carry.

10 MR. SHOUSE: Thank you.

11 CHAIRMAN OKESON: The challenges are upheld.
12 The Election Division is directed not to include
13 John Rust in the certified list of primary
14 candidates sent to county election boards and to
15 indicate the name of this candidate not be printed
16 on the ballot.

17 Thank you.

18 The next matter -- Bieniek, is that
19 correct? -- Bieniek v. Lester, Cause 2024-20, in
20 the matter of the challenge to Trent A. Lester,
21 candidate for the Republican Party nomination for
22 United States Representative, District 4.

23 Valerie.

24 MS. WARYCHA: Yes. In your binder you have
25 the CAN-1 challenge, and the challenge is also

1 based off the two most recent primary votes are not
2 Republican and there's no chairman certification
3 for Indiana Code 3-8-2-7(a)(4). You also, on that
4 second page, have the vote record as well as the
5 candidate's declaration of candidacy and the notice
6 that was served on both parties.

7 CHAIRMAN OKESON: Thank you.

8 MS. WARYCHA: Thank you. And then I've just
9 been given copies for each member of, we'll call
10 it, Exhibit A. Did you give one to them?

11 MR. BIENIEK: I did.

12 MS. WARYCHA: Okay. Thank you.

13 CHAIRMAN OKESON: Am I pronouncing it right,
14 Mr. Bieniek?

15 MR. BIENIEK: With my name, I'm never offended
16 when folks try, and I've been called far worse.
17 Bieniek.

18 CHAIRMAN OKESON: Bieniek. Okay. And if you
19 would, please spell that.

20 MR. BIENIEK: Absolutely. Thank you,
21 Chairman, members of the Commission. Scott
22 Bieniek. That's Bravo, India, Echo, November,
23 India, Echo, Kilo. I'm a registered voter in
24 Greencastle North, Putnam County, which is in the
25 4th Congressional District.

1 I filed a challenge against Mr. Lester, as was
2 indicated, because he does not have the chairman
3 certification nor does he have a primary vote
4 record showing he's cast a Republican ballot in the
5 two most recent primaries that he has voted in.

6 In support of that, I think I attached to my
7 candidate challenge, which should be in your packet
8 today; a copy of the vote record that I acquired
9 from the Tippecanoe County clerk wherein Mr. Lester
10 resides showing his vote history back to 2000. In
11 fact, I don't think there's a single primary ballot
12 cast by Mr. Lester.

13 As one of the able Commissioners noted, the
14 First Amendment right to speech and association
15 applies not only to a candidate and his supporters,
16 but also to other members of a party, a political
17 party, I myself being one of those. And I have a
18 right to not associate with individuals that have
19 not expressed an affiliation with the party to
20 which I subscribe. And that's why I stand before
21 you today.

22 The Exhibit A that was handed to you today was
23 something that was posted on his Facebook page
24 basically confirming that the earliest that he
25 could comply with the statute would be 2028,

1 essentially saying that, look, I haven't voted in a
2 primary. Again, I heard somebody earlier today,
3 one of the hardest things in the law -- and,
4 Ms. Horseman, I'm honored as well, as somebody else
5 said, to appear before you today -- but it's almost
6 impossible to prove a negative. That's about as
7 close as we can get, an admission by a candidate
8 saying, look, I'm aware of this law, there was a
9 law change, and the earliest I can comply with it
10 is 2028.

11 So without the candidate -- or the chairman's
12 certificate, I just don't think he can comply with
13 the statute. And to address -- because depending
14 on what happens with SCOTUS, I may seek to
15 intervene in that case as a registered voter. I
16 want to make it very clear that the trial court's
17 decision was an injunction. It was not a ruling on
18 the merits. And if you want to rely on an
19 injunction, you do so at your own risk knowing full
20 well that it is not a ruling on the merits and that
21 the court may ultimately rule against you.

22 In this case, our state Supreme Court has said
23 we're going to stay that injunction. They may seek
24 emergency relief to the court, but I intend to -- I
25 will intervene on that case if it happens because I

1 think I have a right as a voter as well, and I want
2 to make sure it's in the record today so that I
3 have something to show my interest in that case.

4 Thank you.

5 CHAIRMAN OKESON: Mr. Lester, would you like
6 to cross-examine?

7 MR. LESTER: No. There's no point. I do want
8 to point out --

9 CHAIRMAN OKESON: Go ahead and take the
10 podium.

11 MR. LESTER: Trent Lester, T-r-e-n-t,
12 L-e-s-t-e-r.

13 I do want to point out he was nice enough to
14 put the date. That's when I went back and looked
15 at the way that this whole ballot primary selection
16 is used. I do -- I have concerns basically because
17 I don't think I'm the only one that didn't check
18 the check box that's not in here today. Maybe we
19 pick and choose who we bring in here because we
20 don't fit their narrative. Maybe we don't fit --
21 or we're running against somebody that they
22 particularly like. I don't know. I don't know
23 why, but I don't think I'm the only one that
24 doesn't have the two check box, two primaries or
25 the backing of the Republican chair.

1 With that being said, I know the law is the
2 law, and I accept whatever you guys obviously say.
3 So thank you.

4 CHAIRMAN OKESON: Would you like any
5 cross-examination?

6 MR. BIENIEK: No. Thank you.

7 CHAIRMAN OKESON: Anyone want to provide a
8 motion? Any questions?

9 MS. PYLE: Motion to uphold the challenge.

10 CHAIRMAN OKESON: I have a motion to uphold
11 the challenge.

12 Is there a second?

13 VICE CHAIRMAN OVERHOLT: Second.

14 CHAIRMAN OKESON: We have a second.

15 Any further discussion?

16 Given your statements of admission, I think we
17 kind of are where we are.

18 So we have a motion to uphold the challenge
19 and a second in Cause 2024-20. All those in favor
20 signify by saying "Aye."

21 VICE CHAIRMAN OVERHOLT: Aye.

22 MS. CELESTINO-HORSEMAN: Aye.

23 MS. PYLE: Aye.

24 CHAIRMAN OKESON: Aye.

25 The "ayes" have it. The motion to uphold is

1 approved. The Division is directed not to include
2 Trent A. Lester in its certified list of primary
3 candidates sent to the county election boards and
4 to indicate the name of this candidate not be
5 printed on the ballot.

6 MR. LESTER: Thank you very much.

7 MR. BIENIEK: Thank you.

8 MS. CELESTINO-HORSEMAN: Mr. Chair, I would
9 move for a stay for five minutes so we can discuss
10 the recent -- recess so we can discuss a recent
11 court opinion that just came down.

12 CHAIRMAN OKESON: Do we need to -- did you
13 move for it?

14 MS. CELESTINO-HORSEMAN: Yes. I'm asking for
15 a recess.

16 CHAIRMAN OKESON: Okay. Is there a second?

17 VICE CHAIRMAN OVERHOLT: Second.

18 CHAIRMAN OKESON: All those in favor signify
19 by saying "Aye."

20 VICE CHAIRMAN OVERHOLT: Aye.

21 MS. CELESTINO-HORSEMAN: Aye.

22 MS. PYLE: Aye.

23 CHAIRMAN OKESON: We'll recess for ten minutes
24 and come back here at 2:10.

25 (Recess taken.)

1 CHAIRMAN OKESON: Let's resume here. Back in
2 session. Moving on, the next case I have is Dole
3 v. Fox, Cause 2024-21, in the matter of the
4 challenge to Brent Fox, candidate for Republican
5 Party nomination for State Representative,
6 District 68.

7 Valerie.

8 MS. WARYCHA: Yes. I believe we just got an
9 appearance for this one this morning. I'm looking
10 to see if it's in your binder yet. I think it
11 might be. So that would be in there as well as
12 notice to the candidate. And the reason for the
13 challenge here on the CAN-1 is that he is not a
14 Republican in good standing and did not check a
15 two-primary box or have a letter from the chairman.
16 And the appearance is already in there. Thank you.
17 There is an appearance in the back for an attorney
18 by the name -- oh, it's Paul Mullin.

19 MR. YOUNG: Will Young.

20 MS. WARYCHA: Yes. Okay. Thank you.
21 Mr. Young is appearing. Thank you.

22 CHAIRMAN OKESON: Okay. So recognize Mr. Dole
23 or any representatives.

24 MR. YOUNG: Thank you, Mr. Chairman. My name
25 is Will Young, with Lewis and Wilkins, along with

1 Paul Mullin, the managing partner of our firm,
2 representing Mark Dole, who is the GOP for Dearborn
3 County. As I mentioned, he is challenging
4 Mr. Brent Fox's candidacy on the basis of the
5 affiliation statute, specifically the two-primary
6 rule.

7 And with that, I will turn things over to
8 Chairman Dole for his testimony as to the actual
9 allegations.

10 MR. DOLE: Thank you, Mr. Young. I also have
11 Lisa Fisher here with me today.

12 CHAIRMAN OKESON: Please state your name.

13 MR. DOLE: Mark Dole, M-a-r-k, D-o-l-e.

14 CHAIRMAN OKESON: Thank you. Go ahead.

15 MR. DOLE: And I have Lisa Fisher, who is the
16 Switzerland County chair, here supporting this
17 motion as well, as Switzerland County falls
18 entirely -- the entire county falls within the
19 68th District there.

20 So she read the challenge. The only thing
21 that she stated incorrectly there was that -- he
22 did check the two-vote challenge on there.

23 MS. WARYCHA: I apologize.

24 MR. DOLE: And you stated that he did not
25 check it, but he did check it. And I think that he

1 was given some bad advice. And I had never met the
2 young man until after the challenge was filed, and
3 I explained it to him, and he understands it.

4 So I think that that being said, he was also
5 challenged as precinct committeeman along with
6 eleven other people from our county. The
7 challenges were all upheld at the county level.
8 And prior to the February 9th filing deadline, none
9 of the challenges that were upheld had contacted
10 the county chair for certification, and that also
11 holds true for Mr. Fox on the precinct committee
12 level and also the state rep.

13 CHAIRMAN OKESON: Is Mr. Fox here? I probably
14 should have started with that.

15 VICE CHAIRMAN OVERHOLT: Yeah.

16 CHAIRMAN OKESON: Does anyone want to make a
17 motion?

18 MS. PYLE: I would move to uphold the
19 challenge.

20 CHAIRMAN OKESON: Is there a second?

21 I'll second it.

22 So we have a motion to uphold the challenge in
23 Cause 2024-21 and a second.

24 Any further discussion?

25 Hearing none, all those in favor signify by

1 saying "Aye."

2 VICE CHAIRMAN OVERHOLT: Aye.

3 MS. CELESTINO-HORSEMAN: Aye.

4 MS. PYLE: Aye.

5 CHAIRMAN OKESON: Aye.

6 The "ayes" have it. The motion carries. The
7 challenge is upheld. The Election Division is
8 directed not to include Brent Fox in the certified
9 list of primary candidates sent to the county
10 election boards and to indicate the name of this
11 candidate not be printed on the ballot.

12 Thank you.

13 MR. DOLE: Thank you all for your time and
14 effort.

15 CHAIRMAN OKESON: Baker v. Thompson, Cause
16 2024-22, in the matter of the challenge to Deandra
17 M. Thompson, candidate for the Democratic Party
18 nomination for State Representative, District 96.

19 Mr. Kochevar.

20 MR. KOCHEVAR: Yes. Mr. Chairman, members of
21 the Commission, in your meeting binder for this
22 cause, you will find the CAN-1 candidate challenge
23 filed by the challenger along with attached
24 documents, as well as a copy of the candidate's
25 declaration of candidacy, the CAN-2, that was filed

1 with the State with attached receipts showing the
2 statement of economic interest has been filed, and
3 notice of hearing that was sent to both the
4 challenger and challenged candidate as well as
5 documentation showing the Election Division did
6 send that notice of hearing.

7 CHAIRMAN OKESON: Thank you.

8 MR. KOICHEVAR: And there's also -- just so I'm
9 clear, there has been an appearance notice filed on
10 behalf of the challenged candidate that's also part
11 of your record. And I think we just got it, which
12 is why it's not three-hole punched in my binder,
13 but that has also been made part of the record.

14 CHAIRMAN OKESON: Okay. With that, I
15 recognize Mr. Baker.

16 MR. BAKER: Thank you. Thank you for being
17 here. It's been a long day. My name is Raymond
18 Baker, R-a-y-m-o-n-d, B-a-k-e-r. I filed the
19 challenge on February the 16th at 9:47. I believe
20 the document speaks for itself.

21 CHAIRMAN OKESON: Any cross-examination?

22 MS. HARTER: No.

23 CHAIRMAN OKESON: Okay. You have the floor.

24 MS. HARTER: So I want to move to dismiss this
25 challenge. My client, Deandra Thompson, just

1 received late yesterday a copy. I believe she told
2 me it was thrown on her yard. Right? I'll have
3 her testify here in a minute. It was thrown on her
4 yard, so she didn't have time to even look into --
5 neither did I; I got this last night -- didn't have
6 time to look into the allegations against her or
7 pull up contrary voting records that would
8 contradict the assertions here because she did, in
9 fact, vote in two Democratic primaries, and she
10 used to be under a different last name.

11 So those aren't present, but we object to her
12 not receiving proper notice. So that's, I guess,
13 the threshold matter.

14 MS. CELESTINO-HORSEMAN: Are you saying that
15 she didn't receive the notice regarding the hearing
16 today?

17 MS. HARTER: She received it less than
18 24 hours from the start of this hearing, and that's
19 not appropriate time for her to be able to pull up
20 any of her voting records and obtain meaningful
21 legal advice. I just found out about this late
22 yesterday.

23 MR. KOCHEVAR: I can provide some information
24 in this regard. The notice of the challenge was
25 sent by our office to the candidate. It was

1 shipped to the address that we had on her
2 declaration of candidacy. That was 3233 Broadway,
3 Indianapolis, Indiana 46205.

4 In your record, you will find that UPS
5 indicated that they delivered that notice of
6 hearing on Saturday, February 17th. The delivery
7 time was 3:47 p.m. That's what it provides for in
8 the record and what has been given to us by UPS,
9 which we used.

10 MS. HARTER: That's not what my client is
11 saying happened with the receipt of the document.
12 Let's have her speak to that.

13 MS. THOMPSON: My stepdad is also here. They
14 brought it to me after picking it up from my yard
15 on Sunday -- or excuse me -- Monday.

16 MS. CELESTINO-HORSEMAN: On Monday?

17 MS. THOMPSON: Correct.

18 MS. CELESTINO-HORSEMAN: That's yesterday.

19 MS. THOMPSON: Correct.

20 MS. CELESTINO-HORSEMAN: And so how were you
21 able to find an attorney so fast?

22 MS. THOMPSON: Well, Michelle and I have
23 already talked before about other things.

24 MS. CELESTINO-HORSEMAN: Was it about this
25 particular challenge?

1 MS. THOMPSON: No, about someone had called
2 me --

3 MS. CELESTINO-HORSEMAN: I don't need to know
4 that.

5 MS. HARTER: You don't want to violate
6 attorney-client stuff.

7 She was acquainted with me and asked me late
8 last night if I would jump in and help.

9 MS. CELESTINO-HORSEMAN: Okay. Well, I'm sure
10 you can understand that we have a document from UPS
11 saying that it was delivered to 3233 Broadway and
12 the date and time that Mr. Kochevar stated. And
13 you're saying it didn't appear until, what, a week
14 later?

15 MS. THOMPSON: Yes. And I have the Ring
16 doorbell, so if anything -- I would have been able
17 to receive it in my hand, if nothing else. I work
18 from home quite a bit.

19 MS. CELESTINO-HORSEMAN: So are you at 3233
20 Broadway?

21 MS. THOMPSON: Yes. That is my address.

22 MS. CELESTINO-HORSEMAN: And -- well, it says
23 "Other-Release." What's that mean?

24 MR. KOCHEVAR: I don't know. I'd have to ask
25 my colleague, Kimmy Hollowell-Williams, who sent

1 this out.

2 MS. CELESTINO-HORSEMAN: Okay. Where is that
3 person?

4 MR. KOCHEVAR: Kimmy?

5 MS. NUSSMEYER: She's in our office.

6 MR. KOCHEVAR: She's in our office.

7 CHAIRMAN OKESON: I see two different UPS
8 stamps.

9 MS. WARYCHA: Can I jump in here,
10 Mr. Chairman?

11 CHAIRMAN OKESON: Yeah.

12 MS. WARYCHA: One of them is to the
13 challenger, one is to the challenged.

14 CHAIRMAN OKESON: Oh, okay.

15 MS. WARYCHA: But to go back to Commissioner
16 Karen Celestino-Horseman's question, I believe,
17 because I did some of the notices on the Republican
18 side of the house, when you mark that, it means
19 that they can leave it in the person's mailbox or
20 on their door, is my understanding, instead of
21 having to be there to accept it.

22 MR. KOCHEVAR: I do have one more matter.
23 This has to do with statute. The statute is
24 Indiana Code 3-8-2-18, subsection (b). If you
25 don't mind, I'm going to read the entire subsection

1 to you all just so that it can be understood.

2 This particular subsection states: "The
3 notice requirements set forth in IC 4-21.5 do not
4 apply to the meeting conducted by the commission
5 under subsection (a)." This has to do with
6 candidate challenge hearings. "The election
7 division is required to give the best possible
8 notice of the meeting to a person that the election
9 division identifies as an interested party. Unless
10 a written objection is filed with the election
11 division before the end of the meeting, appearance
12 in person or by counsel at the commission's meeting
13 to act under subsection (a) constitutes an
14 admission that adequate notice of the meeting has
15 been given."

16 I just provide that to you for reference in
17 regards to this particular part of the hearing.

18 CHAIRMAN OKESON: What's this assertion about
19 voting in two previous primaries?

20 MS. HARTER: So if we're not going to address
21 the notice issue, we can move on to that. And so
22 Deandra has, and she'll testify in a minute, she
23 has voted in prior Democratic primaries, and it's
24 my understanding that she did so under a different
25 last name, maybe in a different county than what

1 she currently lives in. And she didn't have time
2 to hunt down records. It's hard as a candidate to
3 get records when you don't have access to the same
4 system as party chairs and other folks do.

5 So, Deandra, do you want to talk about your
6 primary voting record in the past.

7 MS. THOMPSON: Yes. I definitely voted in the
8 2008 election under my former last name, Grady.

9 And I have asked --

10 MS. HARTER: In the Democratic primary,
11 correct?

12 MS. THOMPSON: Correct.

13 MS. HARTER: Do you know who you voted for?

14 MS. THOMPSON: Yes.

15 MS. HARTER: Who did you vote for?

16 MS. CELESTINO-HORSEMAN: She doesn't have to
17 answer that.

18 CHAIRMAN OKESON: She doesn't have to disclose
19 that.

20 MS. THOMPSON: So, yes, the other thing is I
21 have asked the Commission for those records, and
22 for some reason they only stop at 2016, and I've
23 been voting since I've -- definitely since I've
24 been 21 and I'm 40.

25 MS. HARTER: And that was one of your primary.

1 Do you remember voting in another primary besides
2 the 20 -- whatever one you said?

3 MS. THOMPSON: Yeah, 2008 and definitely 2010.

4 MS. HARTER: And both Democrat?

5 MS. THOMPSON: Correct.

6 MS. CELESTINO-HORSEMAN: What county were you
7 living in?

8 MS. THOMPSON: I was living in Johnson County
9 and then Marion County.

10 MS. CELESTINO-HORSEMAN: And which clerk did
11 you go to to get that information?

12 MS. THOMPSON: For both of them -- I didn't
13 have time to go to the Johnson County clerk, but I
14 definitely had asked at the Marion County clerk. I
15 didn't know if they -- I thought they were all
16 digitized, so I thought they would have it as well.

17 MS. CELESTINO-HORSEMAN: Did you call them?

18 MS. THOMPSON: Yes, I called them.

19 MS. CELESTINO-HORSEMAN: Johnson County?

20 MS. THOMPSON: Yes.

21 MS. HARTER: I mean, she had limited time.
22 She did what she could and was trying to chase it
23 down and still got no response.

24 MS. CELESTINO-HORSEMAN: Can I make a
25 suggestion that we --

1 Ms. Harter, he can access the voting record of
2 your client. However, he can't share that with us.
3 He can only share it with her and you as her
4 attorney. And then if she decides she wants to
5 share it with us and authorizes him to, then he can
6 share it with the rest of us.

7 MS. THOMPSON: I would appreciate that.

8 MS. WARYCHA: Mr. Kochevar, do you have it up
9 already?

10 MR. KOCHEVAR: Yes.

11 MS. WARYCHA: Okay. Just making sure.

12 MS. HARTER: I wish I had access to this. It
13 would make things easier.

14 MS. NUSSMEYER: Ms. Thompson, do you mind
15 coming over and talking.

16 (Discussion held off the record.)

17 CHAIRMAN OKESON: Is there any new evidence to
18 bring to light?

19 MS. HARTER: No. It doesn't appear that her
20 records prior to 2016 are available on the system,
21 but, yeah, I'll take -- 2013. I'm going to take my
22 client's word for it when she tells me she voted
23 and in what years and what primary, but we don't
24 have any evidence of the same because it's not
25 available on the system.

1 CHAIRMAN OKESON: Is there any other evidence
2 that you have to contradict Mr. Baker's testimony?

3 MS. THOMPSON: Well, I would say the evidence
4 I got from Marion County -- well, the stuff -- when
5 I got the voter records, it didn't even show the
6 2013. That was the first time I've actually seen
7 the 2013. So I know it's got to be somewhere. I
8 just need to find it and get it.

9 MS. PYLE: Did you get your county chair's,
10 any certification from them?

11 MS. THOMPSON: When you're saying county
12 chair --

13 CHAIRMAN OKESON: The county chair.

14 MS. HARTER: If you had the county chair
15 sign-off.

16 MS. THOMPSON: Oh, no.

17 MS. CELESTINO-HORSEMAN: How far back does the
18 system go?

19 MR. KOICHEVAR: The system was implemented in
20 2005-2006. Depending on which county, there could
21 be voter registration records going back into most
22 of the 20th century. As an example, my
23 great-grandmother, who died in 2005, her voter
24 registration information in Lake County going back
25 into, like, the '40s was entered into that voter

1 registration system.

2 MS. HARTER: But the counties, they can
3 destroy it after ten years, right? The statute
4 says that after ten years they do not have to
5 retain the records.

6 MS. NUSSMEYER: That's not accurate.

7 MS. WARYCHA: That would be the paper copy, I
8 think, what you're thinking about, not the
9 electronic record.

10 MS. NUSSMEYER: There's no statute that says
11 ten years, though.

12 CHAIRMAN OKESON: Okay. You admit there's no
13 additional information to be provided.

14 Does anybody want to make a motion?

15 MS. HARTER: Well, remember, it's the
16 challenger's burden, and I don't know that he even
17 looked into her other last names or other counties.

18 CHAIRMAN OKESON: The challenger has filled
19 out the required paperwork and stated his case.

20 VICE CHAIRMAN OVERHOLT: I move to uphold the
21 challenge.

22 CHAIRMAN OKESON: Is there a second?

23 MS. CELESTINO-HORSEMAN: I'll second.

24 CHAIRMAN OKESON: Any discussion?

25 We have a motion to uphold the challenge on

1 Cause 2024-22 and a second. Hearing none, all
2 those in favor signify by saying "Aye."

3 VICE CHAIRMAN OVERHOLT: Aye.

4 MS. CELESTINO-HORSEMAN: Aye.

5 MS. PYLE: Aye.

6 CHAIRMAN OKESON: Aye.

7 The "ayes" have it. The challenge is upheld.
8 The Election Division is directed not to include
9 Deandra M. Thompson in the certified list of
10 primary candidates sent to the county election
11 boards and to indicate the name of this candidate
12 not be printed on the ballot.

13 Next we have Boyce v. Mahant.

14 MS. WARYCHA: And just since we last recessed,
15 I got a notice of appearance for Sid Mahant for a
16 Mitchell V. Harper. It won't be in your binder.
17 Counsel Kochevar has one as well, but I do have one
18 here for our record.

19 CHAIRMAN OKESON: Okay.

20 MS. WARYCHA: And then in the binder you will
21 have the CAN-1 and the --

22 CHAIRMAN OKESON: And this is Cause 2024-23 in
23 the challenge to Sid Mahant, candidate for
24 Republican Party nomination for United States
25 Representative, District 6. Sorry. Go ahead.

1 MS. WARYCHA: Yes. No problem. And on here
2 we have the CAN-1 from Beth Boyce, and she is
3 challenging his candidacy for the 6th District. He
4 did not answer Question No. 3, which is the
5 two-primary rule that we have been discussing, or
6 have a letter from the party chairman. And there
7 is a copy of the vote history as well as the
8 service to both the challenger and the challenged
9 and an appearance for Mr. Young again, who is
10 appearing on behalf of Ms. Boyce.

11 MR. YOUNG: Thank you, Mr. Chairman. Again,
12 Will Young, W-i-l-l, Y-o-u-n-g, with Lewis and
13 Wilkins appearing on behalf of Chair Beth Boyce,
14 who is the GOP chair for Johnson County.

15 Again, she is, as mentioned, filing an
16 affiliation statute challenge to the candidacy of
17 Mr. Sid Mahant. And with that, I will turn things
18 over to Chair Boyce for the factual allegations in
19 the case.

20 MS. BOYCE: Thank you very much. Good
21 afternoon. Thanks to each of you for your work and
22 for having us here today.

23 Mr. Sid Mahant has --

24 CHAIRMAN OKESON: Can you please state your
25 name.

1 MS. BOYCE: Oh, I'm sorry. I am Beth Boyce,
2 B-e-t-h, last name B-o-y-c-e. Sorry about that.

3 Mr. Sid Mahant has filed a declaration of
4 candidacy seeking to be the Republican nominee for
5 the office of 6th District Representative, U.S.
6 House of Representatives. The CAN-2 he filed, a
7 copy of which, as Valerie mentioned, is in your
8 packet, is incomplete. Specifically, he did not
9 answer Question No. 3. It is not only the failure
10 to check one of the two boxes under Question 3 by
11 which he claims affiliation with the Republican
12 Party, however, that matters. It is his
13 substantive failure to qualify under either of the
14 affiliation options presented in those two boxes.

15 I am the Johnson County Republican Party
16 chair. Under Indiana Code Section 3-8-2-7(a)(4),
17 to claim affiliation as a Republican to be eligible
18 to run for office in a Republican primary, a
19 candidate must either have cast a Republican ballot
20 in the last two primary elections in which the
21 candidate has voted or receive the certification of
22 the county Republican chairman in the county in
23 which the candidate claims residence. Mr. Mahant
24 fails on both counts.

25 His attached voting record, which is in your

1 packet, demonstrates that he has only voted in one
2 Indiana primary election, not the requisite two
3 primary elections.

4 Second, he claims residence in Johnson County,
5 where I serve as the Republican Party chair.

6 Neither Mr. Mahant nor anyone acting on his behalf
7 has ever asked me to certify that Mr. Mahant is a
8 member of the Republican Party, and I have never
9 made any such certification.

10 Indeed, as Mr. Mahant's attached voter
11 registration record demonstrates, he was a
12 registered voter in Steuben County until
13 February 1, 2024, the same day upon which he filed
14 his CAN-2 claiming residency in Johnson County, and
15 has therefore only had a brief period of time in
16 which he could have even sought my certification.

17 Therefore, for these reasons, Mr. Mahant is
18 ineligible to run in the 2024 Republican primary to
19 seek the office of 6th District Representative.

20 Indiana's 6th Congressional District includes all
21 or portions of eleven Indiana counties. In
22 addition to my representation of Johnson County,
23 the Republican Party county chairs in each of the
24 other ten counties have joined me in this
25 challenge. So on the paperwork included, you'll

1 see their names and counties that they represent.

2 So thank you.

3 CHAIRMAN OKESON: Thank you.

4 Would you like two minutes to cross-examine
5 any of the statements made by Ms. Boyce?

6 MR. HARPER: Yes, I would.

7 CHAIRMAN OKESON: Please state your name for
8 the record. Thanks.

9 MR. HARPER: Mitch Harper, Fort Wayne,
10 Indiana.

11 Chairman Boyce, had you had a chance to talk
12 with Mr. Mahant anytime during January?

13 MS. BOYCE: We had one phone conversation.

14 MR. HARPER: All right. Thank you. And I'd
15 like -- well, never mind. I'll save that for
16 later.

17 CHAIRMAN OKESON: Okay. If you'd like your
18 five minutes for presentation, you may begin.

19 MR. HARPER: Thank you, Mr. Chairman and
20 Commission members. I've served with Chairman
21 Boyce on the state committee in the district
22 myself. I've had a long record of involvement in
23 the Republican Party. I was elected precinct
24 committeeman when I was 18, something that would be
25 prevented by the statute that we're talking about

1 today.

2 I'm going to give you something novel. It's
3 been a long day. It's all wonderful you've been
4 here. But a little bit of a novel thing to think
5 about, Mr. Mahant was indeed a resident of Steuben
6 County until January 31st. He was appointed as a
7 vice precinct committeeman in Steuben County by the
8 Steuben County Republican chairman, Rick Michael,
9 and I have that appointment documentation here to
10 present to you. Thank you for recognizing
11 everything. I'll let you distribute those.

12 MS. WARYCHA: All right.

13 MR. HARPER: So he was appointed by Rick
14 Michael as the vice precinct committeeman, and
15 Mr. Michael, in preparation for appointment as
16 precinct committeeman, also indicated that he was
17 accepting of Mr. Mahant as a Republican.

18 So the question for this Commission, which is
19 not really contemplated in the statute, is when did
20 Mr. Mahant stop being Republican? When did his
21 Republican-ness go away? Once he's appointed a
22 vice precinct committeeman, which requires you to
23 be a Republican and requires the appointment of
24 vice precinct committee's certificate to go to the
25 state committee, when did he cease being a

1 Republican? Does someone go in and out? Is
2 someone fish one day and fowl the next?

3 MS. CELESTINO-HORSEMAN: Counselor, you know,
4 I watched the arguments on this regarding Mr. Rust,
5 and --

6 MR. HARPER: This has nothing to do with
7 Mr. Rust's case.

8 MS. CELESTINO-HORSEMAN: No, but one of the
9 questions -- it does very much have to do with it
10 because of the chairman certification. And one of
11 the questions and the point that came up was that
12 the chairman has discretion to refuse to certify
13 anybody for whatever reason, and that was one of
14 the things that was being argued and discussed.
15 There is no framework -- and I am sure Ms. Harter
16 can tell you that. There is no framework that says
17 to them here's what you need to look at to make the
18 determination whether you want to certify somebody.
19 It's not there.

20 MR. HARPER: Correct. It's their discretion.

21 MS. CELESTINO-HORSEMAN: It's at their
22 discretion, so --

23 MR. HARPER: It's at Chairman Michael's
24 discretion.

25 MS. CELESTINO-HORSEMAN: Sir. So if Steuben

1 County decided that they found him to be a
2 Republican in good standing, this chair, for
3 whatever reason, declined to make the same finding.
4 So it's kind of like apples to oranges because
5 she's in the different county and she has the same
6 discretion.

7 MR. HARPER: But you're saying he gets thrown
8 out of the Republican Party somehow?

9 MS. CELESTINO-HORSEMAN: I'm not saying that.

10 MR. HARPER: He ended his Republican Party
11 status, that's what you're saying. It has nothing
12 to do with Mr. Rust. Perhaps if Mr. Rust had been
13 a county auditor or county coroner or held a
14 precinct committee slot, it might have something to
15 do with it. But this really does not have anything
16 factually to do with Mr. Rust at all and, frankly,
17 should not be raised in comparison.

18 VICE CHAIRMAN OVERHOLT: Well, regardless,
19 what the statute says is it's the county chair for
20 the political party with which the candidate claims
21 affiliation and the county in which the candidate
22 resides. And on his CAN-2 his residency he gives
23 as Greenwood. He doesn't give his residency as
24 Fremont. It's Greenwood.

25 So, I mean, he -- so the fact that the county

1 chair, the Steuben County chair, certified him,
2 because he changed his residency to Greenwood means
3 that he had to get the Johnson County chair's
4 approval. That's what the statute says.

5 CHAIRMAN OKESON: Well, and I would offer that
6 what I'm reading is the county chair only certified
7 him for vice precinct committeeman during 2023
8 only, not for purposes of any other contest.

9 MR. HARPER: Well, once you're precinct
10 committeeman, you retain being precinct
11 committeeman until the end of term. Precinct
12 committeemen aren't up for election this year.

13 CHAIRMAN OKESON: I understand. What I'm
14 saying is this same certification would have to be
15 executed by -- Johnson County, is that where he is?

16 VICE CHAIRMAN OVERHOLT: Right.

17 CHAIRMAN OKESON: -- Johnson County in order
18 for him to have ballot access.

19 MS. BOYCE: Yes.

20 MR. HARPER: He's running for Congress. He's
21 not running for trustee. He's not running for
22 county office. You know, the British standard was
23 that you could run from anywhere. Winston
24 Churchill was appointed to run in writing, so he
25 did not decide it. Similarly, running for

1 Congress, you have residency in the state, you run
2 for Congress. There's no residency requirement for
3 a year as there is for the General Assembly.

4 That's noted on the candidate declaration form.

5 CHAIRMAN OKESON: But there is no letter from
6 any county GOP chair who's authorized his access to
7 the ballot or previous voting records for two
8 previous primaries, correct?

9 MR. HARPER: No. It authorized him to be
10 precinct committeeman. He's a Republican.

11 MS. PYLE: I'm not sure, Counsel, that anybody
12 is arguing that, even, you know, our challenger
13 here.

14 CHAIRMAN OKESON: Right.

15 MS. BOYCE: I'm not arguing his status of him
16 as a member of the party. It's about his ability
17 to run.

18 MR. HARPER: It's about the mechanical process
19 of the code.

20 MS. PYLE: It's about the code. We can agree
21 on that.

22 MR. HARPER: That can cause all sorts of odd
23 situations for people who move across county lines.
24 For example, I was a State Representative for
25 12 years, and so you're telling me, if that was my

1 status today and I moved to -- I don't know --
2 Grant County, I would have to get the Grant County
3 chair to declare that I'm a Republican?

4 CHAIRMAN OKESON: Unless you had voted in the
5 previous primaries, yes.

6 MR. HARPER: Well, I'm going to end my
7 discussion here because I think the Commission is
8 not entertaining what is clearly obvious to me.
9 You're saying people can be a Republican one day
10 and somehow change that status.

11 CHAIRMAN OKESON: No. I don't think we're
12 saying that at all. We're looking at the elements
13 of what qualifies someone for ballot access under
14 the two standards, which, unless you're offering
15 something different, haven't been met here.

16 MR. HARPER: Entirely mechanical. All right.
17 Then close.

18 CHAIRMAN OKESON: Do you have any
19 cross-examination or questions?

20 MS. BOYCE: No. I just want to say thank you
21 for the consistency and the comments.

22 CHAIRMAN OKESON: Yes.

23 MS. PYLE: I would move to uphold the
24 challenge.

25 CHAIRMAN OKESON: We have a motion to uphold

1 the challenge. Is there a second?

2 VICE CHAIRMAN OVERHOLT: Second.

3 CHAIRMAN OKESON: We have a second.

4 Any further discussion?

5 We have a motion to uphold the challenge in
6 Cause 2024-23 and a second. All those in favor
7 signify by saying "Aye."

8 VICE CHAIRMAN OVERHOLT: Aye.

9 MS. CELESTINO-HORSEMAN: Aye.

10 MS. PYLE: Aye.

11 CHAIRMAN OKESON: Aye.

12 The "ayes" have it. The motion carries. The
13 challenge is upheld. The Election Division is
14 directed not to include Sid Mahant in the certified
15 list of primary candidates sent to county election
16 boards and to indicate that the name of this
17 candidate not be printed on the ballot.

18 Thank you.

19 MS. BOYCE: Thank you.

20 CHAIRMAN OKESON: Next I have Anderson v.
21 Graves, Cause 2024-24, in the matter of challenge
22 to Chunia L. Graves, candidate for the Democratic
23 Party nomination for State Senate, District 34.

24 Mr. Kochevar.

25 MR. KOCHEVAR: Yes. Thank you, Mr. Chairman,

1 members of the Commission. In your meeting binders
2 under this cause you'll find a copy of the CAN-1
3 candidate challenge that was filed by the
4 challenger; a copy of the candidate's declaration
5 of candidacy, their CAN-2, with accompanying
6 receipts showing the statement of economic interest
7 was filed; the notice of hearing that was sent to
8 both the challenger and challenged candidate;
9 documentation showing that the Election Division
10 sent those notices; and an appearance form filed on
11 behalf of the challenged candidate. I've also been
12 handed other documents that are getting passed down
13 your way to be entered into the record.

14 MS. CELESTINO-HORSEMAN: Has the other side
15 seen the record? They have.

16 CHAIRMAN OKESON: I will recognize
17 Ms. Anderson. You have five minutes.

18 MS. ANDERSON: Hello, everyone. My name is
19 Stella Anderson, S-t-e-l-l-a, Anderson,
20 A-n-d-e-r-s-o-n. And I am a long-time constituent
21 of Senator Jean Breau, Senator, District 34,
22 Senate District 34. I am here to challenge
23 Ms. Graves. Senator Breau has been in the
24 district since 2008, I want to say. I love her
25 work. She fights for the community. She's a great

1 constituent for the community, and I want to see
2 her to continue as our Senator.

3 I am challenging Ms. Graves, who has
4 registered to run against Senator Breaux in the
5 upcoming primary election as a Democrat. But
6 according to Graves' voting record -- I would like
7 to submit this to the Committee, Exhibit A.

8 Okay. According to Ms. Graves' voting record
9 I submitted and provided by the Marion County Board
10 of Voters Registration, she has not voted in two
11 primary elections as a Democrat. She has voted
12 once, as you will notice, in the primary election
13 in her whole life. So I feel a candidate for a
14 Democratic State Senator representing over 120,000
15 voters should have a long history of voting and
16 voting as a Democrat.

17 So I request you to rule her nomination for
18 Democrat candidate for State Senate, District 34,
19 invalid because there is no supporting document
20 showing Ms. Graves has voted in two primary
21 elections or a letter of certification so due to
22 the noncompliance of a party affiliation
23 requirement on the CAN-2 declaration of candidacy
24 for primary nomination form. Thank you.

25 CHAIRMAN OKESON: You have two minutes to

1 cross-examine. Anything?

2 MR. JOHN: No.

3 CHAIRMAN OKESON: Five minutes.

4 MR. JOHN: Mr. Chairman, Madam Vice Chairman,
5 Commissioners, thank you for the time. Tommy John
6 with Ice Miller here on behalf of Chunia Graves,
7 who most assuredly is a Democrat, and we'll have a
8 brief bit of testimony I would like to have from
9 both Ms. Graves and her father, who is an elected
10 Democrat city-county councilor in Indianapolis.

11 But before we do that, I want to get through
12 just the base of this. I would raise many of the
13 same challenges that you saw in the Rust v. Morales
14 case with regard to the statute at large, but you
15 don't have to get that data. The fact is you could
16 argue over whether this is an extra requirement
17 with respect to the two-year residency with respect
18 to running for the Indiana House. You could argue
19 about virtually anything in there except the 17th
20 amendment arguments. You could argue about full
21 faith and credit.

22 We don't need to do that. We just need to
23 look at the actual statute. And if you look at the
24 statute, it says -- and I have included it for you
25 in the documents. IC 3-8-2-7(4)(a), the two most

1 recent -- or "A statement of the candidate's party
2 affiliation. For purposes of this subdivision, a
3 candidate is considered to be affiliated with a
4 political party only if the following applies: The
5 two most recent primary elections in Indiana in
6 which the candidate voted were primary elections
7 held by the party with which the candidate claims
8 affiliation."

9 That does not require the last two, as in
10 somebody had to vote in '23 and '22. It doesn't
11 even include any temporal element other than you
12 didn't vote Republican in between there.

13 And so in the case of Ms. Graves, you'll find
14 in your packet a document from SmartVAN, which is a
15 Democrat Party voter registration system. And the
16 fact is that you'll also get testimony that
17 Ms. Graves did, in fact, testify -- or did, in
18 fact, vote in Democratic primaries.

19 So the problem we have here is, frankly, SVRS,
20 one way or another, this isn't the issue, but does
21 not apparently reflect the accurate voting record.
22 And nothing in the statute says that it has to be
23 validated by SVRS. It simply needs the factual
24 support in order for the person to be proven as
25 having voted in the primaries.

1 So in this case, we have somebody that we also
2 included in our materials. She is a sitting
3 official in the Democrat Club. She is somebody who
4 has been appointed by a Democrat mayor to the
5 Community Corrections Board as a Democrat. She has
6 a variety of bona fides as a Democrat.

7 And now I'd like just briefly, Mr. Graves, can
8 you introduce yourself.

9 MR. GRAVES: Good afternoon, Chairman and
10 Commissioners. Thank you for this opportunity to
11 speak.

12 MR. JOHN: Have you been aware of your
13 daughter's involvement in politics?

14 VICE CHAIRMAN OVERHOLT: Can you state your
15 name for the record.

16 CHAIRMAN OKESON: Yeah. State your name real
17 quick.

18 MR. GRAVES: Thank you so much. Keith Graves,
19 K-e-i-t-h, G-r-a-v-e-s.

20 CHAIRMAN OKESON: Thank you. Sorry.

21 MR. JOHN: And what is your role in the
22 Democrat Party?

23 MR. GRAVES: I'm an elected official
24 originally elected in 2019 to serve District 9 of
25 Indianapolis City-County Council for eastern Marion

1 County.

2 MR. JOHN: And has your daughter been involved
3 in politics at all?

4 MR. GRAVES: Absolutely. She's been right in
5 lockstep with me. We've had one of the more
6 transformative communities in the entire city on
7 the east side, and largely it's because of my
8 relationships across the county, across our
9 district, and working with my team. And she is an
10 absolute important member of my team. She's been
11 there with me the entire way.

12 MR. JOHN: To your knowledge, has she voted in
13 Democrat primaries in the past?

14 MR. GRAVES: She has.

15 MR. JOHN: Do you specifically have evidence
16 or are you able -- or specifically of your own
17 awareness, are you able to say which ones she has
18 voted in?

19 MR. GRAVES: '16, '18, '20 primaries. Those
20 are the three primaries that I'm very familiar
21 with.

22 MR. JOHN: Okay. Thank you.

23 Ms. Graves, would you introduce yourself.

24 MS. GRAVES: My name is Chunia Graves. First
25 of all, thank you so much for your presence today.

1 CHAIRMAN OKESON: Your name, could you spell
2 it.

3 MS. GRAVES: Chunia, C-h-u-n-i-a, Graves,
4 G-r-a-v-e-s.

5 CHAIRMAN OKESON: Thank you.

6 MR. JOHN: So initially, let's just start and
7 get to the point, which is, have you voted in
8 Democrat primaries in Indiana?

9 MS. GRAVES: Yes.

10 MR. JOHN: And what years did you vote in
11 those?

12 MS. GRAVES: Most recent or dating back?

13 MR. JOHN: You can go back or forwards,
14 whichever way.

15 MS. GRAVES: 2012, 2016, 2018, 2023.

16 MR. JOHN: And so we saw the record that was
17 placed into evidence that only showed one Democrat
18 primary.

19 CHAIRMAN OKESON: So we're at our five-minute
20 limit. Does anyone want to give them two minutes?

21 MS. CELESTINO-HORSEMAN: I would.

22 MR. JOHN: I can get it done.

23 MS. PYLE: I'd move for two minutes.

24 MS. CELESTINO-HORSEMAN: I'll second.

25 CHAIRMAN OKESON: Second. All those in favor

1 signify by saying "Aye."

2 VICE CHAIRMAN OVERHOLT: Aye.

3 MS. CELESTINO-HORSEMAN: Aye.

4 MS. PYLE: Aye.

5 CHAIRMAN OKESON: Please continue.

6 MR. JOHN: So why might your voting record
7 only show one vote when SVRS comes up? Could this
8 be your college career? Tell us a little bit about
9 what was happening there.

10 MS. GRAVES: Yes, sir. I was a Division I
11 athlete. I went to Jacksonville University in
12 Jacksonville, Florida, to study. I continued my
13 education on to Pepperdine University out in
14 California and then returned to Indiana back home.

15 CHAIRMAN OKESON: The primaries -- I'm sorry.
16 This won't take away from your time. The primaries
17 that you're discussing, those are all Indiana
18 primaries?

19 MR. JOHN: Yeah, they are. Yes, but she was
20 voting absentee at different times, and she did
21 then, in your materials you'll find, register as a
22 Democrat in California --

23 CHAIRMAN OKESON: Okay.

24 MR. JOHN: -- and then moved back to Indiana.
25 That is more than likely, we think, why maybe it

1 didn't get picked up in SVRS. It's a data system,
2 and data systems don't always pick things up
3 correctly.

4 But the fact is that you have testimony from
5 two people she did vote in primaries. You have
6 materials that show she is, without a doubt, a
7 Democrat. And a likely scenario why she's not
8 showing up on SVRS is simply the fact that she did
9 move her registration as she was a student at
10 Pepperdine and then it moved back, so it's only
11 picking up what she did after she came back.

12 CHAIRMAN OKESON: And, again, this doesn't --
13 I'm asking a question, so this doesn't take away
14 from your time. This SmartVAN system, can you
15 explain that.

16 MR. JOHN: That's a system utilized. I
17 imagine the Democrat members of the Commission
18 might know it.

19 CHAIRMAN OKESON: Are you familiar with it?

20 MS. CELESTINO-HORSEMAN: Yes, I am familiar
21 with it. I'm kind of surprised to see it here, but
22 I am familiar with it.

23 CHAIRMAN OKESON: Do you know when these -- so
24 in the general election under these years, it has
25 different letters for the primary. Does anybody

1 know what that means?

2 MS. CELESTINO-HORSEMAN: Well, that's the
3 problem. We don't know. I mean, I don't know what
4 this report was printed off of.

5 MR. JOHN: There's an email right behind it
6 that discusses what the history of that report is
7 and how it's...

8 MS. PYLE: As they're looking, who maintains
9 SmartVAN? Who keeps these records? Is it the
10 party?

11 MR. JOHN: It's the Democrat Party or their
12 data vendor. It's similar to, on the Republican
13 side, the GOP data vendor.

14 And so the reality is, when we're looking at
15 this, SVRS is not dispositive. I mean, at one
16 point, you know, I've seen my own voting record
17 problematic inside of it. The fact is we have
18 testimony that supports it. Yes, the challenger
19 may have met the burden of at least supporting the
20 idea of the challenge, but obviously the challenged
21 has the ability to provide evidence, which we've
22 provided evidence that I would argue outweighs the
23 simple fact that a data set that could be flawed
24 claims that she isn't when she said she's voted
25 multiple times. When you look at SVRS, it would

1 suggest to you that she's only voted the last
2 three years.

3 MS. CELESTINO-HORSEMAN: Okay. So could I ask
4 staff if they are aware of whether her tenure and
5 changing her residency and such would have caused
6 them to somehow get rid of her voting record?

7 MR. KOCHEVAR: That's not how I understand
8 SVRS. My knowledge is that, once you get
9 registered in SVRS, your record is there forever.
10 Even if you move out of state, you cancel that
11 registration, you register somewhere else, it stays
12 there. That's just my general knowledge of the
13 system, what I understand from voter registration
14 officials in the county and how we maintain that
15 particular system.

16 CHAIRMAN OKESON: So I would have a follow-up
17 to that. So let's presume for a minute there's
18 some level of fallibility right now, which is not
19 what I had contemplated until he brought it up. Is
20 SVRS, when we look at whether someone has voted in
21 two primaries, is that the standard? Is that the
22 record that the law or the statute --

23 MS. WARYCHA: SVRS is the state system of
24 record, and the co-directors administer it with the
25 direction of the secretary of state. And if there

1 was an error in the system with a voter
2 registration --

3 CHAIRMAN OKESON: But I guess what I'm asking
4 is, when the statute says you have to have voted in
5 two primaries or have a letter, SVRS, is it layered
6 into that statute as this is what you refer to?
7 That's what I'm asking.

8 MS. WARYCHA: SVRS, I would say, is the system
9 of record, yes.

10 MR. JOHN: The statute doesn't say that,
11 Mr. Chairman. The statute doesn't say that at all.

12 MS. WARYCHA: It calls it the computer list.

13 MR. JOHN: Where does it say --

14 MS. WARYCHA: Hang on. Let me go to 3-7.

15 MR. JOHN: In this statute it doesn't say that
16 that's where the proof has to come from.

17 VICE CHAIRMAN OVERHOLT: I guess while you're
18 looking at that, the thing is, though, I think what
19 SmartVAN, it's showing that she voted in those
20 years. I then look at what you've provided, but I
21 think this is from the California voter
22 registration, and it seems like she was registered
23 to vote in California for two of the years where
24 she just said she voted in primaries. So I could
25 see that maybe she voted -- and I don't think --

1 well, you're not supposed to vote in two places at
2 once.

3 I mean, it seems to me, it looks like it's
4 possible perhaps that, Ms. Graves, you voted
5 perhaps in California when you were out there at
6 least in 2018 and 2020, it looks like.

7 MR. JOHN: She has unequivocally said she
8 voted for Obama in 2012 in Indiana, and she voted,
9 nobody disputes, in 2023 in the primary. That is
10 two primary votes. It hasn't been interrupted by
11 any vote in between, and the statute clearly says
12 just the last two votes of this person --

13 VICE CHAIRMAN OVERHOLT: But we don't have a
14 record.

15 MR. JOHN: -- so they could be separated by
16 decades.

17 VICE CHAIRMAN OVERHOLT: But her record
18 doesn't show that 2012 vote.

19 MR. JOHN: I understand. It also doesn't show
20 any of the previous votes in SVRS.

21 MS. WARYCHA: Mr. Chairman, if I might, if you
22 go to Indiana Code 3-7-26.3-35, purposes of the
23 list, and it references the federal code that
24 requires us to have a statewide voter registration,
25 and it specifically says that the computerized list

1 is the official voter registration list for the
2 conduction of all elections. So to me, that's
3 definitive that SVRS, not any other system, is the
4 system of record.

5 MR. JOHN: That's definitive as to who gets to
6 come vote, I would argue, but that's quite
7 different than the level of proof that it takes as
8 to whether or not somebody is a Democrat, which is
9 whether they voted in a primary.

10 I'll give you an example. Back when Doris
11 Anne Sadler was the clerk in Marion County, there
12 was an election -- and this is no besmirching of
13 Doris Anne. She's a good friend. But there was an
14 election where they forgot, the staffing at many of
15 the election places forgot to actually mark down
16 partisan pull. And so if you look back on many of
17 us that voted in that election, there is not a
18 partisan vote indicated for the primary even though
19 people did vote in the primary.

20 CHAIRMAN OKESON: So how do you reconcile
21 that?

22 MS. WARYCHA: Well, there's a statute that
23 says if there's a mistake by -- I don't know it off
24 the top of my head; I can find it here -- that says
25 if there was a mistake by staff, that that wouldn't

1 count against the voter, but I don't know of any
2 mistake --

3 MR. JOHN: So in this case, you need evidence.

4 MS. NUSSMEYER: But beyond what the co-general
5 counsel is stating, the counties are the official
6 record keeper, and they use the Statewide Voter
7 Registration System not only to update and merge
8 voter registration records in the voter
9 registration offices, identifying vote history, but
10 if a person voted absentee, we have an absentee
11 module that's been part of the system, and Mr. King
12 can confirm, I think since the beginning,
13 2005-2006, that would show if an absentee ballot
14 was sent to an individual and if it was returned,
15 if you requested an absentee in a primary election,
16 what political party, and all of that would be
17 captured in a person's entire playbook, if you
18 will, within the registration system.

19 So anytime your registration is canceled or
20 updated, that information is stored within the
21 system, and you can go through that hierarchy and
22 look at that level of registration detail, if
23 necessary.

24 MR. KING: Mr. Chairman, I can confirm the
25 statement that my counterpart has made regarding

1 the absentee module and its presence in SVRS since
2 it was established in December 2005.

3 MS. PYLE: I guess I have a question for
4 staff. Haven't, in previous years, we have found
5 evidence that there's been not listed things on the
6 SVRS and we've ruled in that manner? I'm just
7 asking for a precedent here.

8 MS. WARYCHA: I personally can't comment, but
9 I see Matthew Kochevar raising his hand as well.

10 MR. KOCHEVAR: I know it has been alleged. I
11 believe it was alleged in the challenge hearing in
12 2022, but I don't know -- I do not recall, on just
13 my memory here, if the Commission ever got to the
14 bottom of that, the person who made that allegation
15 as part of their defense, what happened with that.
16 But it's come up before. It's come up before in
17 these challenge settings. It's come up before,
18 voters complaining to their county voter
19 registration officials, which is why we have the
20 section that Valerie is referring to. I forget the
21 section myself as well.

22 MS. WARYCHA: I found it. It's 3-8-1. Hang
23 on. I think it's, like, 3-8-1-2.

24 MS. NUSSMEYER: While Valerie is looking that
25 up, my recollection to that case too was that I

1 think it was a female candidate who went to the
2 county and looked at the old paper poll books that
3 the county still had maintained even though they
4 could have destroyed them. We have electronic poll
5 books now that create reports and information that
6 you could pull to gather that information, and I
7 think she actually went and found one vote history
8 or one election where it was improperly recorded
9 but didn't have a second.

10 But I could be misremembering, but I do
11 distinctly remember her talking about going to the
12 Hendricks or Hancock County, one of the H counties,
13 and looking through the whole list to see if she
14 could identify whether or not she had voted in
15 those past elections.

16 MS. WARYCHA: Matthew, the code I was looking
17 for earlier was 3-8-1-1.1. That's the filing
18 errors, but I think that's really more -- I don't
19 know that that really covers VR now that I look at
20 it again.

21 CHAIRMAN OKESON: Well, what's unique, at
22 least amongst what we've heard thus far today, is
23 there's competing information here. Right? So you
24 have -- and, again, I don't know anything about
25 SmartVAN. I don't know what it is. But at least

1 there's some documentation that -- and what I
2 wonder is what level of -- in full disclosure, I
3 worked at the secretary of state's office during
4 the implementation of SVRS, so I'm curious about
5 the fallibility, the vulnerability of data in, data
6 out. I'm just curious if there's any other type of
7 search criteria, anything that could be entered
8 that might produce different results. We haven't
9 had anyone produce anything, to my knowledge that
10 we've heard these cases, where some other system
11 says, oh, yeah, they voted.

12 MS. WARYCHA: In recent years, the counties
13 have been using electronic poll books, and an
14 electronic poll book, they just do a data pull
15 straight into SVRS. So you're really, since we've
16 moved away from paper, I think, less likely to have
17 mistakes with the electronic poll book.

18 So I think you could go back and ask the
19 county to pull electronic poll book records that
20 they used to put into the Statewide Voter
21 Registration System, would be the only thing I
22 could think of.

23 MS. PYLE: I just want to clarify. This says
24 "P" here on the primary. Does that just mean she
25 pulled a Democrat ballot?

1 CHAIRMAN OKESON: That's what I was asking
2 her. I don't know what the --

3 MS. GRAVES: At least to my understanding,
4 that P signifies primary.

5 MS. PYLE: Okay. So it doesn't indicate
6 Democrat or Republican. Or is this only reporting
7 Democrat stats?

8 CHAIRMAN OKESON: So this ledger over here,
9 what I think the A means is this precinct
10 designation over here, if I'm guessing.

11 VICE CHAIRMAN OVERHOLT: I don't think there's
12 a relationship.

13 CHAIRMAN OKESON: Between this and this?

14 VICE CHAIRMAN OVERHOLT: I was just looking at
15 that. I don't think that's a ledger. I was trying
16 to make this mean something over here.

17 CHAIRMAN OKESON: Because there's a P up in
18 the general category.

19 MS. PYLE: Could it be in person, an in-person
20 vote versus absentee?

21 CHAIRMAN OKESON: Oh, okay.

22 MR. JOHN: Yeah. That's probably right, in
23 person, correct.

24 CHAIRMAN OKESON: Yeah. What would the E
25 stand for?

1 MS. NUSSMEYER: So you wouldn't know
2 necessarily what the political party was.

3 MR. JOHN: Yeah. E would be early, P would be
4 in person on Election Day, and A would be absentee.
5 That would make sense. I'll be honest, I haven't
6 been tinkering with that.

7 CHAIRMAN OKESON: Is there anything -- well,
8 that's a good question, whoever just said that. Is
9 there anything on here that discerns party
10 affiliation?

11 MS. NUSSMEYER: I think this speaks to
12 co-counsel's point, and that is Marion County has
13 been using e-poll books for a number of years now,
14 as I understand, when they moved to vote centers.

15 CHAIRMAN OKESON: Yeah.

16 MS. NUSSMEYER: And so you could go back to
17 the county and ask them perhaps to pull the report
18 to identify if that's what the P means. I'll be
19 honest with you, I'm about 13, 14 years removed
20 from the VAN. The last time I used it it was an
21 access database, so it looks a lot different than
22 when I would have used it a million moons ago.

23 But that would be a place to start with, the
24 Marion County clerk's office, to see if they have
25 anything on these e-poll book reports that would

1 show that Ms. Graves voted in the primary election
2 in person and what party ballot she pulled, at
3 least for those -- I don't know about 2016, but at
4 least for 2020 and 2018. I don't remember the year
5 they went to vote centers.

6 MS. CELESTINO-HORSEMAN: So you're saying that
7 she voted Democrat in the municipal primary in
8 2023. And when did she vote in another Indiana --
9 pull a Democratic ballot in an Indiana primary?
10 What year was it?

11 MR. JOHN: For sure, 2012. And you said you
12 voted in person in that one?

13 MS. GRAVES: Absentee.

14 MR. JOHN: Absentee. She's tried to
15 reconstruct the others. She thinks that she had
16 voted absentee in --

17 MS. CELESTINO-HORSEMAN: Okay. Because on the
18 report you gave us, the VAN report, it doesn't
19 reflect anything in 2012.

20 CHAIRMAN OKESON: Yeah, that's right.

21 MR. JOHN: So 2016 and 2018.

22 MS. GRAVES: The other years that I voted
23 absentee were 2016 and then again in 2018.

24 MS. CELESTINO-HORSEMAN: Well, what we're
25 looking for, though, is where you voted in an

1 Indiana primary.

2 MS. GRAVES: Those were for Indiana.

3 MR. JOHN: And if you look at --

4 VICE CHAIRMAN OVERHOLT: You were registered
5 to vote in California in 2018.

6 MR. JOHN: Correct. But if you look in the
7 packet --

8 VICE CHAIRMAN OVERHOLT: I don't dispute that
9 you're a Democrat. That's not really --

10 CHAIRMAN OKESON: That's not an issue, yeah.

11 VICE CHAIRMAN OVERHOLT: But as you've been
12 sitting here most of the day, you've heard that
13 it's either the two most recent primaries in
14 Indiana or the certification.

15 MR. JOHN: Well, no, it's not the two most
16 recent primaries. It's the two --

17 VICE CHAIRMAN OVERHOLT: Sorry. I was
18 paraphrasing. I know what it is.

19 MR. JOHN: But some people misinterpret that.
20 That's why -- sorry.

21 MS. CELESTINO-HORSEMAN: It's been a long day.

22 VICE CHAIRMAN OVERHOLT: It's been a long day.
23 Let's not start talking about what the statute
24 says. Anyway, so, yes, the two most recent primary
25 votes in which -- two most recent primaries in

1 which you voted in Indiana, so other states
2 wouldn't count, or the certification from the party
3 chair. I mean, that's the -- so I'm not disputing
4 your being a loyal Democrat at all. I'm looking at
5 what the statute --

6 MR. JOHN: I'm sorry. I hadn't page numbered
7 these, but if you look, there are three
8 cancellations there.

9 VICE CHAIRMAN OVERHOLT: I see that.

10 MR. JOHN: And the only things that are really
11 reflective --

12 VICE CHAIRMAN OVERHOLT: You need to go to the
13 microphone.

14 MR. JOHN: If you look at the SVRS printout,
15 it reflects three cancellations of her voting
16 record. And I would suggest that potentially that,
17 in the course of it -- so it shows 2012. It would
18 be -- she says that she voted in 2012, yet there's
19 no evidence of 2012. So is she -- I mean, is she
20 lying right now that she voted in 2012? I really
21 doubt that.

22 And so the question is, if it wasn't there, I
23 might suggest that if, in fact, it really -- if you
24 can't take the -- if we're going to engraft that it
25 has to -- well, I don't think we should engraft

1 into the system that SVRS is the sole and final
2 arbiter because data systems are fallible. And the
3 idea is to make sure that somebody is truly a
4 Democrat, not that they're switching parties to run
5 as a Democrat or switching parties to run as a
6 Republican.

7 But I would suggest that, if you can't rule
8 for her now, perhaps you table this and we seek
9 from the Marion County Voter Registration Board,
10 Election Board the actual 2012 records.

11 CHAIRMAN OKESON: We've got a deadline
12 tomorrow.

13 MS. PYLE: No, two days.

14 CHAIRMAN OKESON: Two days.

15 MR. JOHN: But I would argue we've given
16 plenty of evidence to support a ruling on behalf of
17 Ms. Graves.

18 MS. CELESTINO-HORSEMAN: Counselor,
19 Ms. Graves, I have done some reading about you
20 online on some things. I find you to be a very
21 impressive young lady. And I hope no matter what
22 happens here today that you will go forward because
23 our community needs more young women like you to
24 serve as role models and leaders.

25 Unfortunately, we have been saddled with this

1 law that changed recently, and as a result of it,
2 I'd be home already right now if it weren't for
3 this law. You have a most capable counselor who
4 has done the best that he can, but the evidence
5 that we have here today is just -- it's incomplete.
6 We're going back to 2012 for a primary, and we have
7 a deadline. In two days, by noon, we have to
8 decide all these challenges. So it gets to be a
9 real challenge to try and do all of this.

10 CHAIRMAN OKESON: Let me delve into that a
11 little further. You made a comment about going to
12 the Marion County clerk's office.

13 MR. JOHN: I mean, if, in fact -- I mean, we
14 haven't checked. I don't know whether those --
15 because that would have been paper poll books, by
16 the way, that you would have been dealing with,
17 although she said she voted absentee, so I'm not
18 sure where that record -- maybe the co-director
19 would remember. Were you there back then, 2012?

20 MS. CELESTINO-HORSEMAN: If you look in this
21 packet you gave us, the California voter
22 registration form, there is an Indiana voter
23 registration for 2012. And I think maybe you were
24 confused or something here because it says you
25 registered to vote in Indiana on June 19 of 2012,

1 which would have been after the primary. You want
2 to take a look at it and see what I'm talking
3 about?

4 I mean, it's a long time ago. Memory is not
5 always best. So I'm not in any way saying you're
6 intentionally. Maybe you got things confused.
7 Yeah, you voted in November of 2012, and maybe
8 that's what you're thinking about.

9 CHAIRMAN OKESON: Well, so take 2012 and throw
10 it in the corner for a second. You're saying '16,
11 '18, and '20 as well, correct?

12 MS. GRAVES: Yes, sir.

13 CHAIRMAN OKESON: What SVRS shows is '23,
14 right, just the one?

15 MS. GRAVES: Yes, sir.

16 VICE CHAIRMAN OVERHOLT: So the two of those
17 others, piecing this together, I mean, it just
18 seems like those '18 and '20 votes were California
19 votes because she was registered in California in
20 2018 and 2020.

21 I think the problem here is -- I mean, I know
22 what you're saying about the system because
23 otherwise we could be looking at all kinds of
24 stuff. And the VAN system, my understanding is,
25 that's something the Democratic Party pulls

1 together to figure out who they should really try
2 to get out to vote, but it's used for get out the
3 vote efforts, in part, I believe. And so the SVRS
4 is what, you know, we look at. Or, you know, if
5 people go to the county, they think there's been an
6 error, they go to the county clerk's office, get
7 their -- don't trust the system, go to that system
8 and see what it shows, and we don't have that.

9 So it really -- you know, what we've got
10 before us is one clear Indiana primary. The other
11 one you've talked about, 2012, isn't even reflected
12 on this VAN thing. And then we've got voter
13 registrations for California for two of the years
14 you're talking about, and in 2016 you might have
15 been in college in Florida. I mean, I don't know,
16 but I think the issue we've got here is that
17 there's not really anything supporting that we've
18 got a vote in two Indiana primaries.

19 CHAIRMAN OKESON: If they would have arrived
20 with information from the Marion County clerk's
21 office that contradicted SVRS, what we do then?

22 VICE CHAIRMAN OVERHOLT: Then I think we would
23 definitely consider that.

24 MS. GRAVES: I'd like to point out that during
25 2020, though I was technically in school, I was

1 living back -- I was displaced living back in
2 Indiana. So that might be -- due to the pandemic.

3 VICE CHAIRMAN OVERHOLT: Oh, that lovely
4 primary.

5 MS. GRAVES: Yeah. So I was, you know,
6 displaced at that time and want to highlight that.

7 MS. PYLE: So did you ever vote in California
8 in a primary?

9 MS. GRAVES: Yes.

10 MS. PYLE: So which one of these was that
11 vote?

12 MS. GRAVES: 2018.

13 MS. PYLE: 2018. Okay.

14 MS. CELESTINO-HORSEMAN: Okay.

15 CHAIRMAN OKESON: Is the clerk's office still
16 open?

17 MS. WARYCHA: Probably for another 30 minutes.

18 MS. NUSSMEYER: Well, the voter registration
19 office records vote history, unless you wanted to
20 look at the absentee information. Then the
21 Election Board would be able to identify if
22 anything were entered into the system for an
23 absentee.

24 MS. CELESTINO-HORSEMAN: So let me ask this
25 question. And I don't know the answer, so I'm

1 looking to our staff for advice. Let's say we gave
2 them additional time to go and get what they --

3 CHAIRMAN OKESON: That's kind of what I'm
4 curious.

5 MS. CELESTINO-HORSEMAN: Yeah, to go and see
6 what there is. And if they -- because they seem to
7 think that it's there. So if they go and get it,
8 if we take -- how would we handle that? Would
9 we --

10 MS. WARYCHA: Under AOPA, we could recess, if
11 that's what you're asking, and we just would have
12 to announce the time and the date that we're coming
13 back. And the other thing that Brad was just
14 pointing out is we also could do a motion to
15 reconsider at a later date and time. Obviously
16 it's only 30 minutes so not a lot of time.

17 MS. PYLE: Or maybe table it if we're doing
18 that and not make any sort of judgment on it. That
19 way it's not of record precedent-wise.

20 CHAIRMAN OKESON: I mean, I would be very
21 curious if they did come back with stuff from
22 Marion County. That opens a lot of stuff. This is
23 the only case we've heard, even including the last
24 time we went through this, where someone had some
25 competing data that said they did vote in

1 primaries. If they go to the clerk's office and
2 they said, no, this is what we've got, it's the
3 same as SVRS, that's what we have, then we have to
4 go on that, I think is what the consensus is. But
5 if there is something, the clerk says, oh, there it
6 is, that would create an interesting --

7 MS. CELESTINO-HORSEMAN: So if we don't vote
8 on this, take no action, the challenge fails,
9 right? So if we get evidence that you
10 distribute --

11 MS. PYLE: Couldn't we table it and recess?

12 MS. CELESTINO-HORSEMAN: Yeah. If we table it
13 and we don't reconvene by noon on the 29th, then
14 the challenge is denied -- dead. I'm sorry. Dead.
15 So we could give them a date, a time, whatever,
16 deadline to get us that information, which they
17 could send in to staff. Staff could disseminate it
18 to us via email.

19 VICE CHAIRMAN OVERHOLT: But we have to meet
20 to take action.

21 MS. CELESTINO-HORSEMAN: That's just it.

22 MS. WARYCHA: And be careful about ex parte.

23 CHAIRMAN OKESON: Let me ask you this: So if
24 there were record at the Marion County clerk's
25 office that these primary votes did occur, could

1 you do any type of contingent motion that says
2 should those records be produced prior to the 29th
3 at noon...

4 MS. WARYCHA: I didn't see anything about that
5 in AOPA.

6 CHAIRMAN OKESON: So we would have to come
7 back and vote on it at some point.

8 MS. WARYCHA: I believe that's correct, yes.

9 CHAIRMAN OKESON: Reconsider the matter.

10 MS. PYLE: I'm going to move that we table
11 this, that -- I guess this is a question for staff.
12 Can we order that evidence be served upon the
13 parties and that, if there's no evidence, that they
14 let us know so that we don't have to come back?

15 MS. WARYCHA: I don't think that's under AOPA.
16 And I'll be honest with you, this is pretty much
17 the only time that we're doing AOPA here, but I
18 haven't seen anything that would authorize that, so
19 to speak, in AOPA.

20 I would say that we still have a couple more
21 matters and they're down the street, so if you
22 wanted to give them the grace to go down there and
23 see what they can find out and come back within the
24 hour, that would be another option.

25 MS. CELESTINO-HORSEMAN: We have a member of

1 the Marion County Board of Voter Registration in
2 attendance -- a staffer in attendance today. What
3 time -- and I'm looking over here at Rick Sutton.

4 CHAIRMAN OKESON: Can you go over and
5 facilitate this?

6 MS. CELESTINO-HORSEMAN: What time --

7 MR. SUTTON: 4 o'clock.

8 MS. NUSSMEYER: The office closes at 4:00.

9 MS. PYLE: Can we vote to table this matter
10 for right now?

11 MS. NUSSMEYER: Could someone call over there
12 to see what they could pull together so that the
13 parties could get what they need and bring it back
14 to the office?

15 CHAIRMAN OKESON: That would be appreciated.
16 All right. So how do we do this, a motion to table
17 for 30 minutes?

18 MS. WARYCHA: I think that would be
19 appropriate if you want to say to move this to the
20 end of the business of the day.

21 CHAIRMAN OKESON: Just move it to the end?

22 MS. WARYCHA: Yes. That's how I would --

23 CHAIRMAN OKESON: Final agenda item.

24 MS. PYLE: I move to table this until -- or
25 move it to the end of the agenda.

1 VICE CHAIRMAN OVERHOLT: Second.

2 CHAIRMAN OKESON: All those in favor signify
3 by saying "Aye."

4 VICE CHAIRMAN OVERHOLT: Aye.

5 MS. CELESTINO-HORSEMAN: Aye.

6 MS. PYLE: Aye.

7 CHAIRMAN OKESON: Aye.

8 Okay. You've got 30 minutes.

9 MS. CELESTINO-HORSEMAN: Can they email the
10 records over?

11 MS. NUSSMEYER: That's actually my question
12 for the Commission and, I guess, for the attorneys
13 and both parties.

14 MS. WARYCHA: I'm sorry. I didn't hear the
15 question.

16 MS. CELESTINO-HORSEMAN: Hold one moment.

17 MS. NUSSMEYER: Are you comfortable with
18 receiving email from the office to print and
19 consider?

20 MS. WARYCHA: Yes. There's nothing in AOPA
21 that would prevent us from doing that.

22 MS. NUSSMEYER: And I think, I mean, besides
23 Mr. Sutton, Mr. John, or Ms. Anderson could call
24 over to the Marion County Voter Registration office
25 and speak to the Democratic and Republican

1 co-directors to pull together the records.

2 MR. JOHN: So are you thinking taking the
3 testimony of --

4 MS. NUSSMEYER: No. They could make a copy
5 out of SVRS and email it to us.

6 MS. WARYCHA: I would say that Mr. Kochevar
7 and I both have our computers, so if they do find
8 something, if they could email it to Matthew and I
9 both, that way we could share it with our
10 respective members.

11 CHAIRMAN OKESON: Okay.

12 MR. JOHN: Thank you.

13 CHAIRMAN OKESON: Next we have Camp v.
14 Bonahoom, Cause 2024-27, in the matter of the
15 challenge to Zachary Otto Bonahoom, candidate for
16 Republican Party nomination for State
17 Representative, District 82.

18 MS. WARYCHA: And just for matter of the
19 record, during our last recess, we got a notice of
20 appearance on behalf of Mr. Bonahoom from Mitchell
21 Harper. He is here in the audience, and this won't
22 appear in your binders, but both Counsel Kochevar
23 and I both have a copy of it for the record.

24 CHAIRMAN OKESON: Okay.

25 MS. BOHM: And I believe you also have a

1 notice of appearance for Christine Bohm for Derek
2 Camp.

3 MS. WARYCHA: Yeah. I'll get to that in just
4 a second. Sorry. This one wasn't in the binder,
5 so I'm kind of out of order here.

6 And so what we -- Matthew, is this a you
7 challenge?

8 MR. KOCHEVAR: No. This is a Republican
9 candidate.

10 MS. WARYCHA: Oh, okay.

11 CHAIRMAN OKESON: This is us.

12 MS. WARYCHA: Yes, it is. Okay. Here we go.
13 Sorry. The challenge is right here. It's in the
14 binder. It's a CAN-1 challenge that he does not
15 have the two-primary vote history as his most
16 recent primary was Democratic. He also doesn't
17 have his county chair certification to run. You
18 have printouts from the Statewide Voter
19 Registration System with his voter history, and
20 then let me see here, and then an appearance from
21 Mrs. Bohm as well, and then notice to both of the
22 representatives and the CAN-2.

23 CHAIRMAN OKESON: Okay. On behalf of
24 Mr. Camp, Ms. Bohm, go ahead.

25 MS. BOHM: Christine Bohm, C-h-r-i-s-t-i-n-e,

1 B-o-h-m.

2 Mr. Camp originally filed a challenge against
3 Zachary Bonahoom for State Rep, District 82,
4 two-primary rule, and he voted in 2020 as a
5 Democrat and no county certification. I think this
6 one is really easy.

7 CHAIRMAN OKESON: Do you have any
8 cross-examination of anything she had?

9 MR. HARPER: I do not.

10 CHAIRMAN OKESON: Okay. Please proceed.

11 MR. HARPER: We just had a friendly
12 conversation. We would both like to get back to
13 Fort Wayne before central Indiana gets pummeled
14 because I think it's supposed to --

15 MS. CELESTINO-HORSEMAN: State your name for
16 the court reporter.

17 MR. HARPER: Mitchell Harper, Fort Wayne,
18 Indiana, representing Zachary Bonahoom, who can be
19 available telephonically, but I don't think that's
20 necessary.

21 As I can see from the Commission, it's pretty
22 strictly ministerial when it comes to these
23 complaints. Mr. Bonahoom's entire voting record
24 prior to this, except, I think, in 2008 where there
25 was a hot Democrat primary, is all Republican. And

1 in 2011, he was the Republican candidate for city
2 clerk. I ran on the same ticket with him. He and
3 his family did yeoman's work doing telephone calls.

4 His dad is currently the Republican city
5 council attorney and himself a former candidate for
6 city council. And Zachary Otto Bonahoom's
7 grandfather, Otto Bonahoom, well-respected attorney
8 in Fort Wayne, was Republican State Representative
9 elected in 1962. His oral history is available
10 online through the State History museum and is very
11 interesting for anyone to listen to, and Otto is
12 very, very sharp.

13 The Bonahooms are a well-known and long-time
14 Republican family, well-known because they're from
15 the Middle East, from Lebanon, along with Syrian
16 immigrant families that came to Fort Wayne shortly
17 after the turn of the last century and part of a
18 large number of contributors to our community.

19 I would just say, I wanted to refer to -- and
20 this may be an empiric victory for the challenge
21 too, but I want to refer back to something that was
22 said during *Martin v. Nicholson* where it was said
23 that it's instructed that challenges have to be
24 filed, that it is not the election boards or the
25 clerks who automatically check voting records on

1 primaries and throw out people trying to file for
2 election.

3 That certainly was not true in Allen County in
4 2014 when Joe Kelsey, the current Republican mayor
5 of Woodburn, attempted to run for delegate, and his
6 candidacy for delegate was thrown out because he
7 didn't meet the two-primary rule. Two years later,
8 I understand, the county clerks of Indiana were
9 instructed at their annual meeting that that wasn't
10 to occur. Challenges needed to happen.

11 The whole process of election law changes
12 since the mid 1980s, from two-year to four-year
13 precinct committeeman staggered elections, two-year
14 to four-year elections for county chairs, free
15 appointment across the county for anyone to be a
16 precinct committeeman when it used to be restricted
17 to the precinct and then was expanded to the ward
18 or township, it's been a long, long course to where
19 we are today where all sorts of folks are not being
20 listened to.

21 And I think the young lady that came before,
22 she should be taken at her word or you're going to
23 end up disenfranchising not only young people who
24 are 18 or 19 and it's a legal impossibility to
25 vote, or young persons like her who follow their

1 athletic pursuits out of the state.

2 Having said that, I'll close and let the
3 Commission make their motion.

4 CHAIRMAN OKESON: Do you have any
5 cross-examination?

6 MS. BOHM: No.

7 CHAIRMAN OKESON: So, Mr. Harper, one quick
8 question. You don't dispute that the 2020 primary
9 election he voted Democrat?

10 MR. HARPER: He voted Democrat. I think we
11 probably know why, because it was a little more
12 interesting at that time.

13 CHAIRMAN OKESON: Okay.

14 MS. PYLE: No county chair certificate?

15 MR. HARPER: No.

16 CHAIRMAN OKESON: Does anyone want to make a
17 motion?

18 MS. PYLE: I would move to uphold the
19 challenge.

20 CHAIRMAN OKESON: Is there a second?

21 Hearing none, I'll offer a second to that
22 motion.

23 We have a motion and a second to uphold the
24 challenge in Cause 2024-27.

25 Any questions, discussion?

1 Hearing none, all those in favor signify by
2 saying "Aye."

3 VICE CHAIRMAN OVERHOLT: Aye.

4 MS. CELESTINO-HORSEMAN: Aye.

5 MS. PYLE: Aye.

6 CHAIRMAN OKESON: Aye.

7 The "ayes" have it. The motion carries to
8 uphold the challenge. The Election Division is
9 directed not to include Zachary Otto Bonahoom in
10 the certified list of primary candidates sent to
11 county election boards and to indicate the name of
12 this candidate not be printed on the ballot.

13 Thank you.

14 Hathaway v. Breaux, Cause 2024-28, in the
15 matter of the challenge to Jean Breaux, candidate
16 for Democratic Party nomination for State Senate,
17 District 34.

18 Mr. Breaux here?

19 Matthew.

20 MR. KOICHEVAR: Yes. I'm sorry. The hours are
21 getting to me.

22 Mr. Chairman and members of the Commission,
23 you will find in your meeting binder under this
24 cause a CAN-1 candidate challenge filed by the
25 challenger. In addition, it's just part of the

1 record, but we did receive an email from the
2 challenger asking to essentially dismiss their
3 challenge. But then hours after receiving that
4 email, we received another email from the
5 challenger saying that they were rescinding -- I'll
6 just use the word "rescinding" -- rescinding that
7 request. Beyond that is the other standard items
8 that have been in this binder, a copy of the
9 candidate's declaration of candidacy and the
10 receipt showing he filed a statement of economic
11 interest, notice of hearing, and the documents from
12 the Division showing that the notice of hearing was
13 sent to the parties.

14 CHAIRMAN OKESON: Okay. Are all the parties
15 here?

16 MS. McSPADDEN: I'm here on behalf of
17 Ms. Breaux.

18 CHAIRMAN OKESON: And is the challenger
19 Ping-Ponging back and forth on email here?

20 Mr. Hathaway?

21 VICE CHAIRMAN OVERHOLT: I move to dismiss the
22 challenge.

23 MS. CELESTINO-HORSEMAN: Second.

24 CHAIRMAN OKESON: I have a motion to dismiss
25 and a second on Cause 2024-28.

1 Any discussion? Any questions?

2 Hearing none, all those in favor signify by
3 saying "Aye."

4 VICE CHAIRMAN OVERHOLT: Aye.

5 MS. CELESTINO-HORSEMAN: Aye.

6 MS. PYLE: Aye.

7 CHAIRMAN OKESON: Aye.

8 The "ayes" have it. The motion to challenge
9 is dismissed. The Election Division is directed to
10 include the name of Jean Breaux on the certified
11 list of candidates to be printed on the ballot.

12 Roy v. Dossett, Cause 2024-29, in the matter
13 of the challenge to B. Nicholas Dossett, candidate
14 for Republican Party nomination for Warrick County
15 Superior Court 2.

16 MS. WARYCHA: In your binder you will find the
17 CAN-1 challenge. The challenge to Mr. Dossett's
18 candidacy says that he does not meet the
19 requirements to run for the Republican Party. It
20 says see attached. They're challenging off of
21 primary vote history or lack of chairman
22 certification. There is a printout of his SVRS
23 record. We've got the CAN-2 statement of economic
24 interest, notice served to the parties as well.

25 CHAIRMAN OKESON: Okay. I recognize Mr. Roy,

1 the challenger, for your five-minute presentation.

2 MR. ROY: Thank you, Chair, Commission. My
3 name is Brett Roy, B-r-e-t-t, last name is Roy,
4 R-o-y.

5 As indicated in my filing to challenge
6 Mr. Dossett, he has not voted in the last two
7 primaries as a Republican, nor has he ever voted as
8 a Republican according to his SVRS, and I don't
9 believe he has the qualifications -- the
10 certificate from the Republican chairman, Mike
11 Griffin.

12 So with that, I would ask that you remove him
13 from the ballot.

14 CHAIRMAN OKESON: Would you like to
15 cross-examine any statements?

16 MR. DOSSETT: No cross. Thank you.

17 CHAIRMAN OKESON: You have five minutes.

18 MR. DOSSETT: I appreciate it, Chairman,
19 Commissioners.

20 CHAIRMAN OKESON: Do you dispute any of the
21 evidence?

22 VICE CHAIRMAN OVERHOLT: He needs to state his
23 name.

24 CHAIRMAN OKESON: Sorry.

25 MR. DOSSETT: Bronson Nicholas Dossett,

1 B-r-o-n-s-o-n, N-i-c-h-o-l-a-s, D-o-s-s-e-t-t.

2 I do not dispute what was put in front of the
3 Commission, though I do have an argument as to 3 --
4 the election code that's been at issue in the Rust
5 case and I think most of the cases put forward in
6 front of the Commission today. I did actually vote
7 as a Republican, contrary to what was just said. I
8 actually voted in the '22 primary as a Republican.
9 I pulled the Republican ticket.

10 CHAIRMAN OKESON: That's not reflected in
11 this --

12 MR. DOLE: I -- I didn't mean to interrupt. I
13 apologize. I do have evidence as to that vote that
14 I would like to present.

15 CHAIRMAN OKESON: Sure. We'd like to see it.

16 MR. DOLE: I'm marking first as Exhibit 1 the
17 certificate of error.

18 CHAIRMAN OKESON: But even that being the
19 case, it's only one, right?

20 MR. DOSSETT: Yes.

21 CHAIRMAN OKESON: In the previous primary, you
22 would agree with the State Voter System?

23 MR. DOSSETT: Correct. I agree and I do not
24 contest the fact that, even if this vote is
25 counted, it still is only one. I do not meet that

1 prong of the code.

2 But what I would like to do is, if I can,
3 address that vote specifically because, when I
4 originally spoke to the party chairperson in
5 Warrick County, what I was told was, as long as my
6 most recent vote was on the Republican ticket, then
7 he would write me in. That's what I was told.

8 CHAIRMAN OKESON: Did he write you in?

9 MR. DOSSETT: He did not because it's not
10 reflected in my voting history. And so first thing
11 I would like to do is see if I can address that
12 first. That is a certificate of error that I have
13 provided showing that there was an issue with my
14 vote on that day. That is Exhibit 1.

15 Secondly, what I'm marking as Exhibit 2 --

16 CHAIRMAN OKESON: All Exhibit 1 says is you
17 were not on the poll list.

18 MR. DOSSETT: Correct. So Exhibit 2 shows why
19 I was not on the poll list, as their reason for me
20 not being there. And, in fact, at the time I lived
21 in Vanderburgh County, and about halfway down the
22 page, it says "Pulled in error by Warrick County,"
23 meaning that, when I went to vote at the place that
24 I had voted for the previous four probably
25 elections, Warrick County had erroneously pulled me

1 as a registered Warrick County voter when I had not
2 lived there for six years or longer.

3 Nextly, what I'm marking as Exhibit 3 is the
4 acknowledgment notice given to me of my
5 registration in Vanderburgh County, which, again,
6 just shows that Warrick County pulled my status as
7 a voter in error.

8 And the last exhibit that I will provide,
9 marking as Exhibit 4, is a copy of the certified
10 minutes from the Vanderburgh County Election Board
11 where they addressed my vote. And I would point
12 you to page 4. And I apologize for clearing my
13 throat. I'm still getting over an illness. Page
14 No. 4, I've highlighted where they actually
15 specifically addressed my vote at the election
16 meeting, and it says in that paragraph that the two
17 counties essentially talked to each other, that
18 they had fixed the issue with my vote, and that,
19 quote/unquote, I was able to vote normally.

20 Now, I cast that vote. I went to the same
21 poll I always did. I pulled the Republican ticket
22 because on that ticket was a primary race between
23 two prosecutors, and at the time I was a major
24 felony public defender in Vanderburgh County. It
25 directly affected my decision. So I voted in that

1 primary because it directly affected me.

2 Now, I never knew until I met with the party
3 chair and until he pulled my voting record that
4 that vote was never counted. And I have given you
5 everything to show that I went. I was there. I
6 cast my vote. I was registered to vote. They
7 pulled my -- Warrick County pulled me in error. I
8 cast my vote on the Republican ticket, and you have
9 the minutes in front of you where they talk about
10 it and say that I was able to vote normally and
11 they did not count it. If that vote was counted, I
12 would have been written in by the chair.

13 CHAIRMAN OKESON: Okay. So that's the end of
14 your time.

15 Does anybody want to vote to afford more?

16 MR. DOSSETT: I would appreciate it, just a
17 couple of minutes.

18 VICE CHAIRMAN OVERHOLT: I'd move for
19 two minutes.

20 MS. PYLE: Second.

21 CHAIRMAN OKESON: All those in favor.

22 Aye.

23 VICE CHAIRMAN OVERHOLT: Aye.

24 MS. CELESTINO-HORSEMAN: Aye.

25 MS. PYLE: Aye.

1 CHAIRMAN OKESON: Two more minutes.

2 MR. DOSSETT: Couple things. I would like to
3 incorporate the arguments made earlier on behalf of
4 John Rust, and obviously there's been a lot of
5 discussion about that. I would also move to
6 incorporate the pleadings from the underlying case
7 if the Commission would do that.

8 I do think that my position is a little bit
9 different. I filed for candidacy to run for judge
10 in Warrick County. I'm not afforded the
11 opportunity to move to a different county and try
12 to get some other party chair to write me in or
13 otherwise.

14 Also, I do think that the statute, as it
15 pertains to somebody running for judge, the statute
16 requires two votes, as we know, on a particular
17 primary. Except for judges, the judicial canons
18 control and the judicial code of ethics control
19 that you are not to be political, and, in fact, it
20 is unethical for you to do so. So the statute is
21 directly contrary to the nature of the position
22 itself.

23 And so when I have a party chair that tells me
24 that he'll write me in as long as my vote was
25 there, I know I cast the vote. You have in front

1 of you everything that says I cast the vote, and I
2 was put under oath earlier. I have an affidavit
3 that I can sign in open court saying it was on the
4 Republican ticket. I would have been written in if
5 that vote was counted. It was not. That error is
6 not my fault.

7 CHAIRMAN OKESON: Did you go back to the
8 county chair and ask him to write you in?

9 MR. DOSSETT: I did. I provided all this
10 information to him.

11 CHAIRMAN OKESON: What did the county chair
12 do?

13 MR. DOSSETT: He did not write me in. The
14 sequence of events is I went -- when he ran my
15 record --

16 CHAIRMAN OKESON: You don't deny that that's
17 his prerogative, though, in that position to decide
18 whether to write you in or not?

19 MR. DOSSETT: He decided not to write me in
20 when it got closer to the time for the final. So
21 when we had this conversation, this was back in
22 September. What I was told was it's not a no, but
23 let's see how you do over the next few months. So
24 what I did was I went to all the events. I went to
25 the breakfast with the Republican Party.

1 I would really like another 60 seconds or so
2 to finish this up.

3 MS. CELESTINO-HORSEMAN: He's answering your
4 question.

5 CHAIRMAN OKESON: Fair enough. You can answer
6 the question. You've got 30 more seconds.

7 MR. DOSSETT: Sure. I can wrap it up.

8 CHAIRMAN OKESON: Go.

9 MR. DOSSETT: I went to every single event. I
10 walked in the parade with the party. I did
11 everything, and then at the end I was still told
12 no, even though I provided the documents.

13 Now, all I'm asking for is for the Commission
14 to take a look at this and actually count that vote
15 or at least find that I voted, and I, under oath,
16 am telling you I voted on the Republican ticket.
17 And if that is the case and if that vote -- if the
18 Commission can make a finding that I did actually
19 cast a Republican vote, then I know that there's a
20 deadline in two days, but I would ask for at least
21 some time to talk to the chair and say I have a
22 finding from the Indiana Election Commission.

23 CHAIRMAN OKESON: I don't think that there's
24 anything here that states that you voted in the
25 Republican primary, just that there was a voter

1 registration error that was rectified. And
2 according to the meeting minutes, it stated "The
3 voter should be able to vote. Mark Toone informed
4 the board the issue had been addressed and the
5 voter was able to vote normally on Election Day. A
6 certificate of error has been generated to address
7 the registration issue."

8 I don't see anything that suggests which party
9 in that primary vote that you voted for.

10 MR. DOSSETT: Correct. And that's why I am
11 here, and I have provided -- or I have an affidavit
12 that I can sign in open court today, and I am under
13 oath right now, and I am telling you that is what I
14 voted on.

15 CHAIRMAN OKESON: Even considering that to be
16 the case, it's the previous two primary votes --

17 MR. DOSSETT: I understand.

18 CHAIRMAN OKESON: -- which the previous one
19 was Democrat.

20 MR. DOSSETT: Correct.

21 CHAIRMAN OKESON: And the county chair, for
22 whatever reason -- that's up to the county chair --
23 failed to write you in as a candidate.

24 MR. DOSSETT: Right. And I think --

25 CHAIRMAN OKESON: So I'm not sure what would

1 be left for us to do.

2 MR. DOSSETT: What I'm asking is, I can have
3 that rectified if the Commission is willing to make
4 a determination as to my vote in '22 that was not
5 counted.

6 CHAIRMAN OKESON: I don't know that we can do
7 that, though. I mean --

8 MS. CELESTINO-HORSEMAN: What you're asking is
9 that you be allowed to amend your filing, which, as
10 I've been told, the deadline was February 9th.

11 MR. DOSSETT: Right.

12 MS. CELESTINO-HORSEMAN: So we can't -- I
13 don't think we have the authority to go back and
14 say, okay, you can come in and amend now that you
15 have this. So, you know, we just don't have the
16 authority to be able to do that for you.

17 MR. DOSSETT: And I understand. And so I
18 guess my only question then, if the Commission
19 can't or is unwilling to do that, is to make a
20 finding as to my '22 vote because it will affect me
21 come the next election in two years.

22 CHAIRMAN OKESON: You've introduced all this
23 information into the record which is available for
24 public consumption, but what's before us is a
25 challenge. We're hearing a challenge as to your

1 ability or qualification to be on the ballot, and
2 that's what we're voting on. So there's nothing
3 really more we can do to make the record than what
4 we've done.

5 MR. DOSSETT: I understand. I just had --
6 this is the only avenue which I can take to have
7 that vote counted in some way or at least make a
8 record as to the vote.

9 MS. CELESTINO-HORSEMAN: Can you go back to
10 the election board and ask? They gave you the
11 error. They said your vote should be cast that
12 way.

13 MR. DOSSETT: I did ask them.

14 MS. CELESTINO-HORSEMAN: Okay. And you can go
15 back to the poll book. The poll book should
16 indicate --

17 VICE CHAIRMAN OVERHOLT: But he's still only
18 got one primary.

19 MS. CELESTINO-HORSEMAN: I know, but for his
20 future.

21 MS. NUSSMEYER: Because the counties use
22 e-poll book, there is no way to push certificate of
23 errors to the poll books, which is why it likely
24 did not record or forward it on to other
25 documentation other than the poll list because it's

1 all electronic. There's no way to push that
2 information.

3 MS. CELESTINO-HORSEMAN: I mean, you raise a
4 very interesting issue, an as-applied challenge.
5 If I were doing con law on this one...

6 MR. DOSSETT: Well, and when I went to vote,
7 obviously I was there, and I did vote that day.
8 But I pulled the Republican ticket, but even on the
9 log -- because they went back and looked at the
10 log, and there was nothing written because I was
11 pulled in error by Warrick County, so there's
12 nothing showing --

13 CHAIRMAN OKESON: No, I understand that.
14 Unfortunately, the burden is on you to secure that
15 letter from the county chair, and you did not do
16 that.

17 MR. DOSSETT: I understand.

18 CHAIRMAN OKESON: So anyone want to make a
19 motion?

20 MS. PYLE: I would move to uphold the
21 challenge.

22 CHAIRMAN OKESON: Second it.

23 Any further conversation? Any questions?

24 All those in favor signify by saying "Aye."

25 VICE CHAIRMAN OVERHOLT: Aye.

1 MS. CELESTINO-HORSEMAN: Aye.

2 MS. PYLE: Aye.

3 CHAIRMAN OKESON: Aye.

4 The "ayes" have it. The motion to challenge
5 is upheld. The Election Division is directed not
6 to include B. Nicholas Dossett on the certified
7 list of primary candidates sent to the county
8 election boards and to indicate the name of this
9 candidate is not to be printed on the ballot.

10 Thank you.

11 MR. ROY: Thank you.

12 CHAIRMAN OKESON: Weingarten v. Banks, Cause
13 2024-31, in the matter of the challenge to Jim
14 Banks, candidate for Republican Party nomination
15 for United States Senator.

16 MS. WARYCHA: And in your binder you will see
17 the very first document on this is a wish to
18 withdraw the complaint by Mr. Weingarten, and I do
19 not believe he is here today. So between that, I
20 think, based off previous precedent --

21 CHAIRMAN OKESON: Motion to dismiss it?

22 MS. WARYCHA: Uh-huh.

23 CHAIRMAN OKESON: Is there a motion to
24 dismiss? Litany, you want to make a motion?

25 MS. PYLE: I would move to dismiss.

1 CHAIRMAN OKESON: Is there a second?

2 VICE CHAIRMAN OVERHOLT: Second.

3 CHAIRMAN OKESON: Having a motion and a second
4 to dismiss, all those in favor signify by saying
5 "Aye."

6 VICE CHAIRMAN OVERHOLT: Aye.

7 MS. CELESTINO-HORSEMAN: Aye.

8 MS. PYLE: Aye.

9 CHAIRMAN OKESON: Aye.

10 The motion is dismissed. Cause 2024-31 has
11 been dismissed. The Election Division is directed
12 to include the name of Jim Banks on the certified
13 list of candidates to be printed on the ballot.

14 Do we want to go to the advisory opinion or do
15 we want to pick back up on that cause first?

16 MS. WARYCHA: So I would go ahead and do the
17 advisory opinion and then bring them back in
18 because it looks to me that they're still doing
19 some work.

20 CHAIRMAN OKESON: Next on the agenda is the
21 advisory opinion request from the Honorable
22 Victoria Garcia Williams, Indiana State
23 Representative, and the Honorable Andrea Hunley,
24 Indiana State Senator.

25 Commission members have received a request for

1 an advisory opinion to be issued by this body
2 regarding a campaign finance matter, which is
3 described further in the material in our binders.

4 MS. GARCIA-WILBURN: Can I correct the name,
5 please. It's the Victoria Garcia-Wilburn, not
6 Williams.

7 CHAIRMAN OKESON: My apologies.

8 MS. GARCIA-WILBURN: Thank you.

9 MS. HUNLEY: All right. Well, thank you.

10 CHAIRMAN OKESON: Hold on just a second. I
11 don't think this is a matter that follows hearing
12 procedures, so there's no testimony to be given.

13 MS. CELESTINO-HORSEMAN: But they can make an
14 opening statement.

15 CHAIRMAN OKESON: I'll make a motion to afford
16 each of you two minutes to make a presentation.

17 Is there a second?

18 VICE CHAIRMAN OVERHOLT: Second.

19 CHAIRMAN OKESON: All those in favor.

20 Aye.

21 VICE CHAIRMAN OVERHOLT: Aye.

22 MS. CELESTINO-HORSEMAN: Aye.

23 MS. PYLE: Aye.

24 MS. HUNLEY: Thank you so much. I know that
25 you all have been doing a lot of really important

1 work today, and we really appreciate it.

2 CHAIRMAN OKESON: Will you, for the record,
3 please state your name.

4 MS. HUNLEY: Yes. I'm Andrea Hunley, State
5 Senator for District 46, and I'm in my second term,
6 second session here.

7 And we have brought before you today a request
8 for an advisory opinion. We know that advisory
9 opinions are granted by this Commission from time
10 to time, and we are looking for an advisory opinion
11 on whether or not we can use campaign finances to
12 provide childcare support or dependent care
13 support.

14 We know that in the past that the Federal
15 Election Commission has approved for federal
16 candidates to use their campaign finances in this
17 way on a unanimous bipartisan vote, and so we are
18 hoping we can get an advisory opinion in this way.
19 We have talked with the secretary of state's
20 office. They recommended that this is the route
21 that we take. We don't think that it needs to be
22 done legislatively since you all have the power.

23 And right now our election campaign finance
24 laws are written purposely ambiguously to ensure
25 that candidates have opportunities to spend funds

1 as needed. We know that in 2001 it was determined
2 to allow reimbursement here in Indiana for lost
3 wages and salaries of a candidate or their
4 household member resulting directly from campaign
5 activity, so we feel like this kind of falls in
6 that same vein. And that was done through an
7 advisory opinion at that time, so we're hoping that
8 this will follow the same suit.

9 We know that having diverse candidates on the
10 ballot is really important. It helps represent our
11 entire state. And we think that caregivers are
12 especially worthy of being on the ballot, and we
13 wouldn't want to do anything to preclude them. And
14 so having this access to campaign finance funds in
15 this way will help make candidacy a little bit
16 easier, so we would appreciate your consideration
17 of this. Thank you.

18 CHAIRMAN OKESON: Thank you, Senator.

19 MS. GARCIA-WILBURN: Thank you. Again,
20 Victoria Garcia-Wilburn. Thank you for your time
21 today and the ability to give some brief remarks.
22 I just want to state I really appreciate the work
23 done by this committee. I appreciate how broad our
24 election finance laws are so that we can capture
25 anyone that has a desire to run for state office.

1 We're finding ourselves in a bit of a
2 quandary. There's a sandwich generation rising.
3 Many of us are still rearing children while taking
4 care of older adult parents. And so because of
5 that, we feel like it would be necessary to, at
6 this time, join over 30 other states in explicitly
7 allowing dependent care expenses to be used through
8 our campaign finance funds.

9 We know that people that come to Indiana come
10 to this great Hoosier state, many of them might not
11 have family to assist with childcare expenses.
12 Many of them might be first-generation Hoosiers
13 forming a pathway for others. And so we believe,
14 because we have such a strong commitment to
15 freedoms and constitutional abilities and rights,
16 that this falls right in line with that part of our
17 democracy allowing more people to get on the
18 ballot.

19 So we thank you for your time and your
20 consideration, and thank you again for allowing for
21 some remarks.

22 CHAIRMAN OKESON: Thank you. And apologies
23 for mispronouncing your name.

24 MS. GARCIA-WILBURN: No worries.

25 CHAIRMAN OKESON: What was included?

1 MS. WARYCHA: In the binder you have the email
2 from the Representative and the Senator requesting
3 to be put on the agenda today, as well as a letter
4 from them explaining what they just summarized and
5 what they're asking the commission to do, as well
6 as a draft advisory opinion that my Democratic
7 counterparts have worked on and put in the binder
8 as well.

9 CHAIRMAN OKESON: I don't know that I have
10 that.

11 MS. WARYCHA: Go to the very back of your
12 advisory opinion. It should have been the very
13 last tab.

14 CHAIRMAN OKESON: Sorry. Yeah, I got it.

15 VICE CHAIRMAN OVERHOLT: If I might make
16 comments.

17 CHAIRMAN OKESON: Sure.

18 VICE CHAIRMAN OVERHOLT: So after this request
19 came through, I looked at the -- I thought this was
20 a really interesting question and a really
21 important question, and I looked at the opinions
22 from the Federal Election Commission and found them
23 quite interesting as well. And I support issuing
24 an opinion.

25 I think it is -- I can see how childcare,

1 being a mom myself, not running for office, I can
2 only imagine how difficult that would have been.
3 But anyway, I think it would be -- in looking at
4 our statutes, I think it is supportable definitely,
5 without any kind of change in the law or anything
6 like that, to conclude that the statute would
7 support allowing campaign funds to be used for
8 child and other, I guess, caregiving, dependent
9 care expenditures. So I would encourage the
10 Commission to consider this.

11 CHAIRMAN OKESON: I'm curious as to why this
12 wouldn't have taken the form of an amendment or a
13 bill over in the General Assembly during this
14 recent legislative session. Would either of you
15 care to comment on that?

16 MS. HUNLEY: Are we permitted to respond?

17 CHAIRMAN OKESON: I'm asking you a question.

18 MS. GARCIA-WILBURN: Yeah. I mean, I
19 believe --

20 MS. CELESTINO-HORSEMAN: Will you come up to
21 the microphone.

22 CHAIRMAN OKESON: Yeah, please.

23 MS. GARCIA-WILBURN: Oh, sure. I believe that
24 pursuing this administrative route is, quite
25 frankly, the best route to go. This is a short

1 session. This is something that does not need to
2 be done legislatively. These are changes within
3 your authority and your power that you're able to
4 grant, and not every single issue that comes up
5 needs to be before the legislature. We can be a
6 litigious society, and we know that not everything
7 requires legislation in order to be enacted. And
8 so we believe this is well within your purview to
9 create this report and opinion.

10 CHAIRMAN OKESON: I mean, to me, it feels like
11 lawmaking, and we're an appointed body and not
12 lawmakers. In fact, I would defer to co-counsel,
13 but I believe the last advisory opinion we issued
14 had the caveat that it be considered by the General
15 Assembly for affirmation. Is that not correct?

16 MS. WARYCHA: Yes. The last advisory opinion
17 did, yes.

18 MS. NUSSMEYER: But the General Assembly, to
19 my knowledge, has not affirmed any Commission's
20 request on any of the advisory opinions, quite
21 frankly, that we, as a body, have adopted.

22 CHAIRMAN OKESON: That's up to them.

23 MS. NUSSMEYER: I appreciate that. The
24 question was --

25 CHAIRMAN OKESON: And for the record, I'm

1 sympathetic to the request. It just doesn't feel
2 like it's parked in the right parking spot.

3 MS. CELESTINO-HORSEMAN: You know, I am --
4 we've done advisory opinions before, and this one
5 is particularly worthwhile because this deals with
6 families. And why we would hesitate to give an
7 advisory opinion on an issue like this one?

8 When I was sitting on the city council working
9 full-time, doing my council job, I had no children.
10 But I sat there and I thought, oh, my God, what if
11 I had to come home, clean house, get dinner ready,
12 take care of the kids, come do my council meetings,
13 all of that, and particularly if I was a single
14 mother and I didn't have that disposable income to
15 be able to do all of that. Now, this doesn't cover
16 them once they get into the job but during
17 campaigning, which most oftentimes is at night and
18 on the weekends and all of that when the children
19 are home.

20 So I don't think it's unreasonable to do this.
21 We have some of the worst and broadest campaign
22 finance laws in the country, and the legislature
23 still hasn't done anything to change those. So if
24 we can provide clarification and if the federal
25 government can do it and if 30 other states can do

1 it, then I think that we should step into the fray.

2 Now, if you're concerned -- I know that
3 Suzannah has done a great draft here, and she has
4 looked at the federal campaign, and that was an
5 advisory opinion. So I think that, if we really
6 want to do something for families, then I think
7 that we need to step up and provide this
8 assistance.

9 VICE CHAIRMAN OVERHOLT: I want to give credit
10 to Matthew. Matthew did the actual heavy
11 revisions. I shouldn't say heavy revisions, but...

12 MS. PYLE: Just as far as this goes, I have
13 major support of the concept here. I do a lot of
14 guardianships. I have a six-month-old. I mean,
15 I'm here with you on this.

16 You're sitting here as two members of our
17 legislature, and I don't know that adding the
18 caveat that the legislature should consider this is
19 going to be an issue. One of you can bring it
20 next -- we can pass this. One of you can bring it
21 next session. I mean, I don't think that that's an
22 issue to amend it in that way if that's what we
23 want to do.

24 CHAIRMAN OKESON: Well, the only other thing
25 too, I think, if I read this right, this goes a

1 little bit beyond what the Federal Election
2 Commission did. I think the FEC -- correct me if
3 I'm wrong in my brief Google search -- was limited
4 to childcare, and I believe this is caregiver,
5 which goes beyond that.

6 So to Litany's point, I suppose I could get
7 comfortable given that we include that -- amend
8 that language to have this affirmed at the General
9 Assembly. But I would also want to more strictly
10 or closely model what the FEC has done in that
11 light. I suppose any of it could be changed around
12 once over on the third floor, but those are just my
13 thoughts.

14 VICE CHAIRMAN OVERHOLT: Having thought that
15 you might have that thought, behind Door No. 2 --
16 oh, wait, which Version 2?

17 MS. NUSSMEYER: Version 2.

18 VICE CHAIRMAN OVERHOLT: Yes, Version No. 2 is
19 Door No. 2. Yeah, it's like a cooking show. Let
20 me get it out of the oven because it's already
21 done. We've got copies for everyone. So this is
22 an alternative version of the advisory opinion that
23 would limit it to childcare.

24 CHAIRMAN OKESON: This looks like it's written
25 the same.

1 VICE CHAIRMAN OVERHOLT: You have to keep
2 going.

3 CHAIRMAN OKESON: Care or supervision of a
4 child or other person with a disability.

5 VICE CHAIRMAN OVERHOLT: Page 2, Section 1.
6 Well, it's actually Section 2. It would be limited
7 then to childcare, and then in Section 3 it limits
8 it to childcare. So the first is the intro talking
9 about what they request and what the FEC did, so
10 that's the same. But then when you get to what we
11 actually do, Section 2 and 3 limit it to childcare.

12 CHAIRMAN OKESON: And then Section 6,
13 Commission respectfully recommends reading...

14 VICE CHAIRMAN OVERHOLT: Which is what we did
15 with prior advisory opinions.

16 MS. CELESTINO-HORSEMAN: And I would just note
17 the Advisory Opinion 2001-1 does state that we want
18 to issue this advisory opinion to clarify campaign
19 finance expenditures pending legislative action to
20 address Indiana Code. And that pending means that
21 here we provide you with guidance until such time
22 as the legislature decides to take action, and we
23 have precedent that that is what we have done. I'm
24 not aware of any other advisory opinion that says
25 here's an advisory opinion and, by the way, it

1 doesn't take effect until the legislature ratifies
2 it.

3 MS. WARYCHA: I believe that our last advisory
4 opinion about the voting machines and tabulation
5 said that, that we wouldn't take any action on
6 voting machines until the General Assembly did.

7 MS. CELESTINO-HORSEMAN: That we wouldn't take
8 any action. But that's different than saying that
9 setting forth an advisory opinion that says, oh,
10 but this doesn't take effect.

11 MS. WARYCHA: So we just basically said that
12 we weren't going to certify those equipment.

13 MS. CELESTINO-HORSEMAN: Yeah.

14 CHAIRMAN OKESON: Legally, from your
15 interpretation, what does Section 6 do? This looks
16 like a respectfully recommend. It doesn't --

17 MS. NUSSMEYER: It's consistent, if you look
18 at Advisory Opinion 2001-01, when we, as a
19 Commission, interpreted 3-9-3-4, the very statute
20 that's at question here about whether or not it's
21 appropriate to use campaign contributions towards
22 salary. That's not been codified, and the
23 Commission gave candidates the ability to collect a
24 salary because the Commission interpreted the
25 statute.

1 And so the language in Section 6 is
2 commiserate with the language in 2001-01 where the
3 Commission interpreted the statute to allow for
4 salaries and then asked that the legislature
5 consider this in the future.

6 MS. CELESTINO-HORSEMAN: And if the
7 legislature doesn't like our advisory opinion, that
8 may spur them to take action faster.

9 VICE CHAIRMAN OVERHOLT: Well, so now that I
10 read this, this looks like this wouldn't be saying
11 that they could use campaign funds for expenses.

12 CHAIRMAN OKESON: That's what I'm trying to
13 figure out.

14 VICE CHAIRMAN OVERHOLT: Now I'm confused.

15 MS. WARYCHA: Mr. Chairman, Mr. King and I
16 were discussing, and I believe our interpretation
17 is that this would allow the Election Division to
18 send out to the counties that we interpret that
19 using campaign contributions for childcare expenses
20 is permissible and respectfully ask that if the
21 General Assembly go forward and make a policy.

22 So I wouldn't say it's making a policy. I'd
23 say it's -- or rulemaking either. It's not
24 rulemaking or policymaking as much as saying that,
25 as we read the statute, that's our understanding.

1 MS. PYLE: So if somebody challenged it, they
2 can say here's this opinion, it's persuasive,
3 right?

4 MS. WARYCHA: Yes.

5 MS. NUSSMEYER: Correct. It gives the
6 candidates -- from my understanding, it would give
7 the candidates that, if they needed childcare to
8 attend a campaign event and they did not have
9 access -- or they did not have someone to watch
10 their child and had to pay for a babysitter, that
11 they could use campaign finance funds or
12 contributions to pay for that caregiving expense.
13 And it provides those candidates some cover that
14 the Commission has said that's an appropriate way
15 to spend dollars that have been contributed to your
16 campaign.

17 VICE CHAIRMAN OVERHOLT: I mean, the FEC
18 opinion and the way this is written to, it's your
19 own campaign activities for your own campaign,
20 other -- participating in other campaigns, and then
21 also related to service in an elected office. So
22 it's not just --

23 MS. NUSSMEYER: Correct. Well, that also --
24 I'm sorry, Commissioner. So Section 3 walks
25 through how 3-9-3-4 is written. So 3-9-3-4 -- do

1 you have it pulled up, Matthew? 3-9-3-4 tells you
2 how a candidate can use their money, and it can be
3 in furtherance of political activity and for
4 service in elected office.

5 So 1, 2, and 3 mirror subsection (a), which
6 says "Money received by a candidate or committee as
7 a contribution may be used only to defray any
8 expense reasonably related to the person's or
9 committee's campaign for federal, state,
10 legislative, or local office; continuing political
11 activity; or activity related to service in an
12 elected office."

13 And so Section 3 just mirrors that language to
14 say that, for those types of activities, you could
15 use your campaign contributions for childcare
16 expenses in furtherance of those events that are
17 permitted under state law.

18 CHAIRMAN OKESON: I'm still hung up on
19 Section 6.

20 MR. KOCHEVAR: Mr. Chairman.

21 CHAIRMAN OKESON: Yes.

22 MR. KOCHEVAR: Section 6 is -- really that
23 section was pulled when I was updating these
24 drafts. I pulled that from the advisory opinion in
25 2022.

1 CHAIRMAN OKESON: Yeah, I saw that.

2 MS. CELESTINO-HORSEMAN: Section 8 from that
3 same advisory opinion, 2001-1.

4 MR. KOICHEVAR: My best guess, and obviously I
5 will defer to any other staff, that has been in
6 parts some advisory opinions where it's like we
7 essentially are providing interpretation, read this
8 law in this particular subject matter, we find
9 this. We advise folks who have a question about
10 this that this is how the law reads, but, of
11 course, the Indiana General Assembly is the one
12 that crafted this law. It is a statute.

13 And so this section usually just compels --
14 well, the Election Division, since we serve you
15 all, to send a copy of this advisory opinion to the
16 General Assembly for them to consider.

17 I would just go back to what happened in 2022
18 in regards to the voting systems since that's the
19 last advisory opinion where this particular section
20 was located. As I recall, because the General
21 Assembly had already turned aside, the co-directors
22 had sent a copy of this advisory opinion and this
23 matter to legislative counsel, both to the party
24 leaderships as well because they sit on the
25 legislative counsel. And to my knowledge, I know

1 they have it, and their vote, since it's a separate
2 branch of government, they wait for them to see
3 what they want to do on that particular matter.

4 Conceivably, if this advisory opinion was
5 adopted today, the co-directors would do the same
6 thing, send this over to party leadership, the
7 speaker, the president pro tem, and minority
8 leaders of the House and Senate, for them to
9 consider, probably in the future, a future
10 legislative session, if they want to amend the
11 campaign finance at all in regards to this advisory
12 opinion or possibly do nothing, which I would
13 assume has been the case from that 2001 about
14 salaries since we have nothing about using campaign
15 finance dollars to cover salary or lost wages
16 written into the actual code itself. We still use
17 the advisory opinion.

18 MS. CELESTINO-HORSEMAN: And as far as this
19 being rulemaking or anything, it's not because it
20 clearly states it's an advisory opinion. So we
21 send it out to the counties and we say here for
22 your consideration is how we would interpret this
23 provision if a challenge was made to us regarding
24 this language. Now, it's not part of the law, so
25 we're inviting the legislature to address it.

1 But it's an advisory opinion. That's all it
2 is, providing some guidance. And it lets these
3 folks here sitting in front of us go ahead and make
4 that expenditure for childcare, and they've got a
5 little bit of cover because they can say they acted
6 in good faith. They weren't --

7 CHAIRMAN OKESON: No, I understand that. But
8 the point you're making is that lawmakers
9 ultimately should deal with it, and that's where
10 I'm starting with it.

11 MS. CELESTINO-HORSEMAN: No, no, I'm not
12 saying that. I'm saying that --

13 CHAIRMAN OKESON: How many different doors
14 will that open for advisory opinions on campaign
15 finance where they're perfectly suited and capable.
16 They're the ones that made the laws in the first
17 place.

18 VICE CHAIRMAN OVERHOLT: But we interpret the
19 laws all the time. The ones we've been
20 interpreting today, they're black and white, and so
21 it's a lot of --

22 CHAIRMAN OKESON: I don't know that this is
23 necessarily interpretation other than a judgment as
24 to what is allowed.

25 MS. CELESTINO-HORSEMAN: But that's the exact

1 authority that we have been given. We have been
2 given the authority to issue advisory opinions. If
3 we were setting forth the law and we were telling
4 the candidates --

5 CHAIRMAN OKESON: I don't debate the authority
6 to issue an advisory opinion. I'm talking about
7 what's in this advisory opinion.

8 MS. CELESTINO-HORSEMAN: Okay. Well, but this
9 is an advisory opinion. What about this is not an
10 advisory opinion?

11 CHAIRMAN OKESON: My point is it feels like
12 this should be a legislative matter codified by
13 lawmakers.

14 MS. CELESTINO-HORSEMAN: Well, if you could
15 identify what part of this do you think exceeds our
16 authority to issue an advisory opinion.

17 VICE CHAIRMAN OVERHOLT: Can I take a crack at
18 it?

19 CHAIRMAN OKESON: Yeah, sure.

20 VICE CHAIRMAN OVERHOLT: So I think this -- so
21 when it comes to election law or the administrative
22 law judges who have the authority to deal with
23 election law, we are -- in other types of statutory
24 interpretation, if you have a question about a
25 statute, that goes to the courts. But we're the

1 ones tasked with election law, and right now, so
2 the way the code is written, it says that -- right
3 now it says that the money received by a candidate,
4 and this is talking about 3-9-3-4(a), and it says
5 they can use the money to defray any expense
6 reasonably related to the person's or committee's
7 campaign, the language that Angie read before.

8 Well, I mean, what's being asked of us is to
9 interpret what any expense is, and that's what a
10 court would be asked to do. In court, you
11 wouldn't -- so it's not adding language. It's
12 being asked -- we're being asked to interpret what
13 that language, as written, means, which is what a
14 court would be asked to do and is often asked to do
15 about any other statute. So we are being asked to
16 determine whether any expense -- whether a
17 childcare expense can count as any expense that is
18 reasonably related.

19 CHAIRMAN OKESON: That's reasonably related.

20 VICE CHAIRMAN OVERHOLT: So this is asking us
21 to provide an interpretation of what the existing
22 statute says, which is what courts do all the time.

23 CHAIRMAN OKESON: Right. And I guess my point
24 today is it doesn't say that you can't. We're
25 issuing an advisory opinion to create some level of

1 cover. To me, that is ripe for legislative
2 clarity.

3 VICE CHAIRMAN OVERHOLT: Which they could then
4 do, because like with the court, if the -- well, I
5 don't want to talk about the Rust decision again.
6 But, I mean, if a court decision came out, so if
7 someone challenged -- let's say someone were to
8 challenge the two-primary rule. Let's say one of
9 us were to challenge it because we decided that it
10 makes our lives too difficult. So they go to
11 court, get a court to issue an opinion about, you
12 know, saying, well, that two-primary rule really
13 means X, Y, and Z. It doesn't mean A, B, and C; it
14 means X, Y, and Z. Well, then it's up to -- the
15 legislature can then say, no, court, we don't like
16 what you said, we're going to change our statutes
17 to make it more clear. Just like the attorney
18 general issues advisory opinions about --

19 CHAIRMAN OKESON: Well, and I guess that's
20 where I keep going back to how we've worded
21 Section 6.

22 MS. CELESTINO-HORSEMAN: Would you be more
23 comfortable if we struck it?

24 CHAIRMAN OKESON: No, no, I would not. How
25 did we write it in the voting system? What was our

1 caveat to the General Assembly there?

2 MS. WARYCHA: Just a second. Let me find it.

3 CHAIRMAN OKESON: Something along those lines
4 would make me far more comfortable.

5 MS. WARYCHA: I've got it.

6 MR. KOICHEVAR: I have that one pulled up, so I
7 can read you Section 8 of Advisory Opinion 2022-8.
8 It's the voting system one.

9 CHAIRMAN OKESON: Yeah. What was that?

10 MR. KOICHEVAR: And I'm pretty sure I copied
11 this verbatim, Section 8 in the voting system one,
12 it says "Section 8: The Commission respectfully
13 recommends to the Indiana General Assembly that the
14 policy set forth in this Advisory Opinion be
15 codified by enacting appropriate remedial
16 legislation."

17 CHAIRMAN OKESON: So that is how it's worded.

18 MS. CELESTINO-HORSEMAN: Thank you.

19 CHAIRMAN OKESON: Does this require a
20 unanimous vote or majority?

21 MR. KING: Majority.

22 CHAIRMAN OKESON: Well, I've raised my
23 concerns. If somebody wants to put together a
24 motion, I'll entertain it.

25 VICE CHAIRMAN OVERHOLT: Well, do we need

1 to -- should I move it and see how it goes and then
2 we read it in if it's approved or do we have to
3 read the advisory opinion?

4 MS. CELESTINO-HORSEMAN: Can we do a consent
5 to just submit the written copy?

6 CHAIRMAN OKESON: Brad, what do you think
7 about that?

8 MR. KING: I'm sorry?

9 MS. WARYCHA: If we could do a consent to
10 adopt.

11 CHAIRMAN OKESON: Does this opinion need to be
12 read into the record?

13 MR. KING: No.

14 VICE CHAIRMAN OVERHOLT: Okay. So I don't
15 have to read it. So I would move to adopt or issue
16 Proposed Advisory Opinion 2024-1 that I distributed
17 to the Commission members during the meeting. It's
18 in one of the binders. It's 2024-1.

19 MS. CELESTINO-HORSEMAN: I second.

20 CHAIRMAN OKESON: We have a second. Sorry.
21 We have a motion to approve Advisory Opinion 2024-1
22 from the Election Commission. We have a second.

23 All those in favor signify by saying "Aye."

24 VICE CHAIRMAN OVERHOLT: Aye.

25 MS. CELESTINO-HORSEMAN: Aye.

1 MS. PYLE: Aye.

2 CHAIRMAN OKESON: Aye.

3 The motion for the advisory opinion passes.

4 It will be in the record.

5 MS. CELESTINO-HORSEMAN: I move that we -- I
6 would move that we consent to allowing the hard
7 copy be put into the record rather than sitting
8 here reading it.

9 CHAIRMAN OKESON: Second?

10 VICE CHAIRMAN OVERHOLT: Second.

11 CHAIRMAN OKESON: All those in favor.

12 Aye.

13 VICE CHAIRMAN OVERHOLT: Aye.

14 MS. CELESTINO-HORSEMAN: Aye.

15 MS. PYLE: Aye.

16 CHAIRMAN OKESON: It's in the record.

17 MR. KING: Mr. Chairman, earlier the
18 Commission voted to authorize the use of their
19 signature stamps, and we assume that applies in
20 this case as well.

21 CHAIRMAN OKESON: Yes. All in agreement,
22 consent.

23 VICE CHAIRMAN OVERHOLT: Yes.

24 MS. CELESTINO-HORSEMAN: Yes.

25 MS. PYLE: Consent.

1 CHAIRMAN OKESON: Thank you, both. Appreciate
2 your time.

3 Almost went there. Mr. John, are you ready?
4 What was our move? Did we table it?

5 MS. PYLE: Yes.

6 CHAIRMAN OKESON: How do you pick it up off
7 the table?

8 MS. WARYCHA: Make a motion.

9 VICE CHAIRMAN OVERHOLT: Lift it up.

10 CHAIRMAN OKESON: I don't even remember what
11 the cause was.

12 VICE CHAIRMAN OVERHOLT: I think it's 2024-24.

13 MS. WARYCHA: I believe that's correct.

14 VICE CHAIRMAN OVERHOLT: Anderson v. Graves,
15 right?

16 CHAIRMAN OKESON: Graves.

17 MR. JOHN: So, Mr. Graves --

18 CHAIRMAN OKESON: Hold on one second. Give us
19 a second.

20 Is there a motion to pick up Cause 2024-24 off
21 the table?

22 MS. PYLE: So moved.

23 CHAIRMAN OKESON: Second?

24 VICE CHAIRMAN OVERHOLT: Second.

25 CHAIRMAN OKESON: All those in favor signify

1 by saying "Aye."

2 VICE CHAIRMAN OVERHOLT: Aye.

3 MS. CELESTINO-HORSEMAN: Aye.

4 MS. PYLE: Aye.

5 CHAIRMAN OKESON: Aye.

6 The "ayes" have it. We're back in business.

7 MR. JOHN: So --

8 CHAIRMAN OKESON: What did you learn?

9 MR. JOHN: Councilor Graves went over to the
10 Election Board, and I'll have him report back.

11 CHAIRMAN OKESON: Sure. Just one more time
12 for the record.

13 MR. GRAVES: Keith Graves, Indianapolis City
14 Council, K-e-i-t-h, G-r-a-v-e-s.

15 Mr. Commissioner, I want to say thank you for
16 being gracious today. We really appreciate this
17 opportunity.

18 CHAIRMAN OKESON: Yeah. We're anxious.

19 MR. GRAVES: We did find some things out that
20 were more alarming than were additional proof.
21 Primarily we understand that what we saw on that
22 June date in 2012, that is -- in today's world,
23 there is about a seven-day delay from getting
24 things registered. So when we see something that
25 says June of 2012, back in 2012, there was an

1 influx, a huge influx, of new voters because of the
2 Obama time frame.

3 CHAIRMAN OKESON: Lot of registrations.

4 MR. GRAVES: That delay -- because today we're
5 more technologically enhanced, so we may be at a
6 seven-day delay, but then it could be 30 to 60 days
7 to get registrations. So what you see is
8 absolutely not giving us a clear path to proof, and
9 so that was one of the more alarming things.

10 So we said, hey, can we find the paper
11 documentation and where is that held. And they
12 said, yeah, we do not destroy anything, but we
13 don't know where things are, so we really can't
14 help you.

15 So I stand here just to say that we have more
16 than proven that she's voted many times, possibly
17 in Indiana many times in primaries. We do see the
18 '16, the '18, and the '20. The question is where
19 those were. We do know that '12, per her
20 testimony. So we did do the effort. They were
21 unable to give us a paper document. So
22 unfortunately --

23 CHAIRMAN OKESON: So you didn't find anything
24 that would contradict what was on the SVRS?

25 MR. GRAVES: Right, absolutely. And SVRS is

1 2018 future item. Prior to that it was something
2 that, in 2012, we were looking for the paperwork.
3 So what I understand is that 2018 is when the
4 reliance on SVRS. Well, it goes back to, I think,
5 '05, but it was the 2018 date that was kind of a
6 stamp in time.

7 So I think what we really learned, Mr. Chair,
8 is there's a lot of conflicting information and we
9 really can't pinpoint. I want to say that there
10 was, you know, a delay in getting registrations
11 registered for documentation and time stamp
12 purposes.

13 There is also the COVID year where she did
14 have two residences. I'm her dad and she came
15 home. I definitely was happy about that. We saved
16 a lot of money. She was pursuing her master's
17 degree in Pepperdine in California, so we wanted
18 her home where we could make sure she was safe from
19 the pandemic. So that threw a little monkey wrench
20 in her registration because our family votes
21 Democrat. I am an elected Democratic leader in
22 this city. I've been voting Democrat since the
23 '80s.

24 So I'm extremely proud of my record. I know
25 where my family's record is. There's no question.

1 We have demonstrated proof that she's voted
2 Democrat. She's voted, voted, voted. That's all
3 on the documentation that we provided.

4 Thank you guys. We really appreciate
5 everybody.

6 CHAIRMAN OKESON: Would you like to
7 cross-examine based on that testimony? You have
8 two minutes.

9 MS. SHACKLEFORD: I think she just wanted a
10 statement, not cross.

11 MS. ANDERSON: I just wanted a statement.

12 CHAIRMAN OKESON: I think you've already had
13 your opening allotment of five minutes.

14 MS. WARYCHA: Yeah. I think --

15 MS. SHACKLEFORD: Does she get a two-minute
16 close?

17 MS. WARYCHA: She gets two minutes to cross.

18 CHAIRMAN OKESON: We've only been doing two
19 minutes for cross-examination.

20 MS. SHACKLEFORD: You said she gets a
21 two-minute rebuttal, right?

22 CHAIRMAN OKESON: There was cross-examination
23 which was limited to her comments and questions
24 relative to the testimony provided by Ms. Graves.

25 MS. SHACKLEFORD: Yes. You get a two-minute

1 rebuttal.

2 CHAIRMAN OKESON: It would be a
3 cross-examination, so you have two minutes to ask
4 any questions to Mr. Graves or Ms. Graves relative
5 to their testimony.

6 MS. SHACKLEFORD: When you went over the
7 instructions earlier, I wrote them down. You said
8 you get a two-minute cross and you get a two-minute
9 rebuttal.

10 CHAIRMAN OKESON: No, they get the rebuttal.

11 MS. SHACKLEFORD: So we don't get a rebuttal?

12 CHAIRMAN OKESON: It's a rebuttal to anything
13 you raise in your cross-examination.

14 MS. ANDERSON: Okay. So I have a question.
15 You said that --

16 CHAIRMAN OKESON: I'm just trying to be
17 consistent.

18 MS. SHACKLEFORD: Sure.

19 MS. ANDERSON: -- you have no documentation of
20 her registration in 2012?

21 MR. GRAVES: They could not provide us with
22 that paper documentation which indicates -- what
23 you see in your hands is an admission of when it
24 was time stamped, but there is a date that it was
25 received and there is a delay. Even today there is

1 a delay, seven days. But back then it was an
2 influx of registrations, and then there was also
3 we're not as advanced as we are now in the
4 technology, so there could have been a 30- or
5 60-day delay.

6 MS. ANDERSON: What I have here in my hand is
7 dated 6/19/2012.

8 THE REPORTER: Ma'am, I can barely hear you
9 back here.

10 MS. ANDERSON: So what I have here,
11 documentation showing that it was dated with her
12 signature on 6/19/2012.

13 MS. GRAVES: Yes, ma'am.

14 MS. ANDERSON: Okay. And evidently it was
15 posted on 6/27, which is approximately seven days
16 after.

17 MS. GRAVES: But does it say the date on there
18 received?

19 MS. ANDERSON: It doesn't say the date
20 received.

21 MS. GRAVES: That's all. That's the problem,
22 because the date received is not on there, and
23 that's the issue that -- that's purpose of the
24 argument.

25 CHAIRMAN OKESON: So let me interrupt here.

1 So I think the two standards we're trying to get to
2 is do we have proof that you voted in two primary
3 elections as a Democrat here in Indiana --

4 MS. GRAVES: Yes.

5 CHAIRMAN OKESON: -- and/or did you secure
6 written permission to qualify you on the ballot
7 from the county chair. And we don't have the
8 latter, correct?

9 MR. GRAVES: Correct.

10 CHAIRMAN OKESON: And I think what we did was
11 afford you time to go over to the Marion County
12 clerk's office and see if we could produce any
13 evidence contrary to what we see on the Statewide
14 Voter System, and what I've heard you say is you
15 were unable to do that, for whatever reason.
16 Correct?

17 MR. GRAVES: Yes, because they could not
18 produce a document.

19 MS. CELESTINO-HORSEMAN: I would like to
20 explain something too. The June 19, which is my
21 birthday, 2012, registration was done online, so
22 that's the date that you actually submitted. This
23 is an online registration form.

24 And the seven-day period that they were
25 telling you about is a period of pending. So

1 anybody who files a new voter registration, it
2 pends for seven days, but that's not the day that
3 you submitted it because that day you put on there
4 what date it was. And the deadline to register to
5 vote was actually in April, so they weren't running
6 that far behind. But that's --

7 CHAIRMAN OKESON: Well, it's almost irrelevant
8 because one's about registration and the other is
9 about proof of voting in primaries.

10 MS. CELESTINO-HORSEMAN: Right. But I wanted
11 them to understand because this is the whole
12 problem with our whole -- it's so complicated now,
13 and this is what we've come to. It's a hard thing
14 to understand, as your attorney can tell you, I'm
15 sure.

16 So, yeah, but Mr. Chair is right. Mr. Chair
17 is right. You have to be able to show that you
18 voted.

19 CHAIRMAN OKESON: For the record, I find
20 absolutely no fault. I believe everything that
21 you're saying, but we need to have some level of
22 evidence that says, you know, hey, we made a
23 mistake, you did vote in these two primaries,
24 here's documentation. That would have been
25 compelling.

1 MS. GRAVES: Sure. If I may.

2 CHAIRMAN OKESON: Yeah.

3 MS. GRAVES: I am uncertain as to why the
4 documents there do not reflect my honest voting
5 record, but if the premise of the law is to
6 determine my party affiliation, then, as you can
7 see and based on the numerous amount of boards I
8 serve, community engagement activities I'm in, and
9 just my civic duties alone, you'd be able to see
10 which party I'm aligned with.

11 CHAIRMAN OKESON: That's absolutely correct,
12 but that's not the premise of the law. The premise
13 of the law is your ballot eligibility is predicated
14 on one of two factors. One is that you can prove
15 you voted in two primaries under the party
16 affiliation of which you subscribe or you got a
17 letter from the chair that says don't worry about
18 it, you're good to go.

19 MS. GRAVES: And it seems as though the data
20 itself as well as the paper records, it seems as
21 though there hasn't been a good recordkeeping. So
22 if we're relying on the recordkeeping and to show
23 you all that evidence today, it seems as though
24 there's been an issue there, as you can see.

25 CHAIRMAN OKESON: I'm not in a position to

1 disagree with you. That might be the case. But we
2 have to go on what consistently we've applied all
3 day long, which is the ability to prove one of
4 those two factors. And your challenger has filled
5 out the proper challenge form and stated that you
6 did not vote in two prior primaries under party
7 affiliation, and near as we can tell, that's a
8 correct assertion.

9 MS. CELESTINO-HORSEMAN: Ms. Graves, I think
10 what gets confused in all of this -- and, again,
11 I'd be home if it weren't for this law. But what
12 gets confusing in all this is that people come in
13 here and think that we get to determine if you are
14 affiliated with a particular party, and that's not
15 what we are allowed to do. All we can do is apply
16 the law, which says you have to have voted in
17 two -- the last two primaries you voted in you
18 voted as -- you pulled a ballot for that party, or
19 that you got a signature of the chair.

20 You could sit here and show us that you've
21 given millions and millions of dollars to a party,
22 that you've given your child, your life, your dog,
23 everything else to the party, and we still can't
24 say that you are a member of that party. The only
25 thing that the law allows us to do is to make a

1 determination as to whether you satisfy the party
2 affiliation requirement by whether you voted in
3 those two primaries or you have the signature of
4 the chair. That's all. You can show us all kinds
5 of things, and certainly the stuff you've shown us,
6 you are very active, but we can't take that into
7 account. We're very limited. Our vision is like
8 this when it comes to that.

9 CHAIRMAN OKESON: By no means do I dispute the
10 party affiliation. That's not the issue.

11 VICE CHAIRMAN OVERHOLT: Right. Yeah, that's
12 not at issue.

13 MS. GRAVES: Thank you for your time.

14 CHAIRMAN OKESON: Thank you. I appreciate you
15 taking the extra time to go see what you could
16 find.

17 With that in mind, does anyone want to make a
18 motion?

19 VICE CHAIRMAN OVERHOLT: I would move to
20 uphold the challenge.

21 CHAIRMAN OKESON: Is there a second?

22 MS. CELESTINO-HORSEMAN: And I will second it.
23 And I hope that you will keep trying.

24 CHAIRMAN OKESON: We have a motion and a
25 second on Cause 2024-24.

1 Any comments, discussion?

2 Hearing none, all those in favor signify by
3 saying "Aye."

4 VICE CHAIRMAN OVERHOLT: Aye.

5 MS. CELESTINO-HORSEMAN: Aye.

6 MS. PYLE: Aye.

7 CHAIRMAN OKESON: Aye.

8 The "ayes" have it. The motion carries. The
9 challenge is upheld. The Election Division is
10 directed not to include Chunia L. Graves in the
11 certified list of primary candidates sent to the
12 county election boards and to indicate that the
13 name of this candidate not be put on the ballot.

14 Thank you all for your time. I think with
15 that, I can safely say we've completed our business
16 for the day, and I will accept a motion to adjourn.

17 MS. PYLE: Motion to adjourn.

18 CHAIRMAN OKESON: Is there a second?

19 VICE CHAIRMAN OVERHOLT: Second.

20 CHAIRMAN OKESON: All those in favor signify
21 by saying "Aye."

22 VICE CHAIRMAN OVERHOLT: Aye.

23 MS. CELESTINO-HORSEMAN: Aye.

24 MS. PYLE: Aye.

25 CHAIRMAN OKESON: Aye.

1 The "ayes" have it. We are adjourned. Thank
2 you all for your time.

3 (The Indiana Election Commission Public
4 Session was adjourned at 4:38 p.m.)

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1 STATE OF INDIANA

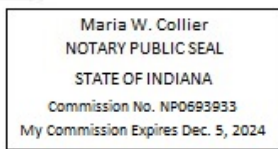
2 COUNTY OF HAMILTON

3 I, Maria W. Collier, a Notary Public in and
4 for said county and state, do hereby certify that the
5 foregoing public session was taken at the time and
6 place heretofore mentioned between 10:00 a.m. and
7 4:38 p.m.;

8 That said public session was taken down in
9 stenograph notes and afterwards reduced to typewriting
10 under my direction; and that the typewritten
11 transcript is a true record of the public session.

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my notarial seal this 12th day of
14 March, 2024.

15
16 *Maria W. Collier*



19
20
21 My Commission expires:
22 December 5, 2024

23 Job No. 188366

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