

# Indiana Recount Commission

## Minutes

### May 22, 2024

**Members Present:** The Hon. Diego Morales, Secretary of State and Chairman of the Indiana Election Commission (“Commission”); Mr. Mark Wynn, Member; Mr. Michael A. Claytor, Member.

**Members Absent:** None.

**Staff Attending:** Philip Sicuso, Recount Director; J. Bradley King, Majority Counsel; Matthew R. Kochevar, Minority Counsel; Mary McCarty, Alliance Court Reporting.

**Others Attending:** The Hon. Christopher Anderson, Elkhart County Circuit Court Clerk; Mr. Ryan Harper, Indiana State Police; Ms. Michelle Harter; Mr. Dod Hodson, Member, Hendricks County Election Board; Ms. Debbie Hoskins, Chief Deputy, Hendricks County Circuit Court Clerk; Ms. Kendra Leatherman, State Board of Accounts; Ms. Carol Smith, Chief Deputy, Elkhart County Circuit Court Clerk.

#### **1. Call to Order:**

The Chair called the May 22, 2024 meeting of the Commission to order at 2:00 p.m. EDT in Wabash 4 Conference Room, 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 in this document are corrected:

- Page 10, line 24, delete “KING” and insert “CLAYTOR”.
- Page 13, line 22, delete “petitions [sic]” and insert “precincts”.
- Page 36, line 13, delete “State” and insert “state”.
- Page 50, line 20, delete “supercede” and insert “supersede”.
- Page 75, line 22, delete “petitions [sic]” and insert “precincts”.

The Commission adjourned its meeting at 4:01 p.m. EDT.

**APPROVED:**

A handwritten signature in black ink, appearing to read 'Philip Sicsu', written over a horizontal line.

**Philip Sicsu, Recount Director  
Pursuant to Order 2018-1**

INDIANA STATE RECOUNT COMMISSION

PUBLIC SESSION

Wednesday, May 22, 2024

2:00 p.m. EDT

Wabash Room 4, Conference Center

Government Center South

402 West Washington Street

Indianapolis, Indiana

A STENOGRAPHIC RECORD

By: Mary S. McCarty

Notary Public

Stenographic Reporter

ALLIANCE COURT REPORTING

P.O. Box 78261

Indianapolis, IN 46278-0261

317.875.3914

[www.alliancecourtreporting.com](http://www.alliancecourtreporting.com)

## 1 RECOUNT COMMISSION MEMBERS PRESENT:

2 Diego Morales, Chairman

3 Michael A. Claytor, Democratic member

4 Mark Wynn, Republican member

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7 COUNSEL PRESENT:

8 Matthew R. Kochevar, Democratic party counsel

9 Brad King, Republican party counsel

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12 INDIANA STATE POLICE REPRESENTATIVE:

13 Bryan Harper

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16 RECOUNT DIRECTOR:

17 Philip Sicuso

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20 STATE BOARD OF ACCOUNTS REPRESENTATIVE:

21 Kendra Leatherman

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1 CHAIRMAN MORALES: Good afternoon. This meeting  
2 of the Indiana State Recount Commission is called to  
3 order.

4 Since all three members of the Commission are  
5 present, there is a quorum for this meeting.

6 First, allow me to provide brief remarks. I'm  
7 Diego Morales, Indiana Secretary of State, and I serve  
8 as the chair and a member of the Indiana State Recount  
9 Commission. As you know, as Secretary of State, I  
10 also serve as Indiana's Chief Election Officer and  
11 with that comes responsibilities of conducting safe  
12 and secure elections.

13 This year I traveled to all 92 counties within  
14 three months. In each county, one of my first stops  
15 was also to meet with each county clerk. I wanted to  
16 make sure they have the tools and resources they need  
17 as I truly believe when our counties are strong, our  
18 state is stronger.

19 Today at this Recount Commission meeting is  
20 another example of open and trusted elections. The  
21 recount process is very detailed. Recounts take a  
22 really close look at the individual races, it adds to  
23 the public confidence, and, in fact, yes, every vote  
24 does count, and adds to voters' confidence that  
25 results that are accurate.

1           I want to thank everyone, including the  
2 Commission members, for being here today and your  
3 continued service to the Hoosier State.

4           I would like to start today's meeting by asking  
5 everyone to please stand and join me in saying the  
6 Pledge of Allegiance.

7           (The Pledge of Allegiance was recited.)

8           CHAIRMAN MORALES: I am joined by Commissioner  
9 Mark Wynn, and Commissioner Michael Claytor. Thank  
10 you both for your service.

11           The Election Division of the Secretary of State's  
12 office provides administrative support to the Recount  
13 Commission. Brad King serves as majority counsel to  
14 the Commission and Matthew Kochevar serves as minority  
15 counsel.

16           Our court reporter today is Mary McCarty from  
17 Alliance Court Reporting. Welcome, Mary.

18           Before we begin, I want to remind everyone on  
19 behalf of the court reporter to identify yourself when  
20 you begin to speak, spell your name when identifying  
21 yourself, speak clearly, and do not speak at the same  
22 time when others are speaking.

23           Any person who plans to address the Commission  
24 today, please raise your -- raise yourself -- your  
25 hand for the administration of the oath. And at this

1 time I recognize Matthew Kochevar to administer the  
2 oath.

3 MR. KOCHEVAR: All those who will speak before  
4 the Indiana Recount Commission please rise and raise  
5 your right hand. Please say "I do" after the  
6 recitation of the oath.

7 (Oath administered collectively.)

8 MR. KOCHEVAR: Thank you.

9 CHAIRMAN MORALES: Thank you, Matthew.

10 At this time I would like now to ask Director  
11 Phil Sicuso --

12 MR. SICUSO: Sicuso. Not bad.

13 CHAIRMAN MORALES: -- to provide an update on his  
14 activities since April 29 meeting, specifically  
15 issuance of the impoundment orders.

16 The floor is yours.

17 MR. SICUSO: Sure. Thank you, Mr. Secretary.  
18 Members of the Commission, good to see you again.

19 My report will be brief but factual. We received  
20 verified petitions for recount in House District 40 --  
21 the Republican races in House District 40 and 49 for  
22 State Representative on May 15th.

23 As is the custom in these matters, I was  
24 consulted by Brad King and the staff in the Election  
25 Division and issued an order later that day to impound

1 materials relevant to the precincts that were called  
2 forth in the verified petition.

3 Later that day, the State Police served notice on  
4 the parties and also assisted with impounding the  
5 relevant election materials in Hendricks County and  
6 Elkhart County. I received confirmation that service  
7 was provided on the 15th in House District 40 and on  
8 the 16th in House District 49, which has been  
9 verified.

10 So, with that, what I think we'll be discussing  
11 today are some issues with respect to the recount  
12 guidelines that have been perfected over the years as  
13 we've done many of these and serve as a good framework  
14 for the procedures that we do moving forward, and this  
15 is kind of a living document that we work on at the  
16 State Board of Accounts. There's a couple of small  
17 adjustments that we'd like to talk about today, as  
18 well as some nuances with respect to Elkhart County  
19 and the impact of the impoundment on some materials  
20 that are not related to this recount and the need to  
21 possibly address access to some materials in order to  
22 meet some certification deadlines that are due later  
23 this week. Those are all in my report.

24 CHAIRMAN MORALES: Thank you.

25 I would like now to ask Bryan Harper with the



1 State Police for his update regarding police  
2 activities since the May 7th of 2024 primary.

3 The floor is yours.

4 MR. HARPER: Thank you, Mr. Secretary.

5 So the State Police received notification on or  
6 around the 15th of May about impoundment orders later  
7 that evening in Hendricks County as well as Elkhart  
8 County. The district investigative commanders for the  
9 State Police for those areas had made contacts with  
10 the clerks prior to this and it was determined that  
11 the best course of action would be to handle the  
12 impoundments on the following day, early those days,  
13 so -- depending on where.

14 But about 8:00 a.m. those investigative  
15 commanders, as well as the detectives, as well as our  
16 crime scene investigators had met with the county  
17 clerks. They -- each location had two locations --  
18 counties, excuse me, had two locations for  
19 impoundment. It was agreed that those impoundments  
20 could happen in place and did not have to be moved.

21 So locks were changed, photographs of the room,  
22 descriptions of the room were made. Crime scene logs  
23 were taken to control the entry and exit and who does  
24 so, and then locks were changed, and then we served  
25 the impoundment orders to the parties.

1           CHAIRMAN MORALES: Thank you, Major.

2           Now I would like to call and recognize Kendra  
3           Leatherman with the State Board of Accounts to provide  
4           an update on the activities since May 7, 2024 primary.

5           Kendra?

6           MS. LEATHERMAN: Thank you, Mr. Secretary,  
7           members of the Commission. My name is Kendra  
8           Leatherman, K-e-n-d-r-a, Leatherman,  
9           L-e-a-t-h-e-r-m-a-n. I'm the general counsel and  
10          recount supervisor for the State Board of Accounts.

11          We also attended the execution of the  
12          impoundment. Myself attended in Hendricks County and  
13          our Chief of Staff attended in Elkhart County to  
14          ensure that all the materials relevant to the race or  
15          that otherwise were in question were impounded  
16          appropriately.

17          I think for my purposes of the report, one of the  
18          things that the Board of Accounts has prepared in  
19          order to kind of keep moving the recount in maybe a  
20          fashion that helps us kind of facilitate things a  
21          little bit easier is we've suggested some updates to  
22          our SBOA forms, which I think is provided in your  
23          packet. I'm happy to go through those if anyone has  
24          any questions, but I'll give a high-level view, and  
25          then if anyone has specific questions.

1           And so one of the things that -- these forms  
2           are -- incorporated Recount Commission guidelines, and  
3           so one of the things that we did for this year was  
4           made an update to what we call our Form 1 in order to  
5           make sure that -- which is our Precinct Tally Sheet,  
6           in order to make sure that we kind of more accurately  
7           separate what may be generally known as undervotes.  
8           We changed that to not add in the undervotes on every  
9           single type but will add it in on the bottom of the  
10          form to only reconcile it once. This ensures that we  
11          match up to the official precinct tallies.

12           And also, the official precinct certificate  
13          reconciliation is through the form this year.  
14          Historically, that's not been, like, throughout the  
15          form. Auditors really like to reconcile things.

16           And then the last change on Form 1 is kind of a  
17          confirmation checklist of -- at the end of the closing  
18          of every precinct, the SBOA auditors at the table and  
19          our recount supervisors will otherwise confirm that  
20          the forms are filled out properly and appropriately.

21           The other change that we have made to the forms  
22          generally is on Form 3, which is our kind of tally  
23          sheet. We have noticed in the last few recounts that,  
24          as a general rule, there are more non-disputed ballots  
25          than disputed ballots, and so we end up going through

1 a lot of Form 3s with lots of tick marks on one half  
2 of the page and no tick marks on the other. So what  
3 we actually did was split these forms into two  
4 different ones, disputed and non-disputed. This will  
5 also help us kind of keep track of disputed exhibits a  
6 little bit easier.

7 And then the other -- I'm not going to say it's  
8 not a substantive change but minor change that we've  
9 made on Form 4 is to otherwise specifically account  
10 for the undervotes. We have been handwriting this I  
11 think on the form for the last five or six recounts  
12 and so it just seemed appropriate to actually make it  
13 as a part of the approved form.

14 So those are the, you know, suggested changes to  
15 SBOA forms that are generally incorporated into the  
16 guidelines that we have suggested.

17 If anyone has any questions about that, I'm happy  
18 to answer it, but it's pretty ministerial in nature,  
19 I'd say. So. . . .

20 CHAIRMAN MORALES: Now for purposes of  
21 discussion, is there a motion to adopt order 2023-3 --  
22 2024? -- 2024-3 to amend the recount guidelines as  
23 described by the State Board of Accounts?

24 MR. KING: So moved.

25 CHAIRMAN MORALES: Is there a second?

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MR. WYNN: Second.

CHAIRMAN MORALES: Thank you.

Is there a discussion? If not, those in favor of the motion say "aye."

(Ayes heard.)

CHAIRMAN MORALES: And those opposed say "nay."

(Silence.)

CHAIRMAN MORALES: The ayes have it. The order is adopted.

Is there consent from -- okay. So we need to sign the one document, so thank you Mr. Brad King.

MR. CLAYTOR: Mr. Chairman, may I bring up just a matter of just personal privilege? Just as a matter of full disclosure, I think it was a hundred years ago, but in the 1980s when I was deputy examiner of the State Board of Accounts I was liaison to county prosecutors, including Greg Stuerwald, who was prosecutor at the time, worked with him on some matters, and if my memory serves me correctly, we co-taught an ethics course together back at the time.

That does not impact and is not a conflict, but I'd just like it to be on the record as full disclosure that I have worked with one of the respondents in the past.

1 Thank you.

2 CHAIRMAN MORALES: We will proceed to sign these  
3 and I will pass this to members of the Commission as  
4 well.

5 Is there consent from Commission members to take  
6 up the Petition for Recount for the Republican Party  
7 Nomination for Indiana House District 49 at this time?

8 MR. WYNN: Does that require a motion or just our  
9 consent?

10 MR. CLAYTOR: Consent.

11 MR. WYNN: Yes, then.

12 CHAIRMAN MORALES: I would like now to ask Brad  
13 King to provide an update on the Petition for Recount  
14 for the Republican Party Nomination for Indiana House  
15 District 49.

16 MR. KING: Thank you, Mr. Chairman, members of  
17 the Commission.

18 Brad King, serving as Majority Counsel for the  
19 Commission.

20 A verified petition for a recount in this  
21 election in all 35 specified precincts was filed with  
22 the Election Division by candidate Cindi Hajicek --  
23 and if I mispronounce the name, please correct me --  
24 on May 15th, 2024, which was prior to the applicable  
25 filing deadline.

1           The recount petition was accompanied by two cash  
2           deposits totaling \$2,600. According to the statewide  
3           voter registration system records, there are 35  
4           precincts within House District 49.

5           The unofficial results entered by the Elkhart  
6           County Election Board pursuant to State law beginning  
7           after the close of the polls are included in the  
8           Commission's binder, which show that the margin of the  
9           winning candidate was more than 1 percent of the total  
10          votes cast in this race.

11          As a result, under Indiana Code 3-12-11-10, the  
12          amount of the required deposit when the difference  
13          between the candidate nominated and the petitioner is  
14          more than 1 percent of the total votes cast for all  
15          candidates, and when more than 10 precincts are to be  
16          recounted, which are both true in this case, the total  
17          amount of the required cash deposit would equal  
18          \$2,600.

19          The other required elements of the recount  
20          petition are set forth in Indiana Code 3-12-11-3(a):  
21          the office for which the petitioner desires a recount;  
22          the petitions [sic] in which the petitioner desires a  
23          recount; that the individual is entitled to a recount;  
24          and that the nomination was voted on in the specified  
25          precincts; the names and addresses of the candidates;

1 the petitioner in good faith believes that the votes  
2 cast for the nomination were not correctly counted and  
3 returned. In addition, the petition is required to be  
4 verified. On its face, the recount petition in this  
5 matter appears to include each of the other required  
6 elements.

7 The binder also includes proof of service by the  
8 Indiana State Police of the Notice of Filing the  
9 record [sic] petitions in this matter upon the only  
10 other candidate in this primary, Ms. Joanna King.

11 Under Indiana Code 3-12-11-12(b), the Commission  
12 may order a recount in an entire election district  
13 upon the filing of a cash deposit or bond and proof of  
14 service of all notices.

15 There is a distinction in this case between the  
16 other recount matter pending in that, as I noted  
17 earlier, the recount petition covers all of the  
18 precincts included in House District 49.

19 I'll be happy to answer questions.

20 CHAIRMAN MORALES: Thank you, Brad.

21 I would like to ask Matthew if he has any further  
22 information to add.

23 MR. KOCHEVAR: Nothing further to add in regards  
24 to what is in your binders or what I know to be the  
25 particular facts that are evidenced in the filed



1 petition or in the election results that are currently  
2 in your binder.

3 For those who are not aware, the document that  
4 has been placed in your binder is a screen capture of  
5 our -- the State election night reporting site. That  
6 is a publicly available page for members of the public  
7 to go online and see what election results have been  
8 entered into by the various county clerks and election  
9 officials for the various offices that are up for  
10 election during a particular election, in this case,  
11 the 2024 Indiana primary.

12 So just to add on to -- affirm what my knowledge  
13 is of everything that is before us and that  
14 Counsel King is accurate in his description of what  
15 you have before you.

16 CHAIRMAN MORALES: Thank you, Matthew.

17 Now we can discuss any impoundment order  
18 notification issues. I would like to ask Mr. Sicuso  
19 or Mr. Christopher Anderson of Elkhart County if they  
20 would like to address the Commission.

21 MR. SICUSO: I can give a very brief overview and  
22 then I'll leave it to Chris to provide some details as  
23 well.

24 We were notified by the county clerk shortly  
25 after the impoundment order that there were some

1 ballots still uncounted that needed to be counted that  
2 were subject to the impoundment, partly due to the  
3 fact that some votes in our county and ballots had not  
4 been separated out by precinct yet. So all these  
5 materials have been impounded, even though some of  
6 them we know will not be subject to recount.

7 So what's at issue, I believe, is how to best  
8 access those materials while under impoundment while  
9 preserving the right evidence and materials so that we  
10 can do the recount at the right time thereafter and  
11 not have those ballots be prejudiced in any way.

12 So I don't know if any -- oh, and I'll also say  
13 we've had some good dialogue. State Board of  
14 Accounts, we -- Kendra and I have had discussions with  
15 the County about some options for doing this in the  
16 next 24 to 48 hours, and I know Kendra has put  
17 together some great thoughts on it as well, but if the  
18 Commission would like to hear from the County as well,  
19 the clerk, then by all means.

20 MR. WYNN: I would welcome that.

21 MR. ANDERSON: Matthew, I did not take the oath.  
22 Can you administer that?

23 (The oath was administered to Christopher  
24 Anderson.)

25 MR. SICUSO: So I don't know if you wanted to --

1           it might help if you described the status of where the  
2           relevant ballots are and what you would need to do  
3           before the end of the week to meet certification  
4           deadlines.

5           MR. ANDERSON: Okay. Christopher Anderson,  
6           C-h-r-i-s-t-o-p-h-e-r A-n-d-e-r-s-o-n, Elkhart County  
7           clerk of court.

8           8:00 a.m. Thursday morning I met with the State  
9           Board of Accounts and the State Police and the -- we  
10          had two locations that were impounded and secured.  
11          The ballots in question, there are approximately 100,  
12          including provisional ballots, military and overseas  
13          ballots that were received over the weekend prior to  
14          election day and on election day that had not been  
15          counted, and the traditional provisional ballots from  
16          early voting: Photo IDs, missing/mismatched  
17          signatures, election day of the same type. Those are  
18          all in one of the impounded locations segregated from  
19          the rest of the ballots that were counted -- absentee  
20          by mail, absentee by travel board, absentee in  
21          person -- are in one container, ballot box. We have  
22          29 other ballot boxes that have the ballots that were  
23          cast at each one of the 29 vote center locations.

24          There is a separate -- on top of the absentee --  
25          on top of the absentee sealed bin, two blaze orange

1 envelopes, provisional ballot bags that contain those  
2 ballots that have not yet been tabulated.

3 We do know that there are ballots within that  
4 that are valid, that are in House District 49. We  
5 also do know that there are ballots in that that are  
6 valid that are outside of House District 49.

7 Access that Elkhart County supervisor asks --  
8 access that Elkhart County would request is access to  
9 those ballots, those ballots alone, and the ERM,  
10 Election Reporting Module computer, that is utilized  
11 to tab -- not to tab, request access to the DS450,  
12 high-speed scanner for those -- to tabulate those  
13 ballots, and the ERM, Election Reporting Module  
14 computer, that takes those that we do count and pulls  
15 them with -- into all of the other results that we  
16 have from election night, grand totaling 18,221  
17 ballots.

18 MR. SICUSO: So I think, just to add on to that,  
19 I believe the request would be to have the State Board  
20 of Accounts oversee that process--actually conduct  
21 that process would be what I would propose--to  
22 identify which ballots need to meet the standard of  
23 impoundment and which can be released from impoundment  
24 and actually, technically, aren't subject to the  
25 impoundment order but have been impounded by virtue of

1           how they were organized on -- you know, at the time  
2           that the impoundment took place. They shouldn't be  
3           impounded right now is the position, but since they  
4           are, we can't just have everybody -- anybody go in and  
5           do this outside the observance of the State Police and  
6           the State Board of Accounts.

7           So I think what we're proposing is, as the clerk  
8           had provided, or suggested, that the State Board of  
9           Accounts go in and execute what was described.

10          CHAIRMAN MORALES: Thank you.

11          MR. CLAYTOR: Mr. Chairman, if I may ask a  
12          question of one or both of you. I understand there  
13          are impounded versus non-impounded ballots. Why would  
14          it not be possible for this Commission to release  
15          impound for 48 hours to meet the certification  
16          deadline for all of those ballots so that every person  
17          that validly voted can be counted? Because a recount  
18          is to recount. I -- that's a little facetious, but a  
19          recount is to recount, not to primary count.

20          So I'm going to assume we're not going to allow  
21          the Board of Accounts to original count provisional  
22          ballots; they can only recount. And, therefore, we're  
23          going to have people lose their franchise because an  
24          early impoundment was done.

25          That offends me, quite frankly. So why is this

1 suggestion of only allowing access to non-impounded  
2 ballots the correct solution?

3 MR. SICUSO: Counsel might be able to provide  
4 some legal analysis on that. I do think part of the  
5 reason why the Commission meeting today is appropriate  
6 is I do not want to make that call without the  
7 Commission.

8 MR. CLAYTOR: Sure.

9 MR. SICUSO: So I think it's important for the  
10 Commission to make a decision like that. In my role  
11 of recount director, I've tried to be careful with  
12 respect to erring on the side of caution on impound  
13 materials to ensure integrity.

14 I've not come across this issue before, so I  
15 thought it was one that was nuanced and unique and  
16 I -- you know, we haven't had a forum where the  
17 parties could even, you know, provide their thoughts,  
18 but I think legally that might be an option, and I  
19 don't know if counsel has comments on that.

20 MR. KING: Mr. Chairman?

21 CHAIRMAN MORALES: First of all, would anyone  
22 else like to address the Commission?

23 MS. HARTER: I would, and I'll have to take an  
24 oath if I'm going to speak, though.

25 Michelle Harter, counsel for the petitioner.

1 MR. KOCHEVAR: Did you take the oath originally?

2 MS. HARTER: I did not.

3 MR. KOCHEVAR: Okay. Once again, we'll make sure  
4 to get this right.

5 UNIDENTIFIED FEMALE VOICE: Matthew?

6 MR. KOCHEVAR: Yes.

7 UNIDENTIFIED FEMALE VOICE: Sorry. While you're  
8 at it, may I take --

9 MR. KOCHEVAR: Yes, please. If you have any --  
10 if -- I will say this. If you have any inclination  
11 you will address the Commission, we'll just swear you  
12 in. Please say "I do" after the recitation of the  
13 oath.

14 (The oath was administered collectively.)

15 MR. KOCHEVAR: Thank you.

16 MS. HARTER: Oh, okay. So --

17 CHAIRMAN MORALES: You may proceed.

18 MS. HARTER: So thank you. So I'm counsel for  
19 petitioner.

20 You know, we don't have to allege the reasons we  
21 want a recount in our petition but we do have some  
22 concerns, obviously, about some things that happened  
23 with regard to results, and so we would like to  
24 preserve the integrity of the impounded records. I  
25 understand maybe some were impounded that shouldn't

1 have been, but I don't think that should mean we  
2 release them all back. We should keep the ones that  
3 are not impacted by needing to be counted for the  
4 first time or, you know, that aren't affected by this  
5 recount.

6 That's why we want to segregate those in a  
7 supervised fashion, as has been suggested, but to  
8 release all of them, I don't think that's appropriate.  
9 I think we need to preserve and err on the side of  
10 caution the integrity and the fact that they've been  
11 impounded.

12 We believe there's some issues. We don't want  
13 anyone messing around with those, you know, materials  
14 that have been impounded except to the extent that is  
15 necessary.

16 CHAIRMAN MORALES: Thank you.

17 Please say your name and spell your name if you'd  
18 like to address the Commission.

19 MS. HOSKINS: Debbie Hoskins, D-e-b-b-i-e  
20 H-o-s-k-i-n-s, chief deputy of Hendricks County.

21 I would just like to -- we have -- we're in the  
22 same situation as Elkhart County. We have some  
23 provisionals that have not been counted. We have two  
24 types: Precinct committeeman races, and we have a  
25 township board race that's within seven votes, and we



1 would just like to be able to count what's not been  
2 counted so that we can certify our election.

3 CHAIRMAN MORALES: Thank you, Debbie.

4 Anybody else?

5 MR. ANDERSON: If I can just add to my testimony.  
6 Christopher Anderson.

7 Right now I did some quick calculations this  
8 morning, and with -- and my understanding is that any  
9 of those ballots -- provisional, military, overseas,  
10 remix that we would be doing -- if they dealt with  
11 House District 49, we couldn't do anything with any of  
12 the races on those ballots. Is that my understanding  
13 from the -- what we talked about?

14 MR. SICUSO: Unless, as Commissioner Claytor  
15 suggested, the entire impoundment were released  
16 temporarily.

17 Is that what you were suggesting?

18 MR. CLAYTOR: I'm suggesting that modifying the  
19 impoundment order to allow supervisory of both --

20 MR. SICUSO: Of all of the --

21 MR. CLAYTOR: -- germane and non-germane ballots.

22 MR. SICUSO: Got it. I see.

23 MR. KOICHEVAR: So just to help you place this  
24 into context and everything, is that -- and from my  
25 understanding of Clerk Anderson here, is that there

1 are a number of uncounted ballots, many of which are  
2 valid, meaning they really don't need to be scanned  
3 and added to the election record, that are both in  
4 precincts out of House District 49, so not subject to  
5 the recount, but need to be accessed by Friday at  
6 noon, which is the deadline to correct election  
7 results with the State to get those added into the  
8 final totals.

9 In addition, I would assume, though I don't  
10 know--and, again, Clerk Anderson can speak more to  
11 this--is that there may be also Democratic primary  
12 ballots that are in the precincts that make up House  
13 District 49 that may be -- that may not have been  
14 added to the totals, have not been tabulated or  
15 counted that would also not be released -- or not  
16 subject to this recount since it's for a Republican  
17 primary.

18 The issue -- and then all those, I think, are the  
19 easier ones to resolve with whatever is decided today  
20 and whoever will supervise that because that's just a  
21 matter of taking things that were impounded that were  
22 caught up and then moving them out of -- and getting  
23 them back into the jurisdiction for the County.

24 The issue that I think that -- just make sure  
25 that everyone is aware is of the ballots that would be

1 subject to this recount, those are those uncounted  
2 provisional or remade ballots that are in the  
3 Republican primary in the precincts that are in House  
4 District 49.

5 Now, the -- this petition is only dealing with  
6 the recount of that particular office and none of the  
7 other offices that are on that -- on those Republican  
8 primary ballots. That runs the gamut from the  
9 Presidential primary down to whatever county, local  
10 races that are on the ballot in Elkhart County, for  
11 which I can't tell you what those are. I don't have  
12 your election results in front of me.

13 The issue of not giving -- or if the County does  
14 not have access to those ballots to process all of  
15 those, then it is very much, I would couch as a  
16 possibility, that those other votes and those other  
17 offices in the Republican primary in House District 49  
18 will never and can never be counted, much less added  
19 to their final totals, just that because the County,  
20 once we go through the entire recount, the County is  
21 not going to get those records back for -- if we use  
22 the past recounts -- for a number of weeks. And we  
23 would have passed all those deadlines, most likely --  
24 or also possibly gone through the Republican State  
25 Convention, which I know is the first of the two major

1 party conventions that are on the calendar for this  
2 year.

3 So I just throw that out there as what the --  
4 what we're looking at and what's being asked for.

5 Now, as for the law, really what is -- the  
6 section that's here I think is Indiana Code  
7 3-12-11-16(a). Subsection (a), I believe, is the  
8 catch-all for all recounts except for legislative  
9 office recounts during the November general election.

10 Now, that is a May provision. It is the option,  
11 whether of the Recount Commission or through the  
12 recount director, of when to order that impoundment.

13 Now, precedence is always a good thing. This  
14 is -- recounts have been professionalized through the  
15 1986 changes that were made, and so I would say -- I  
16 would obviously defer over to Phil on how normally  
17 these things are handled.

18 I think what is just subtly different -- and I  
19 think Phil really hit the nail on the head that we  
20 haven't experienced before -- I can certainly back him  
21 up on this, having been counsel for the Recount  
22 Commission for nearly ten years, is this is the first  
23 time we have seen where a petition was filed earlier,  
24 definitely before that -- before that -- the County  
25 needs to be done for the provisional ballots. I've

1 not seen that before in that -- and that, you know, we  
2 just follow through what we would normally see as a  
3 typical process, but then we come to realize that, you  
4 know, there's -- that typical process now has --

5 MR. SICUSO: Has consequences.

6 MR. KOCHEVAR: Has consequences. Yes, stopped  
7 the counting of whatever ballots that are out there  
8 from being provided in the final total.

9 I would just say at the end, I think it is,  
10 again, possible; that is, a recalculation. You could  
11 do what Mr. Claytor has asked for, to lift that, or  
12 think of some way to modify. I think it is a  
13 possibility. It is an option that is before you.

14 I will leave it to your open judgment on what you  
15 believe is the best option to ensure that the counties  
16 can complete what work they need to complete, as well  
17 as for this Commission to do its process as required  
18 by law.

19 I think that's all the comments I have on this  
20 particular matter so I will defer over to my  
21 counterpart counsel, Mr. King, or anyone else on this  
22 particular question.

23 CHAIRMAN MORALES: We have one more.

24 Go ahead.

25 MR. HODSON: Don Hodson, D-o-n H-o-d-s-o-n. I'm

1 a member of the Hendricks County Election Board.

2 My question to you would be whatever you decide  
3 to consider, the Election Board of Hendricks County  
4 was scheduled for May 17th at 12:00 noon to certify  
5 those votes. Of course, the State Police and State  
6 Board of Accounts came in on Thursday so everything  
7 was taken -- or locked up. We couldn't do that.

8 My question would be -- because you mentioned the  
9 deadline for certification is this Friday at noon.  
10 The State also requires an open door law, says 48 hour  
11 notice for any meetings of the Election Board or any  
12 kind of government board. I want to know how we get  
13 by that deadline because --

14 MR. CLAYTOR: Declare an emergency.

15 MR. KOCHEVAR: Yes. And of course I do want to  
16 make sure there is -- to defer over to counsel, but I  
17 think I can help answer these statutory questions.  
18 And I will note the folks here are from Hendricks  
19 County. That's House District 40. I'm pretty sure  
20 that's on the agenda, so we will obviously tread the  
21 ground there. I think they're a little bit different,  
22 and I think Phil and Kendra will talk about that when  
23 we get to them.

24 But nonetheless, for both those counties,  
25 whatever they -- whatever you determine today and

1           whatever they can get to certify by noon, to answer  
2           the first question, the deadline that I'm referring to  
3           is a deadline to correct your certification. The  
4           certification deadline was actually this past Monday  
5           at noon. There's another statute on the books which  
6           say that counties get until the final deadline for  
7           filing any recount petition, which is this upcoming  
8           Friday at noon, to correct their materials.

9           Now, if any of these counties have provisional  
10          ballots which they have not processed which requires  
11          them to do a -- to meet as Election Board, to go  
12          through that process under the provisional counting  
13          law, there is a provision under the open door law  
14          where they can declare an emergency and not observe  
15          the 48-hour notice requirement. I don't have the open  
16          door law up in front of me.

17          As long as they cite to that particular statute  
18          as well as inform any media that had already  
19          previously filed for the year to request those notices  
20          and they get them out there and most likely do their  
21          best to notify the public, they can proceed to dealing  
22          with a actual government emergency, which I would  
23          presume that they have. They have a deadline coming  
24          up to certify as -- whatever they may have left that  
25          they will have access to, and I would personally say

1 as an attorney, that constitutes an emergency as the  
2 General Assembly intended when they crafted that law  
3 and the open door law.

4 Of course I'll defer over to my fellow counsel,  
5 Mr. King, to add on or provide other comments on these  
6 questions.

7 MR. KING: Thank you, Mr. Secretary.

8 Matthew has addressed several questions. I'm  
9 going to address a number of different points that  
10 have been raised here.

11 First, with regard to the ability of the  
12 Commission to modify the impoundment order, as noted,  
13 we are under different statutes when it comes to a  
14 primary versus the general, and so there is more  
15 discretion with regard to the impoundment material  
16 by either the Commission as a body or the director  
17 acting under their authority.

18 With regard to past precedent, we certainly have  
19 had a case in December of 2010 when a recount  
20 impoundment order was issued on the night of the  
21 general election at the request of a candidate for  
22 State representative, that it was applicable to Posey,  
23 Vanderburgh and Gibson counties, and the State Police  
24 implemented that order the next morning.

25 So that, as a result, in Gibson County there was



1 a close race for county recorder which could not be  
2 resolved because of course the State recount took  
3 precedent over any local election proceeding.

4 So there have been situations in the past where  
5 because of the timing of a request for a recount and  
6 the issuance of the impoundment order that the end  
7 result has been that some votes cast may not be  
8 counted simply because of the deadlines for  
9 individuals to either be certified following the  
10 primary, which, Mr. Kochevar, you had directly stated,  
11 or to determine who takes actual office beginning  
12 presumably on January 1st following the general  
13 election.

14 I think there are a number of different options  
15 that are available to the Commission. I would start  
16 by saying the impoundment -- and I believe  
17 Mr. Kochevar referenced this as well -- for House  
18 District 49 covers ballots that were cast in both of  
19 the major party primaries, and the guidelines do use,  
20 in a limited way, information from ballots cast in  
21 another party's primary or where there's a public  
22 question, you know, some variation, as part of their  
23 counting techniques.

24 So, from my perspective, it is important for the  
25 integrity of the process to maintain impoundment

1 security with regard to any ballot cast in House  
2 District 49 for the reasons I've just set forth.

3 Stepping beyond that, the recount guidelines  
4 provide for a mechanism that's similar to what we are  
5 discussing here, and that's the pre-recount  
6 inspection, which is done at a time ordered by the  
7 recount director with representatives from both  
8 candidates present to sort through election material  
9 such as ballots to determine what is relevant what is  
10 not and to "narrow the issues," is the phrase used in  
11 the guidelines.

12 And so that certainly has been a common practice  
13 for State Board of Accounts used most recently, as I  
14 recall, in the 2016 Democratic primary in  
15 Congressional District 8 where there were 21 counties  
16 involved and significant coordination was achieved  
17 through the pre-recount inspection.

18 Moving beyond the pre-recount inspection, I think  
19 if the Commission were to modify the impoundment order  
20 issued in this matter, it would want to specifically  
21 address the requirements for the presence of  
22 individuals, the opportunity for candidates to be  
23 present, and to give some guidance to the extent it's  
24 helpful to the recount director for the scheduling  
25 that everyone would be required to undergo to carry

1           this out.

2           I do want to shift with regard to the  
3           certification deadline that's been referenced  
4           correctly as being Friday noon. The counties were  
5           required -- all counties were required to certify  
6           results on Monday of this week. Some did not. And we  
7           can understand there may have been reasons, with  
8           regard to Elkhart and Hendricks County, why they did  
9           not. Nonetheless, the Indiana election law provides  
10          there is no home rule authority in elections. Under  
11          Indiana Code 36-1-3-8(a)(12), the General Assembly in  
12          2023 reinforced that to say there has to be a  
13          statutory mechanism used to conduct any part of an  
14          election in Indiana.

15          Therefore, provisional ballots, as one example,  
16          can only be -- have their validity determined by the  
17          County Election Board at a meeting following the  
18          process that Mr. Kochevar mentioned, if necessary  
19          giving public notice and citing to the applicable  
20          provisions of the open door law that permit less than  
21          48 hours notice to be given to deal with an emergency  
22          situation, one of which is the disruption of  
23          government activities, and certainly the election  
24          activities are important ones and, in my opinion,  
25          would certainly come within the coverage of that

1 exemption of the 48-hour law.

2 I think the third and final level that I want to  
3 address is that the petitioner in this matter has  
4 requested a hand count of that, and the --  
5 Mr. Anderson, clerk, referenced using voting systems  
6 that involve more than a hand count as part of this  
7 process. And, again, these -- this is equipment that  
8 is authorized for use by the State in the normal  
9 course of business and properly used by the Elkhart  
10 County Election Board in the May primary, but to note  
11 that the hand count of ballots is an issue that's been  
12 raised in this proceeding and therefore the Commission  
13 needs to take that aspect into consideration.

14 I'll be happy to answer any further questions or  
15 comments people may have.

16 MR. CLAYTOR: Can I ask --

17 CHAIRMAN MORALES: Please. Go ahead. Go ahead.

18 MR. CLAYTOR: The hand count -- and I'm -- I know  
19 I'm parsing words here, but we're counting and we're  
20 recounting and the hand count is for a recount, and I  
21 believe what the clerks are asking for is an original  
22 count. And I know that's not provided for in the  
23 statute, but it's your opinion that a count, if we  
24 allow it, would be required to be a hand count because  
25 of the recount petition?

1 MR. KING: Thank you, Commissioner Claytor.

2 There's really two parts to that question.

3 One is, the hand count has been requested. The  
4 recount petition has not yet been granted, and so that  
5 remains before the Commission.

6 But I think you referenced the other important  
7 point in your question is that unless we can point to  
8 a statute in Title 3 that authorizes a procedure,  
9 using that procedure is impermissible and the action  
10 is void under the 2023 legislation I referenced.

11 And so, from my perspective, since the recount  
12 law does authorize a hand count to be requested, then  
13 I would understand that to mean -- have a plain  
14 meaning of the words under Indiana Code 1-1-4-1 to say  
15 yes, you would have to use a manual count to comply  
16 with that part of the process even though we're in the  
17 context of a recount procedure.

18 MR. CLAYTOR: Right.

19 MR. WYNN: I just want to clarify. So I've got  
20 to break this down even more.

21 So if I understand your answer to his question,  
22 you believe the law as it is today, Brad, is that the  
23 uncounted votes are subject to a hand count, the ones  
24 that have not been examined.

25 MR. KING: Commissioner, if I can distinguish

1 here between types of ballots.

2 Provisional ballots are ballots whose validity is  
3 in dispute for some reason, and therefore before the  
4 ballot is opened and the ballot tabulated in any way,  
5 there has to be that determination by the County  
6 Election Board. And so, until that happens, no, those  
7 ballots -- ballot envelopes cannot be opened and the  
8 counting proceed.

9 With regard to other ballots that are not in  
10 the -- that provisional status, again, we have a  
11 petition pending, but assuming that the petition is  
12 not granted in that regard, and under the normal  
13 course of the process, State law spells out when you  
14 use a particular type of equipment, which in this case  
15 would be generically called ballot card, the ballot  
16 cards are to be tabulated by use of the authorized  
17 equipment.

18 What makes the difference is, again, we've had a  
19 request to -- which, again, is permitted under the  
20 law, the statute -- to instead use a hand counting  
21 procedure rather than what might have been used on  
22 election night.

23 So I hope that addresses the question, at least  
24 in part.

25 MR. WYNN: Sir, I believe when you initially --

1 and I know you have a comment, but the -- when you  
2 initially raised this issue, said the State Board of  
3 Accounts had some suggestions.

4 MR. SICUSO: Yes.

5 MR. WYNN: I don't know if we've heard those.

6 MR. SICUSO: I would love --

7 MS. LEATHERMAN: We have not, and I'm happy to  
8 provide them.

9 Kendra Leatherman again, general counsel for the  
10 State Board of Accounts.

11 So recount director, Mr. Sicuso, myself, and  
12 Mr. Anderson had a discussion yesterday about kind of  
13 a proposed plan to bring to the Commission for  
14 consideration, and I think maybe -- I think probably  
15 because the items in question haven't actually been  
16 counted yet, you know, that is why we have some  
17 speculation about maybe how we're going to get this  
18 done.

19 But what our proposal is, is, you know, according  
20 to the clerk, there are kind of two large ballot bags  
21 that otherwise contain all of the items that have not  
22 yet been counted.

23 MR. WYNN: And we're only talking about Elkhart  
24 now.

25 MS. LEATHERMAN: And we're only talking about

1 Elkhart County and only the -- we're only talking  
2 about Elkhart County.

3 As mentioned before, Elkhart County is a vote  
4 center county, and so when we talk about recounts,  
5 that means that under the guidelines we might have to  
6 perform a recount both by vote center and by precinct.  
7 That's contemplated.

8 And so what we would do is sort through the  
9 materials in those two orange bags. First -- I'm just  
10 going to walk through the process because I think it  
11 makes sense. This is a Republican primary, so the  
12 first thing we would do is take out all of the  
13 Democratic ballots, right? Those can be released, you  
14 know, with the Commission's approval, to the clerk.  
15 And then once we go -- we get to the Republican  
16 ballots, we sort through all Republican ballots and we  
17 separate the ones that are not relevant to the  
18 precincts at issue, right? So any Republican ballot  
19 that was cast for a precinct that's not in House  
20 District 49 would also be separated out, and with the  
21 Commission's permission, could be released back to the  
22 County.

23 And so then what Board of Accounts is therefore  
24 kind of left with are the ballots that have not yet  
25 been counted -- and, again, I can't tell you what the



1 mixture of what those are, right? Military  
2 provisional, paper absentee, et cetera, because,  
3 again, they haven't been counted so I can't tell you.

4 And so what we would do is, for purposes of  
5 sorting and identifying them, we would identify those  
6 and mark them that they are -- where they were counted  
7 at from a vote center because we have that  
8 information, and we would also mark that these were  
9 the ones that were the uncounted ones so they can  
10 later be separated out.

11 So that's kind of the first part of the process  
12 in terms of sorting. And, as the clerk mentioned,  
13 the -- in order to report information back to the  
14 State, the clerk would like access to one of the  
15 high-speed scanners. They are -- the County is able  
16 to provide us a list of scanners that were used and  
17 not used on election day, also media that were used  
18 and were not used on election day. So they would  
19 otherwise have empty media that could be used, stuck  
20 in the scanner, the ballots ran through, and then they  
21 could report those results to the State. They would  
22 do that under our supervision and State Police's  
23 supervision.

24 I think what has been kind of tossed around a few  
25 times so that items regarding provisionals could be

1 counted, you know, best-case scenario, they would be  
2 able to declare an emergency, have an Election Board  
3 hearing, the Election Board could meet and rule on  
4 those things kind of while we were otherwise there.

5 I can't really say if there are actually any  
6 provisional ballots that are relevant to the race. If  
7 we knew there weren't, then, you know, it -- the  
8 recount of that ballot that has not yet been counted  
9 is not particularly an issue.

10 But that that's kind of our proposed plan. I  
11 have a team that is ready to start that work in  
12 Elkhart County tomorrow morning at 8:00 a.m.

13 MR. WYNN: Have you contemplated who would be  
14 present or who would be allowed under what you --

15 MS. LEATHERMAN: So State Police would be there  
16 because they have to open the doors, and we would be  
17 there. I think -- you know, in previous sorting  
18 activities, I think the parties have been allowed to  
19 attend and not allowed to touch materials. It is  
20 pretty custom practice that either County Election  
21 Board or employees that otherwise work in voter  
22 registration in the clerk's office are also in  
23 attendance because they know their materials, really  
24 better than we do, and if they touch anything, it's  
25 kind of under our direction and, you know, in order to

1 assist us with our job. So I would presume that's how  
2 we would operate this also.

3 MR. WYNN: I'm sorry.

4 MS. LEATHERMAN: I don't know if anyone has any  
5 questions. That's kind of our proposed plan as of  
6 this moment. That seems -- from my perspective, it's  
7 kind of the best narrow version of trying to get to  
8 what we want. There are other -- I mean, this could  
9 be done a different way but that's kind of what we've  
10 come up with so far.

11 MR. WYNN: So I would just be curious hearing  
12 that, does -- are -- either counsel believe that is  
13 consistent with Indiana law at this time?

14 MR. KOICHEVAR: I believe so. I'm -- a function  
15 and certain actions by the State entity has prevented  
16 the County from completing its work. I have a belief  
17 that even though -- certain deadlines have been missed  
18 but not all deadlines have crossed. The County still  
19 needs to do as much as they possibly can to make sure  
20 that they execute all of their duties and  
21 responsibilities under the code on there.

22 This -- really what Kendra is -- what I'm hearing  
23 from her is that this almost seems to be like a  
24 modification of what you would normally -- what I  
25 normally understand to be a pre-recount inspection.

1 That is about getting into materials, figuring out  
2 what those materials are, but it's being used for a  
3 special purpose of one, which I think is clear to me,  
4 is taking all the materials that are behind the lock  
5 that the State Police put on there that do not -- that  
6 are not subject to this particular petition and giving  
7 them back to the counties for those things.

8 As for -- as well as, I would hope, the  
9 Democratic primary ballots, if there are any, that  
10 haven't been counted in House District 49 as well  
11 because -- again, they are -- while I'm -- I do know  
12 that they have been helpful. I affirm what Mr. King  
13 said previously about that. The State Board of  
14 Accounts has used them to figure out, you know,  
15 different totals and everything and making sure that  
16 everything lines up. They are, from my perspective,  
17 legally not subject to this petition. It's the  
18 Republican primary recount, not a Democratic one.  
19 Those ballots should be processed and those votes, if  
20 any are out there, should be counted and added to the  
21 totals.

22 And so if this all does make sense -- I'm a  
23 little bit unclear about the Indiana -- the ballots  
24 that are really actually subject to this particular  
25 recount. I think that, if I'm following correctly,

1 I'm going to say this to make sure I'm not getting  
2 this wrong, is that, you know, your process is you're  
3 going to handle them at that recount, that the County  
4 will not get to them because they are -- you know,  
5 they are materials that you need to do your job under  
6 the statute. Am I following that correctly?

7 MS. LEATHERMAN: Yes. That is what we have  
8 proposed. Now, I understand that, you know,  
9 Commissioner Claytor may raise another issue that this  
10 is a recount, not a first count.

11 I acknowledged -- I acknowledge that. I think,  
12 from my perspective, just from a process standpoint,  
13 we have stamps; we have rubber bands; I've got  
14 markers; I have stuff. We've done this a few times so  
15 I know how to otherwise ensure that, if those  
16 particular ballots become an issue, to separate them  
17 from other things.

18 Also, just for purposes of this, our intention is  
19 only to go through those two orange bags. Nothing  
20 else. So that -- because that has what -- those two  
21 bags are the items that are otherwise, from the  
22 County's perspective, preventing them from certifying  
23 their results.

24 So, you know, from a narrowing of the issue  
25 problem, those two bags are the problem. We're going

1 to deal with only those two bags.

2 MR. SICUSO: And pre-recount inspection will  
3 cover a lot more before a full inspection.

4 MR. CLAYTOR: Your statement of those two orange  
5 bags, anything D goes back to the County; anything not  
6 HD 49 goes back to the County; but then anything that  
7 is HD 49 is then not touched?

8 MS. LEATHERMAN: Well, it's going to be  
9 separated, but I'm not going to do anything with it.

10 MR. CLAYTOR: You're not going to count them.

11 MS. LEATHERMAN: No. One hundred percent not. I  
12 mean, other than I have -- it's not going to be -- I  
13 can't say that I'm not going to count it because  
14 auditors count everything, okay? But what I'm going  
15 to say, it's not a part of, like, the official  
16 counting process where we're verifying and tallying  
17 votes or anything. We're going to count them in the  
18 fact that I need to know how many pieces of paper are  
19 there.

20 MR. CLAYTOR: Right. Right.

21 MS. LEATHERMAN: But we're not tallying votes or  
22 persons or anything like that.

23 MR. CLAYTOR: But the County's not going to get  
24 township board --

25 MS. LEATHERMAN: No.

1 MR. CLAYTOR: -- counts off those ballots.

2 MS. LEATHERMAN: And, from my understanding and  
3 kind of perspective -- I haven't done this as much as  
4 everybody else, but that's typical.

5 MR. SICUSO: Well, in a typical scenario I think  
6 they would have already been counted, right?

7 CHAIRMAN MORALES: So that --

8 MR. SICUSO: So that's the distinction here.

9 CHAIRMAN MORALES: I would like to give an  
10 opportunity to Chris Anderson to say a few words.

11 MR. ANDERSON: I understand, and I did a quick  
12 count this morning of the races in Elkhart County.  
13 There are 49 races because of district cross-over that  
14 we would not be able to certify, from President all  
15 the way down to State Convention Delegate.

16 We have two State Convention Delegate races that  
17 cross into District 49. I have the bottom person in,  
18 in one of those races, is either 8 or 11 votes ahead  
19 of the top person out, that if those are -- that goes  
20 like this (indicating) if there are 11 votes, 12  
21 votes.

22 I have a tie in a precinct committeeman race that  
23 is -- that is out.

24 I have a six vote in several precinct  
25 committeeman races within District 49. Those -- there

1 are ballots that could be available. We don't know.  
2 That's where my concern lays.

3 MR. SICUSO: And so I think what you were  
4 saying -- I don't mean to put words in your mouth --  
5 but you're asking whether there's a way to do this  
6 where, when the ballots have been separated and  
7 segregated, to count them all.

8 MR. CLAYTOR: And I think Brad's saying no, that  
9 because of the hand count provision.

10 The other thing that was mentioned at some point,  
11 beyond what you've got here, Kendra, I think the clerk  
12 will need the poll books because the provisional  
13 ballot application doesn't have -- or affidavit  
14 doesn't have a D or an R on it, and so you don't know  
15 that sealed provisional whether or not it's a D or an  
16 R.

17 MS. LEATHERMAN: Yes.

18 MR. CLAYTOR: But they -- you're saying they  
19 would have a hearing to determine whether they're  
20 going to open it, and then you're going to care  
21 whether it's a D or an R.

22 MS. LEATHERMAN: Well, I think, from my  
23 understanding of how the electronic poll book works,  
24 is that once the clerk has access to their otherwise  
25 ERM computer, they're going to be able to access their



1 electronic poll books, but I would defer to counsel on  
2 that.

3 MR. KOCHEVAR: I think they normally -- what I --  
4 I'm not -- fortunately I -- we're at State level and  
5 so I know what the law is but I'm not sure how the  
6 other particulars of that --

7 So, Chris, you may need to help me out on how you  
8 keep your list and everything. Yes, if there was a  
9 vote -- so I will say this. If there was a voter who  
10 came in to vote on election day.

11 MS. LEATHERMAN: Right.

12 MR. KOCHEVAR: And signed -- or early voting,  
13 signed the poll book, but then was challenged, they  
14 had to vote on a provisional ballot. Their party  
15 designation, what party primary they're participating  
16 in, may be on there.

17 In addition, any of those where they -- was an  
18 absentee my mail ballot or a travel ballot that turned  
19 into a provisional ballot, you can look at their  
20 absentee ballot application. Those, conceivably, you  
21 can look at SVRS.

22 I think the problem you may have or run into --  
23 and it may be very narrow. I hope they're zero but it  
24 could be one or more -- is that you have someone who  
25 is not registered -- who is not on the voter

1 registration rolls but by our -- a suggestion in  
2 training, what counties have normally done in the last  
3 many years is that they say -- they usually issue a  
4 provisional ballot knowing probably it's not going to  
5 count in the end, but there is no -- there is a --  
6 probably a different record that is kept for saying,  
7 well, we have this person and he was given this  
8 particular party's primary ballot.

9 Now, that would be an election writer, and most  
10 likely that election writer has been impounded, which  
11 means that whether -- if this process goes forward and  
12 your team is up there, your team, along with the  
13 clerk's staff, is probably going to have to find that  
14 record, though I would, again, defer to Clerk Anderson  
15 on what that particular record is, if at all. If I'm  
16 speaking things that he knows that I'm talking about  
17 that he may have, and especially where he thinks it is  
18 in whichever location that record may -- may be, on  
19 top of accessing his electronic E-poll book  
20 information. Because even if he made a copy, that  
21 most likely -- also has been impounded and  
22 Clerk Anderson most likely has not probably accessed  
23 that information since the State Police came by and  
24 did their work.

25 CHAIRMAN MORALES: Thank you.

1 I'd like to provide Clerk Anderson, if you would  
2 like to say something. If not, Brad King would like  
3 to say a few comments.

4 MR. ANDERSON: The E-poll book files have been  
5 impounded. We do not have access to those. And  
6 that -- the other thing is that when I look at the not  
7 counting of those ballots, 85 -- based on turnout,  
8 85 percent of those ballots are going to be Republican  
9 ballots, and those -- then you've got 85 percent of  
10 those, those voters have been disenfranchised if we  
11 turn over the Democratic ballots and count those  
12 because they're not part of the impoundment, and  
13 that's the decision, but you've got these -- this  
14 other 85 percent that could be -- we've got precinct  
15 committeeman races that are close, separated by five  
16 or six, that we're not going to count those, that  
17 could then determine who that precinct committeeman  
18 is, and that could be within that -- that race within  
19 a race for County Council District 4. That precinct  
20 committeeman does not -- they're disenfranchised from  
21 becoming the new precinct committeeman if we don't  
22 count that ballot and it changes.

23 Middlebury town council. I've got a separation  
24 of seven and I know that there are probably seven  
25 Middlebury ballots in that batch that has not been

1 tabulated.

2 CHAIRMAN MORALES: Thank you, Clerk Anderson.  
3 Brad?

4 MR. KING: Thank you, Secretary -- Mr. Chairman.

5 I'll begin by stating that we're wrestling with a  
6 very practical problem in the administration of  
7 elections, and that is the risk that the perfect  
8 becomes the enemy of the good.

9 I respectfully disagree with Clerk Anderson about  
10 his ability to certify the results from Elkhart County  
11 and would say the same with regard to Hendricks County  
12 or any other. State statute requires the  
13 certification of results by a particular deadline.

14 State law also assumes that there may be a need  
15 to correct those certifications and provides a window  
16 for it.

17 Further, State recounts provides that if a  
18 recount is conducted and the numbers change, that the  
19 numbers voted on by this body, the Recount Commission,  
20 supercede anything that the County has previously  
21 certified.

22 And so my advice to counties throughout the years  
23 and certainly this May has been: Certify what you  
24 can, that you are confident in good faith you can say  
25 to the best of your knowledge as of this moment were

1 the number of votes each candidate received.

2 With regard to certain political party offices  
3 that are on the ballot for both parties, the State  
4 Convention Delegates, that becomes a matter where  
5 ultimately the political party itself through the  
6 credentials committee of its State Convention  
7 determines who is eligible to serve as a State  
8 Convention Delegate, whether by election through the  
9 primary or by appointment later subject to party  
10 rules.

11 And precinct committeemen, likewise, have  
12 provisions for appointment under certain conditions by  
13 the party when vacancies occur.

14 And so, again, I return to being the perfect  
15 cannot hold up the calendar. It cannot hold up the  
16 need for the certification of the elections conducted  
17 in May. It cannot hold up preparing of the ballots,  
18 which have to be distributed or be ready by the  
19 counties 50 days before the general election. And so,  
20 because we're in a federal election year, we have some  
21 very strict timelines to deal with here.

22 I think the question before the Commission is  
23 really a threshold one: First, should any  
24 modification of the impound order be made? And if the  
25 answer to that question is yes, what should be the

1 extent of that modification so that -- for example,  
2 we've had discussion already with regard to the hand  
3 count versus tabulation aspect of the proceeding.  
4 We've had comment from State Board of Accounts and  
5 others regarding ballots cast in the Democratic  
6 primary which are subject to the impoundment order in  
7 that they are necessary for the State Board of  
8 Accounts to come up with the detailed accounting of  
9 the number of ballots cast in the precinct, and I  
10 would imagine would not be released back to the County  
11 without reservation before that State Board of  
12 Accounts work is done.

13 And so we've not heard -- I'm speaking now with  
14 regard to Elkhart County specifically. We've not  
15 heard with regard to any comments from parties with  
16 regard to the hand count issue, and beyond that it  
17 becomes a question of the Commission's ability to  
18 grant relief that's envisioned under the State  
19 statutes.

20 CHAIRMAN MORALES: Thank you, Mr. King.

21 You know --

22 MR. HODSON: Don Hodson, Hendricks County  
23 Election Board.

24 Mr. King, I'm hearing you say that we should have  
25 certified -- went ahead and certified the ballots --

1 the record that we had. We had an Election Board  
2 meeting scheduled for that Friday. But the clerk's  
3 office reached out to you on Thursday after the  
4 impounding. No direction was given to us. We went  
5 ahead and held that meeting and certified that.

6 I guess that -- I'm bringing this up because, I  
7 mean, this whole process is causing a lot of confusion  
8 and you have people change all the time in these  
9 election offices. I mean, the clerk and the deputy  
10 clerk, neither one of them been through this process,  
11 or the Election Board.

12 We would have done our job and certified, and  
13 then we could have gone back and, you know, corrected  
14 any errors, like you said.

15 But she reached out to your office for guidance  
16 and no guidance was said, Go ahead and have your  
17 meeting. She told you that we were scheduled to have  
18 that meeting and so we canceled that meeting. So  
19 I'm -- I'm just bringing that up because I think that  
20 needs to be on the record. So. . . .

21 CHAIRMAN MORALES: If there is -- for purposes of  
22 discussion, is there a motion to accept the recount  
23 petition and order a recount proceeding? Any motion?

24 MR. CLAYTOR: Mr. Chairman, I'm going to attempt  
25 to make a motion that it will probably be ruled

1 illegal, immoral and fattening.

2 I would like to move that the Recount Commission  
3 modify the impoundment order that was issued by the  
4 recount director to the extent that in House  
5 District 49, the uncounted ballots, which we assume  
6 are in two large orange ballot bags, will be reviewed  
7 by the State Board of Accounts under the supervision  
8 of the State Police and the county clerk; that the  
9 uncounted ballots will be segregated into three  
10 divisions as being Democrat ballots, House District 49  
11 ballots, and not House District 49 ballots; and that  
12 the clerk be allowed to run those through a tabulating  
13 machine, all three sets, and the clerk may then use  
14 those totals to correct its certification, and at noon  
15 on Friday, with the -- will return all the materials  
16 back to impound and the impound order would be  
17 reinstated.

18 CHAIRMAN MORALES: Thank you, Commissioner.

19 MR. CLAYTOR: And I would like to point out  
20 specifically that the counting -- the machine counting  
21 of those ballots as a primary count and not a recount  
22 is not authorized specifically by Indiana statute but  
23 I believe we could order it and let somebody sue us.

24 CHAIRMAN MORALES: Commissioner Wynn, any  
25 comments?



1           So we have a motion from one of our  
2 commissioners. Is there a second?

3           With no second, the motion dies.

4           Any additional motions?

5           MR. CLAYTOR: Mr. Chairman, I would like to make  
6 a motion that the Recount Commission modify its  
7 impoundment order as following the recommendation by  
8 the State Board of Accounts as outlined by the Board  
9 of Accounts' counsel a few minutes ago.

10          CHAIRMAN MORALES: Is there a second?

11          Since there is no --

12          MR. WYNN: No. I'm sorry. I'm just -- I'm --  
13 there's a lot of information. I apologize and I'm  
14 making sure that I go through what their  
15 recommendation was, and given the concerns that were  
16 raised by counsel. So I apologize for taking just a  
17 moment.

18          CHAIRMAN MORALES: Should we ask the  
19 Commission -- should we ask the State Board of  
20 Accounts to --

21          MR. WYNN: If that's appropriate, I would like  
22 that.

23          MS. LEATHERMAN: I -- yes. And I, you know, kind  
24 of even myself, I would like to confirm what I promise  
25 to do for everybody.

1           MR. WYNN: This is my concern. My concern is  
2           crafting this in a manner that doesn't invite -- these  
3           always create unintended consequences like we find  
4           ourselves here today. So crafting this order I  
5           think -- or crafting this modification is clearly  
6           challenging.

7           So, if you could.

8           MS. LEATHERMAN: So what we would do is otherwise  
9           go only through these orange bags that have been  
10          labeled as issued and then take out everything  
11          irrelevant to the recount. So that would be Democrat  
12          ballots; that would be Republican ballots that are not  
13          in the precincts at issue. And I think from my  
14          perspective something that Mr. Claytor raised and that  
15          Brad also mentioned is I don't think I was really  
16          precise enough in my language about the Democrat  
17          ballots in House District 49.

18          So I think from a reconciliation standpoint, it  
19          would be best practices for those are in -- it would  
20          be best practices for us to keep those should they  
21          otherwise exist for the recount but they have not yet  
22          been counted.

23          So, you know, I -- I don't know that we discussed  
24          this particular issue yesterday.

25          MR. SICUSO: We envisioned releasing --

1 MS. LEATHERMAN: I envisioned releasing those,  
2 just to be really honest --

3 MR. SICUSO: Right.

4 MS. LEATHERMAN: -- about it.

5 MR. SICUSO: So that a count could be done.

6 MS. LEATHERMAN: So a count could be done. And I  
7 think that, at least in my previous experience, you  
8 know, for different counties, that is what we have  
9 historically done.

10 MR. SICUSO: I think historically this has never  
11 been done.

12 MS. LEATHERMAN: Well, I mean, generally it's,  
13 you know --

14 MR. SICUSO: But, yeah, those would have already  
15 been counted, historically.

16 MS. LEATHERMAN: Right.

17 MR. SICUSO: So the question I think on the table  
18 is whether these votes are ever going to be counted.  
19 So it might be a valid question. If we were to go  
20 through this process, can they be counted for the  
21 first time on a recount? I don't know the answer.

22 CHAIRMAN MORALES: Do we have a motion?

23 MR. SICUSO: Still on the table, yeah.

24 MR. WYNN: Did you have anything else that you  
25 wanted to outline?

1 MS. LEATHERMAN: No. I guess the proposed  
2 discussion that we've had before is that we would  
3 release the Democrat ballots for 49, which is, I  
4 think, is -- maybe I'll call it so I get -- SBOA  
5 Proposed Plan 1. And so, you know, if that is  
6 otherwise rejected, then counsel will come up with  
7 SBOA Proposed Plan Number 2.

8 MR. SICUSO: Right. I guess the legal question  
9 would be with the proposal on the table, State Board  
10 of Accounts to sort ballots that are relevant to the  
11 recount and ballots that are not relevant to the  
12 recount, whether those ballots, after sorting, can be  
13 released to the County or not. Because I think the  
14 proposal that was on the table is to release them.

15 CHAIRMAN MORALES: Then there's some confusion.  
16 I would probably like more clarification, Kendra, if  
17 you may.

18 MS. LEATHERMAN: So what we are proposing to do  
19 is, as Phil said, you know, we will sort through those  
20 orange bags and what we will otherwise keep segregated  
21 and not release back to the County would only be, you  
22 know, Republican ballots in House District 49, which  
23 are the precincts that are in that district.

24 And then once we get those, we will have to --  
25 the process of sorting will require us to identify

1           these, to mark them in a different manner so we can  
2           otherwise segregate those out.

3                     But those are -- at least my understanding --  
4           ballots that have never been counted. And so my  
5           intention in segregating them out is that I imagine  
6           maybe further down this process there will be kind of  
7           another discussion, probably with counsel, on should  
8           those even eventually be a part of the recount  
9           process. That's kind of my. . . .

10                    MR. SICUSO: The proposal is --

11                    MS. LEATHERMAN: To segregate them out and not do  
12           anything with them at this point.

13                    MR. SICUSO: -- was to provide a sorting --

14                    MS. LEATHERMAN: Yes.

15                    MR. SICUSO: -- mechanism and to retain only  
16           those that are necessary to conduct the recount.  
17           That's what was on the table from the State Board of  
18           Accounts.

19                    Now, Brad, you may have raised some good  
20           procedural or legal questions as to whether that's  
21           okay, if that proposal is okay.

22                    MR. KING: Mr. Chairman, members of the  
23           Commission, I think the pertinent question is, can the  
24           Board of Accounts comply with the recount guidelines  
25           adopted by the Commission if the non-Republican

1 ballots in House District 49 are released at this  
2 stage of the proceeding.

3 MR. SICUSO: And if there's a question about  
4 that, the way to correct that, then, would be instead  
5 of having three groups of sorting, it would be two.  
6 It wouldn't be a separate by party; it would be to  
7 simply identify ballots that are relevant to House  
8 District 49 and those that are not. And to preserve  
9 the impoundment -- to preserve the impoundment for all  
10 ballots relative to House District 49 and to release  
11 those that are not.

12 MR. KING: Then if I could add one other point  
13 with regard to no recount petition has been filed in  
14 any other race, and therefore the only method  
15 available to modify the vote totals certified by the  
16 County Election Board is through the County Election  
17 Board process between now and certification deadline.

18 MS. LEATHERMAN: Yeah.

19 MR. SICUSO: So I don't want to put words in your  
20 mouth, but State Board of Accounts Proposal 2 would be  
21 to have a sorting procedure done whereby we would  
22 separate the uncounted ballots into two groups: Those  
23 relevant to House District 49, regardless of party;  
24 and those that are not relevant to House District 49,  
25 regardless of party.

1 MS. LEATHERMAN: And we would release those back  
2 to the County, I mean, to otherwise tabulate. I think  
3 maybe the thing that we haven't discussed in Proposal  
4 Number 2, we've talked about ballots but there will  
5 also have to be some release in the impoundment of the  
6 equipment for the County to do their -- for a period  
7 of time.

8 MR. CLAYTOR: Just a question on -- relevant to  
9 House District 49. The count of the Democrat ballots  
10 is a reconciling factor so that you know the total  
11 ballots processed within a precinct and you have all  
12 the Rs, all the Ds, and that either does or doesn't --  
13 sometimes it's off one or two, but that either does or  
14 doesn't agree.

15 So the only reason to hold on to the Democrat  
16 ballots is for a reconciliation. If you counted those  
17 ballots, you could enter those on your reconciliation  
18 form and get to the same thing without hanging on to  
19 the ballots. And I don't know how that comports with  
20 the law, Brad.

21 MS. LEATHERMAN: I --

22 MR. CLAYTOR: I think it will comport with the  
23 guidelines. I don't know about the law.

24 MS. LEATHERMAN: I think -- well, just to maybe  
25 be a little more transparent than I should be, I don't

1 know that our agency is prepared to do a full-on count  
2 tomorrow.

3 MR. CLAYTOR: No, no. I'm just saying there's --

4 MS. LEATHERMAN: Or even --

5 MR. CLAYTOR: There's 10 there, there's 11 there,  
6 there's 14 there, not to count how those ballots were  
7 voted or not voted, but just the number of ballots.  
8 That's the only reason to hang on to the Democrats, is  
9 it not, to reconcile the total?

10 MS. LEATHERMAN: Well, it's not -- it's not  
11 actually even to reconcile the total if they're not in  
12 the count.

13 MR. CLAYTOR: Well, that's true.

14 MS. LEATHERMAN: You know, I don't want to tell  
15 anybody --

16 MR. CLAYTOR: No, you're right. I'm not an  
17 accountant anymore, so. . . .

18 MS. LEATHERMAN: You know, it's not going to  
19 reconcile to the total if it's not actually in the  
20 unofficial results.

21 MR. CLAYTOR: Correct.

22 MS. LEATHERMAN: So I don't know that it -- you  
23 know.

24 MR. WYNN: Let me ask you this. You made a  
25 motion --



1 MR. CLAYTOR: To do the Board of Accounts --

2 MR. WYNN: -- to modify the State Board of  
3 Accounts. There's been discussion now back and forth.  
4 There's also a State Board of Accounts Plan 2. I  
5 don't know, do we need a new motion or are you --  
6 would your motion --

7 MR. CLAYTOR: I'll amend my motion to state that  
8 we would use the Board of Accounts Plan, whether  
9 that's 1, 2 or number 47.

10 MR. WYNN: I second that motion.

11 CHAIRMAN MORALES: So you second that motion?  
12 Thank you, Commissioner.

13 Any further discussions for anybody in  
14 attendance?

15 MR. CLAYTOR: Sorry it's always me raising my  
16 hand. I certainly am going to vote in favor of the  
17 motion. It is not what I want but it's what I'm  
18 willing to live with.

19 MR. WYNN: I share that. I think saying the  
20 perfect being the enemy of the good, I understand  
21 that. I just believe given the scope of our authority  
22 and what we could do and what we're tasked with, I  
23 think that, from what I've heard and the analysis of  
24 law that's been provided to us, I think the State  
25 Board of Account Plan 2 is within our ability and

1 comes the closest to what we can achieve today.

2 CHAIRMAN MORALES: Any other counsel or members?

3 MR. SICUSO: Before the vote, would it be all  
4 right if we restate this so we're clear?

5 MS. SMITH: Could I make a little brief -- I  
6 don't know if it will be helpful or not so you -- oh,  
7 sorry. My name is Carol Smith, chief deputy of  
8 Elkhart County elections.

9 So I know a little bit on what we have in our two  
10 orange bags. Approximately 15 are true provisionals  
11 where we do not know what's in the envelope. We do  
12 not know what's -- party it is.

13 76 of those ballots will be able to be seen on  
14 our paper ballot as to whether it is Democrat,  
15 Republican, District 49, or not, going by the  
16 precincts that are included within District 49.

17 Approximately 20 of those ballots were overseas  
18 and military. Because we turned it over, and we do  
19 not know party, which direction on those.

20 And then how many arrived on election day, 20,  
21 give or take? Approximately 20 ballots arrived by  
22 mail on election day, and, again, those you cannot see  
23 party but you can see precinct to know whether or not  
24 it's within House District 49.

25 MR. SICUSO: So is it correct to say that all

1 of -- all the uncounted ballots we can at least  
2 identify which precinct?

3 MS. SMITH: Yes.

4 UNIDENTIFIED MALE SPEAKER: Provisionals, no.

5 MS. SMITH: No. I can.

6 UNIDENTIFIED MALE SPEAKER: You can?

7 MS. SMITH: Yes. If I have my information  
8 returned, yes, my notes will include that.

9 MR. SICUSO: To access your notes which are in  
10 the impoundment right now?

11 MS. SMITH: Yes.

12 MR. SICUSO: Got it. Okay. But State Board of  
13 Accounts could look at those and identify. So with --

14 MS. SMITH: Yes.

15 MR. SICUSO: -- State Board of Accounts --

16 MS. SMITH: -- based on --

17 MR. SICUSO: -- I think could be executed  
18 appropriately. We wouldn't be able to identify party  
19 on some of these anyway. So with Proposal Number 2,  
20 we could at least segregate and separate ballots by  
21 those that we know are relevant to House District 49  
22 and those that are not. And if that's the will of the  
23 Commission, I think it can be executed.

24 The ones that are not relevant to House  
25 District 49 would be released to the County for

1 counting, and those that are would remain in  
2 impoundment for recount proceedings at a later date.

3 Does that --

4 MS. LEATHERMAN: Yes.

5 MR. SICUSO: -- sound good, Kendra?

6 I think that's a restatement of the motion that's  
7 on the table and that's been seconded.

8 CHAIRMAN MORALES: One more question here for  
9 clarification, specifically for you, the State Board  
10 of Accounts. I mean, whether you do the Plan 2 as  
11 you've said, are you planning on utilizing tabulating  
12 equipment or hand count? What's your plan on that?

13 MS. LEATHERMAN: With the amount that's here, we  
14 will divide all this by hand. We're going to have to.  
15 We're going to have to. With the amount that's here,  
16 we'll divide all this by hand.

17 MR. SICUSO: And all we're doing is sorting.

18 MS. LEATHERMAN: I'm not -- we're not --

19 MR. SICUSO: There's no counting.

20 MS. LEATHERMAN: -- doing any -- not any true  
21 counting in the sense of nothing other than --

22 MR. SICUSO: We'll count how many votes are there  
23 but not who the votes were for.

24 MS. LEATHERMAN: Right. There's not going to be  
25 any tallying the --

1 MS. SMITH: So she's saying we can't certify?

2 MR. SICUSO: No, you can. Once we release --  
3 once we release ballots that are not subject to the  
4 recount, they're yours.

5 MS. SMITH: Okay.

6 MR. SICUSO: The ones that would remain under  
7 impoundment would be uncanceled.

8 MS. LEATHERMAN: For purposes of process, when we  
9 count things during a sorting procedure, it's to  
10 ascertain that we've actually gathered everything that  
11 has been counted before. In this instance, we don't  
12 actually know what is in the orange bags, and so the  
13 proposal is to go through the orange bags with our  
14 hands.

15 MS. HARTER: So it's more like a mini inventory  
16 than anything else.

17 MS. LEATHERMAN: Yeah. It's not --

18 CHAIRMAN MORALES: I was about to ask, is there  
19 any comments from any -- from counsel.

20 MS. HARTER: I just have a few questions. I want  
21 to make sure -- oh, Michelle Harter, counsel for  
22 petitioners, both of them.

23 Couple questions. First, is my client able to  
24 attend this impoundment modification if it goes down  
25 tomorrow at 8:00 a.m.? I'm sure she's going to ask

1 me, up in Elkhart?

2 And then -- I had another question. Now I can't  
3 remember what it was.

4 Okay. So to flesh out the impoundment, so what's  
5 going to happen is we're going to return some records  
6 to the County so they can do certification. Are they  
7 just not going to be returned or what's going to  
8 happen after that happens? I guess I'm just -- I want  
9 to walk it all the way through. What happens with the  
10 records after that?

11 MS. LEATHERMAN: After -- I'm not going to speak  
12 to what the County is going to do with their stuff.

13 MS. HARTER: Right.

14 MS. LEATHERMAN: Because as far as I'm concerned,  
15 once it's released from the impoundment, it's no  
16 longer under my purview.

17 MS. HARTER: Okay.

18 MS. LEATHERMAN: So for the stuff that is still  
19 under impoundment, it will be locked up by the State  
20 Police at the end of the day.

21 MS. HARTER: Okay. So some of the stuff's going  
22 to be released and some of it is not going -- some of  
23 the stuff that they wanted to certify is just not  
24 going to be released to them. Is that what I'm --  
25 understanding that correctly?

1 MS. LEATHERMAN: Stuff relevant to House  
2 District 49, correct, will not be released to them.

3 MS. HARTER: Okay. Okay.

4 CHAIRMAN MORALES: Any other comments from any  
5 parties represented here? Mr. Bradley?

6 MR. KING: Thank you, Mr. Chairman.

7 I'll ask Mr. Kochevar to add his thoughts on this  
8 question as well.

9 The counsel for petitioner raised the question of  
10 what happens to material that is released as not being  
11 subject to the proceeding at hand and if adopted by  
12 the impoundment order.

13 State law provides that ballots themselves are  
14 confidential and not available for public inspection  
15 under 3-10-1-31.1 for the next two years, essentially,  
16 and then they're destroyed.

17 And so, unless there is some intervening judicial  
18 proceeding, I just want to be clear that, again,  
19 these -- the ballots themselves are not subject to the  
20 public records law.

21 Mr. Kochevar?

22 MR. KOCHEVAR: Yes, I do affirm what Counsel King  
23 has said in regards to 3-10-1-31.1. The ballots would  
24 be confidential and would be under seal in the clerk's  
25 office for the requisite record retention period.

1           As for all other election records, just as soon  
2 as the deadline for recounting the contest has passed,  
3 that -- I would assume that the records that are not  
4 subject to this particular recount would become a  
5 matter of public inspection. I cite you the same  
6 statute that Brad just said, 3-10-1-31.1. You will  
7 get subsection (b), but most importantly subsection  
8 (C) which provides that if a petition for a recount or  
9 contest is filed, the material for that election  
10 remains confidential until completion of the recount  
11 or contest.

12           Now, what that means for that particular one is  
13 that the -- all records from House District 49 will  
14 remain confidential, which is all well and good  
15 because they're under impound. No one's going to get  
16 those records for that purpose. But after Friday at  
17 noon, assuming no other petition for recount or  
18 contest is filed in Elkhart County, all other election  
19 records that are in the possession of the clerk of the  
20 County Election Board, except for the ballots that  
21 were already mentioned, will become a matter of public  
22 record.

23           Does that make sense for you? I think we're on  
24 the same page. I'm essentially saying yes to what  
25 you're saying. I'm just basically expanding on that.



1           MR. KING: Yes. Thank you, Mr. Kochevar. I'm  
2 just, again, pointing out the pertinent statutes that  
3 say both for Indiana election law purposes and because  
4 we're in a federal election year, federal election law  
5 purposes that there's a requirement to preserve  
6 material in Indiana. It specifically makes it clear  
7 that the ballots themselves are confidential and not  
8 subject to public inspection.

9           MR. KOCHEVAR: Yes. Absolutely.

10          CHAIRMAN MORALES: Thank you, Mr. King and  
11 Mr. Kochevar.

12          On the State Board of Accounts plan to modify --  
13 to approve the impound orders that you explained, is  
14 there a motion ready?

15          MR. CLAYTOR: I move the -- I believe I already  
16 moved this motion but I will move it again just for  
17 the heck of it.

18          CHAIRMAN MORALES: Is there a second?

19          MR. WYNN: Second as to Plan 2.

20          CHAIRMAN MORALES: Okay. So for those in favor  
21 of the motion, say "aye."

22          (Ayes heard.)

23          CHAIRMAN MORALES: For those opposed say "nay."

24          (Silence.)

25          CHAIRMAN MORALES: The ayes have it. The recount

1 will proceed in this manner. Thank you.

2 Is there discussion -- further discussion?

3 MR. CLAYTOR: Mr. Chairman, if I may, I move that  
4 we order the recount in House District 49 in Elkhart  
5 County.

6 MR. WYNN: Second.

7 CHAIRMAN MORALES: If not -- are there any  
8 discussions from any parties?

9 MR. ANDERSON: Just to have some clarification  
10 with the motion that was just approved, does that  
11 include necessary equipment?

12 CHAIRMAN MORALES: Does --

13 MS. LEATHERMAN: That was my intention. I think  
14 I mentioned it maybe.

15 MR. SICUSO: In the first -- yes.

16 MS. LEATHERMAN: -- 45 minutes ago now, but, yes,  
17 we will release equipment to the County that was not  
18 previously used on election day if it has material on  
19 it to make sure that --

20 MS. SMITH: Restate that because now I'm  
21 confused.

22 MR. ANDERSON: We need access to the computers so  
23 that we can do anything with those.

24 MS. LEATHERMAN: Yes, I mean, your scanners and  
25 the media. You need to know which ones you used and

1           which ones you did not use.

2           MR. ANDERSON:   Yes.

3           MS. LEATHERMAN:   Okay.   And so you're going to  
4           get access to ones that you have not previously used.

5           MR. ANDERSON:   Then we can't do what -- count the  
6           other ballots because we used the computer to tabulate  
7           the --

8           MS. LEATHERMAN:   I'm not talking about the  
9           computer.

10          MR. ANDERSON:   But that's --

11          MS. SMITH:   -- the media.   So as long as I don't  
12          re-enter the same media that I used on election night,  
13          we're fine.

14          MR. ANDERSON:   Okay.

15          CHAIRMAN MORALES:   We have a motion from one of  
16          the commissioners.   Is there a second?

17          MR. WYNN:   Second.

18          CHAIRMAN MORALES:   Thank you, Commissioner.

19                 Is there any further discussion?   If not, now we  
20          will get to vote.   If not, those in favor of the  
21          motion say "aye."

22                 (Ayes heard.)

23          CHAIRMAN MORALES:   And those opposed say "nay."

24                 (Silence.)

25          CHAIRMAN MORALES:   The ayes have it.   The recount

1 proceeding in this manner is ordered.

2 Now I would like to ask Mr. Brad King to report  
3 on Petitions for Recount for the Republican Party  
4 nomination for Indiana House District 40.

5 Mr. King?

6 MR. KING: Thank you, Mr. Secretary,  
7 Mr. Chairman, members of the Commission.

8 A verified petition for a recount in this  
9 election in 10 identified precincts within House  
10 District 40 was filed with the Election Division by  
11 candidate Brian Paasch on May 15, 2024, which was  
12 prior to the filing deadline.

13 The recount petition was accompanied by a cash  
14 deposit in the amount of \$100. Under Indiana Code  
15 3-12-11-10(c), the amount of the required deposit when  
16 the difference between the candidate nominated and the  
17 petitioner is more than 1 percent of the total votes  
18 cast for all candidates and when not more than 10  
19 precincts are to be recounted, which are both true in  
20 this case, the total amount of the required cash  
21 deposit would equal \$100, the amount tendered by  
22 petitioner.

23 The unofficial results entered by the Hendricks  
24 County Election Board pursuant to the requirements of  
25 State law beginning after the close of the polls are

1 included in the Commission's binder, which show that  
2 the margin of the winning candidate was more than  
3 1 percent of the total votes cast in this race.

4 The required elements of the recount petition are  
5 set forth in Indiana Code 3-12-11-3(a): The office  
6 for which the petitioner desires a recount; the  
7 precincts in which the petitioner desires a recount;  
8 that the individual is entitled to a recount; and that  
9 the nomination was voted on in the specified  
10 precincts; the names and addresses of the candidates;  
11 that the petitioner in good faith believes that the  
12 votes cast for the nomination were not correctly  
13 counted and returned. In addition, the petition is  
14 required to be verified. On its face, the recount  
15 petition in this matter appears to include each of the  
16 required elements.

17 The binder also includes proof of service by the  
18 Indiana State Police of the Notice of Filing the  
19 Recount petitions.

20 In this case, under Indiana Code 3-12-11-12(b),  
21 the Commission may order a recount in the requested  
22 petitions [sic] within an election district upon the  
23 filing of a cash bond or deposit, proof of service of  
24 all notices, and in the case where not all petitions  
25 were included in the recount petition, the period for

1 filing a cross-petition that election district has  
2 passed. The deadline for a cross-petition to be filed  
3 has not yet passed. That deadline will occur next  
4 Tuesday at noon, May 28th, 2024.

5 I'll defer to Mr. Kochevar if he has additional  
6 information for that.

7 MR. KOCHEVAR: I have no additional information  
8 to add at this time.

9 Recount Commission members and -- I will say that  
10 what is in your binders and my binders is what has  
11 been reported by Co-director King.

12 I will just make one correction to the citation  
13 that you made in 3-12-11-12, and it may simply be  
14 because of my mishearing. I do apologize. I believe  
15 Mr. King referred to subsection (b). I believe he  
16 meant to refer to actually subsection (a), as in Adam.

17 But, with that, I have nothing further to add at  
18 this point.

19 CHAIRMAN MORALES: Thank you, Mr. Kochevar.

20 Now I would like Mr. Sicuso to -- or any  
21 representative from Hendricks County would like to  
22 address the Commission.

23 MS. HOSKINS: I would just like to --

24 CHAIRMAN MORALES: And this is regarding the  
25 impounding order.

1 MS. HOSKINS: The impoundment orders, yes.

2 Everything from our primary election is  
3 impounded. We have provisional ballots that we have  
4 not counted that we would like to count.

5 For me, it's hard to understand how you can do a  
6 recount when you haven't even -- when you don't even  
7 have an official count yet. So -- but I would like to  
8 be able to count those provisional ballots and certify  
9 our election by Friday.

10 MR. CLAYTOR: Do you know how many ballots there  
11 are, what you're dealing with?

12 MS. HOSKINS: Approximately 10 to 12. I know I  
13 have one military ballot. I have five provisionals  
14 from election day and I probably have about a handful  
15 of no signature affidavits that were returned. So 12?

16 MR. KOICHEVAR: And where -- do you know which  
17 precincts they're in specifically? Are any in these  
18 precincts or in House District 40 in general?

19 MS. HOSKINS: I can't say a hundred percent that  
20 I know that none are in this District 40. I know the  
21 military ballot is not in District 40. There are a  
22 few others that are not in District 40 but I can't say  
23 a hundred percent that I know that none are in  
24 District 40.

25 CHAIRMAN MORALES: Thank you.

1           MR. SICUSO: So it sounds like a similar  
2 situation, just far fewer ballots at issue and a  
3 similar sorting process could occur.

4           MR. KOCHEVAR: I will just add that it is  
5 entirely possible based on what was provided here and  
6 what I've already previously noted that if a similar  
7 process is adopted, it is very possible that it'll be  
8 found that all those 11 ballots are not subject to  
9 the -- to this particular pending recount and thus not  
10 subject for the impoundment order, for which then I  
11 will just say that Hendricks County may be subtly but  
12 will be different than Elkhart County in that, if they  
13 get their materials, they complete their full count,  
14 say update your certification, and that matter is done  
15 for now.

16           CHAIRMAN MORALES: At this time --

17           MR. HODSON: Question. Mr. King, you said  
18 something about a cross-petition. What are you  
19 talking about there?

20           MR. KING: Mr. Chairman, the recount law provides  
21 for a candidate in a primary to request additional  
22 precincts be counted as part of the recount. If that  
23 occurs, that is described as a cross-petition.

24           MR. HODSON: Okay. Thank you.

25           CHAIRMAN MORALES: I think it's fair to give an



1 opportunity as well to the counsel, Miss Harter.

2 MS. HARTER: I don't have anything to add.

3 CHAIRMAN MORALES: That's okay. Just want to  
4 make sure.

5 MR. HARTER: Thank you.

6 MR. CLAYTOR: Mr. Chairman, I assume it's  
7 appropriate to do the same motion that we had for  
8 Elkhart County as applies to Hendricks County? Would  
9 you consider that in order at this time?

10 CHAIRMAN MORALES: Yeah. So at this time I  
11 suggest that -- then we can -- Mr. Commissioner, it's  
12 appropriate to do that. You can make the same motion.

13 MR. CLAYTOR: Okay. Again, Mr. Chairman, I wish  
14 I could go further, but I would like to move that we  
15 modify the impoundment order to allow the sorting that  
16 we referred to as the Board of Accounts Proposal 2 to  
17 sort the appropriate ballots, both D and R, in the  
18 affected precincts. These would just be certain  
19 precincts, not the entire House District.

20 And then those that are not subject to the  
21 recount could be released to the County.

22 CHAIRMAN MORALES: Mr. King?

23 MR. KING: Mr. Chairman, by my -- I don't see  
24 State Board of Accounts --

25 MR. SICUSO: Kendra had to leave.

1 MR. KING: -- Kendra had to leave.

2 So if I may clarify, Mr. Claytor's motion is  
3 intended to be identical to the motion --

4 MR. CLAYTOR: Correct.

5 MR. KING: -- previously with regard to  
6 Elkhart --

7 MR. CLAYTOR: Right. The only dissension being  
8 we're not dealing with the entire House District.  
9 We're only dealing with certain precincts in the House  
10 District. So the sorting process will be slightly  
11 different.

12 MR. KING: And, Mr. Chairman, again, and that is  
13 a factual difference between the two cases.

14 So thank you for clarifying the --

15 CHAIRMAN MORALES: There's a motion. Is there --

16 MR. WYNN: Second.

17 MS. HARTER: Actually, I have a question, and he  
18 does, too.

19 MR. HODSON: So, for clarification, do you mind  
20 saying what precincts are involved for your motion so  
21 that we have it on the record what precincts we're  
22 talking about for the record, please?

23 MR. KING: Sure.

24 MR. HODSON: That would be affected under that  
25 order, please?

1 MR. CLAYTOR: They are in the recount petitions.

2 MR. HODSON: Yeah, but for the public record.

3 MR. SICUSO: The petition reads Hendricks County  
4 Washington precincts 1, 3, 5, 7, 9, 11, 13, 15, 17 and  
5 19.

6 MR. HODSON: All right. Thank you.

7 MS. HARTER: Just a quick question. I know that  
8 Elkhart County had two orange bags so things were  
9 already sort of segregated. What about Hendricks  
10 County? Are these records mixed in? Are they  
11 segregated?

12 MS. HOSKINS: No. They're -- all the provisional  
13 ballots that have not been counted, they're on a shelf  
14 in the locked closet. They're together.

15 MS. HARTER: Okay.

16 CHAIRMAN MORALES: Thank you.

17 We have a second, so to take a vote on that  
18 motion. All in favor of the motion, say "aye."

19 (Ayes heard.)

20 CHAIRMAN MORALES: And those opposed say "nay."

21 (Silence.)

22 CHAIRMAN MORALES: So the ayes have it. The  
23 modifications will happen. The recount proceeding on  
24 this matter in the modification --

25 So it is not ordered. It is continued.

1           MR. CLAYTOR: Mr. Chairman, if it's appropriate,  
2 I would like to move that we approve the petition for  
3 recount --

4           (Discussion among the Commission.)

5           MR. CLAYTOR: Okay. I apologize.

6           CHAIRMAN MORALES: So I think at this time the  
7 impoundment modification is approved and -- so the  
8 recount proceeding will continue. Okay.

9           MR. HODSON: Mr. Chairman, question for the State  
10 Board of Accounts. When will this occur as far as  
11 your coming out to -- with the State Police?

12           MR. SICUSO: We're going to have to talk to the  
13 State Board of Accounts and see their availability.  
14 Tomorrow is probably unlikely. It might need to be  
15 Friday morning based on their availability since I  
16 know they're planning to go to -- they've got some  
17 staff at Elkhart tomorrow morning. But we'll be in  
18 touch with you about Friday morning. I believe. I  
19 can't speak for the State Board of Accounts, so -- but  
20 with this modified impoundment order, clearly we'll do  
21 it as soon as possible. You're in Danville?

22           MS. HOSKINS: Yeah.

23           MR. SICUSO: Everything is in Danville. In what  
24 building?

25           MS. HOSKINS: In the government center.

1           CHAIRMAN MORALES: Thank you.

2           I think that this takes care of the Recount  
3 Commission business for today.

4           Is there any further business to come before the  
5 Commission of this committee?

6           MR. CLAYTOR: Mr. Chairman, I'm going to make one  
7 quick comment just before I move we adjourn. Filing a  
8 recount petition early, the way we have handled this,  
9 and the early impoundment of that recount petition  
10 disenfranchises voters and I am extremely upset about  
11 that.

12           And I would move that we adjourn.

13           CHAIRMAN MORALES: Is there a second?

14           MR. WYNN: Second.

15           CHAIRMAN MORALES: Those in favor say "aye."

16           (Ayes heard.)

17           CHAIRMAN MORALES: Opposed?

18           (Silence.)

19           CHAIRMAN MORALES: The ayes have it. This  
20 meeting is adjourned. Thank you all. Thank you for  
21 the members of the Commission, Election Division  
22 staff, candidates and counsel and everyone else in  
23 attendance.

24           (Proceedings concluded at 4:01 p.m.)

25

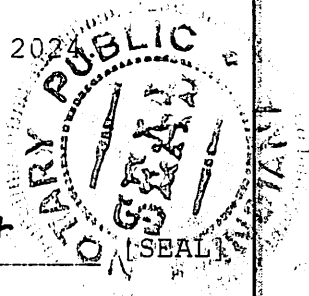
1 STATE OF INDIANA )  
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I, Mary McCarty, a Notary Public in and for the County of Marion, State of Indiana at large, do hereby certify that on the 22nd day of May, 2024, I took down stenographically the foregoing proceedings, and that the transcript is a full, true and correct transcript made from my stenographic notes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 4th day of June, 2024

*Mary SMcCarty*



NOTARY PUBLIC

My Commission Number:  
701431

My Commission Expires:  
June 8, 2025

County of Residence:  
Marion

<b>A</b>	<b>Accounts'</b> 55:9	5:7 16:23	72:9,22 73:2,5	52:3
<b>A-n-d-e-r-s-o-n</b>	<b>accurate</b> 3:25	21:14	73:10,14	<b>Assembly</b> 30:2
17:6	15:14	<b>administration</b>	<b>answer</b> 10:18	33:11
<b>a.m</b> 7:14 17:8	<b>accurately</b> 9:6	4:25 50:6	14:19 28:17	<b>assist</b> 41:1
40:12 67:25	<b>achieve</b> 64:1	<b>administrative</b>	29:1 34:14	<b>assisted</b> 6:4
<b>ability</b> 30:11	<b>achieved</b> 32:16	4:12	35:21 51:25	<b>assume</b> 19:20
50:10 52:17	<b>acknowledge</b>	<b>adopt</b> 10:21	57:21	24:9 54:5 70:3
63:25	43:11	<b>adopted</b> 11:10	<b>anybody</b> 19:4	79:6
<b>able</b> 20:3 23:1	<b>acknowledged</b>	59:25 69:11	23:4 62:15	<b>assumes</b> 50:14
39:15 40:2	43:11	78:7	63:13	<b>assuming</b> 36:11
45:14 46:25	<b>acting</b> 30:17	<b>advice</b> 50:22	<b>anymore</b> 62:17	70:17
64:13 65:18	<b>action</b> 7:11 35:9	<b>affidavit</b> 46:13	<b>anyway</b> 65:19	<b>attempt</b> 53:24
67:23 77:8	<b>actions</b> 41:15	<b>affidavits</b> 77:15	<b>apologize</b> 55:13	<b>attend</b> 40:19
<b>absentee</b> 17:19	<b>activities</b> 5:14	<b>affirm</b> 15:12	55:16 76:14	67:24
17:20,20,24,25	7:2 8:4 33:23	42:12 69:22	82:5	<b>attendance</b>
39:2 47:18,20	33:24 40:18	<b>affixed</b> 84:11	<b>appears</b> 14:5	40:23 63:14
<b>Absolutely</b> 71:9	<b>actual</b> 29:22	<b>afternoon</b> 3:1	75:15	83:23
<b>accept</b> 53:22	31:11	<b>agency</b> 62:1	<b>applicable</b> 12:24	<b>attended</b> 8:11
<b>access</b> 6:21 16:8	<b>Adam</b> 76:16	<b>agenda</b> 28:20	30:22 33:19	8:12,13
18:7,8,8,11	<b>add</b> 9:8,9 14:22	<b>ago</b> 11:16 55:9	<b>application</b>	<b>attorney</b> 30:1
20:1 25:14	14:23 15:12	72:16	46:13 47:20	<b>auditors</b> 9:15,18
29:25 39:14	18:18 23:5	<b>agree</b> 61:14	<b>applies</b> 79:8	44:14
46:24,25 49:5	30:5 60:12	<b>agreed</b> 7:19	<b>appointment</b>	<b>authority</b> 30:17
65:9 72:22	69:7 76:8,17	<b>ahead</b> 27:24	51:9,12	33:10 63:21
73:4	78:4 79:2	34:17,17 45:18	<b>appropriate</b>	<b>authorize</b> 35:12
<b>accessed</b> 24:5	<b>added</b> 24:3,7,14	52:25 53:5,16	10:12 20:5	<b>authorized</b> 34:8
48:22	25:18 42:20	<b>allege</b> 21:20	22:8 55:21	36:16 54:22
<b>accessing</b> 48:19	<b>addition</b> 14:3	<b>Allegiance</b> 4:6,7	79:7,12,17	<b>authorizes</b> 35:8
<b>accompanied</b>	24:9 47:17	<b>Alliance</b> 1:22	82:1	<b>availability</b>
13:1 74:13	75:13	4:17	<b>appropriately</b>	82:13,15
<b>account</b> 10:9	<b>additional</b> 55:4	<b>allow</b> 3:6 19:20	8:16 9:20	<b>available</b> 15:6
63:25	76:5,7 78:21	23:19 34:24	65:18	31:15 46:1
<b>accountant</b>	<b>address</b> 4:23	79:15	<b>approval</b> 38:14	60:15 69:14
62:17	6:21 15:20	<b>allowed</b> 40:14	<b>approve</b> 71:13	<b>aware</b> 15:3
<b>accounting</b> 52:8	20:22 21:11	40:18,19 54:12	82:2	24:25
<b>Accounts</b> 2:20	22:18 30:9	<b>allowing</b> 20:1	<b>approved</b> 10:13	<b>aye</b> 11:5 71:21
6:16 8:3,10,18	32:21 34:3	<b>amend</b> 10:22	72:10 82:7	73:21 81:18
10:23 11:17	76:22	63:7	<b>approximately</b>	83:15
16:14 17:9	<b>addressed</b> 30:8	<b>amount</b> 13:12	17:11 64:10,17	<b>eyes</b> 11:6,9
18:20 19:6,9	<b>addresses</b> 13:25	13:17 66:13,15	64:21 77:12	71:22,25 73:22
19:21 28:6	36:23 75:10	74:14,15,20,21	<b>April</b> 5:14	73:25 81:19,22
32:13 37:3,10	<b>adds</b> 3:22,24	<b>analysis</b> 20:4	<b>areas</b> 7:9	83:16,19
38:23 42:14	<b>adjourn</b> 83:7,12	63:23	<b>arrived</b> 64:20,21	
52:4,8,12 54:7	<b>adjourned</b>	<b>Anderson</b> 15:19	<b>ascertain</b> 67:10	<b>B</b>
55:8,20 58:10	83:20	16:21,24 17:5	<b>asked</b> 26:4	<b>b</b> 70:7 76:15
59:18,24 60:20	<b>adjustments</b>	17:5 23:5,6,25	27:11	84:15
63:1,3,4,8	6:17	24:10 34:5	<b>asking</b> 4:4 34:21	<b>back</b> 11:21 22:2
65:13,15 66:10	<b>administer</b> 5:1	37:12 45:10,11	46:5	24:23 25:21
71:12 79:16,24	16:22	48:14,22 49:1	<b>asks</b> 18:7	26:20 38:21
82:10,13,19	<b>administered</b>	49:4 50:2,9	<b>aspect</b> 34:13	39:13 42:7

44:5,6 52:10	62:6,7 64:13	13:6 16:13	<b>building</b> 82:24	<b>caution</b> 20:12
53:13 54:16	64:17,21 65:1	17:9,20 18:19	<b>business</b> 34:9	22:10
58:21 61:1	65:20 67:3	19:6,8,21	83:3,4	<b>center</b> 1:8,9
63:3	69:13,19,23	22:25 28:1,3,6		17:23 38:4,6
<b>bad</b> 5:12	70:20 71:7	28:11,12 29:11	<b>C</b>	39:7 82:25
<b>bags</b> 18:1 37:20	73:6 77:3,8,10	32:13 33:17	<b>C</b> 70:8 84:15	<b>certain</b> 41:15,17
38:9 43:19,21	78:2,8 79:17	34:10 36:6	<b>C-h-r-i-s-t-o-p...</b>	51:2,12 79:18
43:25 44:1,5	81:13	37:2,10 38:23	17:6	80:9
54:6 56:9	<b>bands</b> 43:13	40:2,3,21	<b>calculations</b>	<b>certainly</b> 26:20
58:20 64:10	<b>based</b> 49:7	42:13 44:24	23:7	30:18 32:12
67:12,13 81:8	65:16 78:5	52:4,7,11,23	<b>calendar</b> 26:1	33:23,25 50:23
<b>ballot</b> 17:21,22	82:15	53:1,11 54:7	51:15	63:16
18:1 25:10	<b>basically</b> 70:25	55:8,8,19 58:9	<b>call</b> 8:2 9:4 20:6	<b>certificate</b> 9:12
32:1 36:4,4,7	<b>batch</b> 49:25	59:17,24 60:16	58:4	<b>certification</b>
36:15,15 37:20	<b>becoming</b> 49:21	60:17,20 63:1	<b>called</b> 3:2 6:1	6:22 17:3
38:18 40:8	<b>beginning</b> 13:6	63:2,4,8,25	36:15	19:15 28:9
46:13 47:14,18	31:11 74:25	65:12,15 66:9	<b>canceled</b> 53:18	29:3,4 33:3
47:18,19,20	<b>behalf</b> 4:19	70:20 71:12	<b>candidate</b> 12:22	50:13 51:16
48:4,8 49:22	<b>belief</b> 41:16	74:24 79:16,24	13:9,13 14:10	54:14 60:17
51:3 54:6	<b>believe</b> 3:17	82:10,13,19	30:21 51:1	68:6 78:14
64:14 77:13,21	16:7 18:19	<b>body</b> 30:16	74:11,16 75:2	<b>certifications</b>
<b>ballots</b> 9:24,25	22:12 26:7	50:19	78:21	50:15
16:1,3,11 17:2	27:15 31:16	<b>bond</b> 14:13	<b>candidates</b>	<b>certified</b> 31:9
17:11,12,13,15	34:21 35:22	75:23	13:15,25 32:8	50:21 52:25,25
17:19,22 18:2	36:25 41:12,14	<b>book</b> 46:23	32:22 74:18	53:5,12 60:15
18:3,5,9,9,13	54:23 63:21	47:13 48:19	75:10 83:22	<b>certify</b> 23:2 28:4
18:17,22 19:13	71:15 76:14,15	49:4	<b>capture</b> 15:4	29:1,24 33:5
19:16,22 20:2	82:18	<b>books</b> 29:5	<b>card</b> 36:15	45:14 50:10,23
23:9,12,21	<b>believes</b> 14:1	46:12 47:1	<b>cards</b> 36:16	67:1 68:23
24:1,12,25	75:11	<b>bottom</b> 9:9	<b>care</b> 46:20 83:2	77:8 84:5
25:2,8,14	<b>best</b> 7:11 16:7	45:17	<b>careful</b> 20:11	<b>certifying</b> 43:22
26:25 27:7	27:15 29:21	<b>box</b> 1:23 17:21	<b>Carol</b> 64:7	<b>cetera</b> 39:2
29:10 31:18,20	41:7 50:25	<b>boxes</b> 17:22	<b>carry</b> 32:25	<b>chair</b> 3:8
32:9 33:15	56:19,20	<b>Brad</b> 2:9 4:13	<b>case</b> 13:16 14:15	<b>Chairman</b> 2:2
34:11 36:1,2,2	<b>best-case</b> 40:1	5:24 11:12	15:10 30:19	3:1 4:8 5:9,13
36:7,9 38:13	<b>better</b> 40:24	12:12,18 14:20	36:14 74:20	6:24 8:1 10:20
38:16,16,24	<b>beyond</b> 32:3,18	35:22 49:2	75:20,24	10:25 11:3,7,9
39:20 40:6	46:11 52:16	50:3 56:15	<b>cases</b> 80:13	11:13 12:2,12
42:9,19,23	<b>bin</b> 17:25	59:19 61:20	<b>cash</b> 13:1,17	12:16 14:20
43:16 45:1	<b>binder</b> 13:8 14:7	70:6 74:2	14:13 74:13,20	15:16 19:10,11
46:1,6 49:7,8,9	15:2,4 75:1,17	<b>Brad's</b> 46:8	75:23	20:20,21 21:17
49:11,25 51:17	<b>binders</b> 14:24	<b>Bradley</b> 69:5	<b>cast</b> 13:10,14	22:16 23:3
52:5,9,25 54:5	76:10,10	<b>break</b> 35:20	14:2 17:23	27:23 34:17
54:9,10,11,11	<b>bit</b> 8:21 10:6	<b>Brian</b> 74:11	31:7,18,20	45:7,9 48:25
54:21 56:12,12	28:21 42:23	<b>brief</b> 3:6 5:19	32:1 38:19	50:2,4 52:20
56:17 58:3,10	64:9	15:21 64:5	52:5,9 74:18	53:21,24 54:18
58:11,12,22	<b>blaze</b> 17:25	<b>bring</b> 11:13	75:3,12	54:24 55:5,10
59:4 60:1,7,10	<b>board</b> 2:20 6:16	37:13	<b>catch-all</b> 26:8	55:18 57:22
60:22 61:4,9	8:3,10,18	<b>bringing</b> 53:6,19	<b>caught</b> 24:22	58:15 59:22
61:11,16,17,19	10:23 11:17	<b>Bryan</b> 2:13 6:25	<b>causing</b> 53:7	63:11 64:2



66:8 67:18 69:4,6 71:10 71:18,20,23,25 72:3,7,12 73:15,18,23,25 74:7 76:19,24 77:25 78:16,20 78:25 79:3,6 79:10,13,22,23 80:12,15 81:16 81:20,22 82:1 82:6,9 83:1,6 83:13,15,17,19 <b>challenged</b> 47:13 <b>challenging</b> 56:6 <b>change</b> 9:16,21 10:8,8 50:18 53:8 <b>changed</b> 7:21,24 9:8 <b>changes</b> 10:14 26:15 49:22 <b>checklist</b> 9:17 <b>chief</b> 3:10 8:13 22:20 64:7 <b>Chris</b> 15:22 45:10 47:7 <b>Christopher</b> 15:19 16:23 17:5 23:6 <b>Cindi</b> 12:22 <b>citation</b> 76:12 <b>cite</b> 29:17 70:5 <b>citing</b> 33:19 <b>clarification</b> 58:16 66:9 72:9 80:19 <b>clarify</b> 35:19 80:2 <b>clarifying</b> 80:14 <b>Claytor</b> 2:3 4:9 11:13 12:10 19:11 20:8 23:14,18,21 27:11 28:14 34:16,18 35:1 35:18 43:9 44:4,10,20,23 45:1 46:8,18	53:24 54:19 55:5 56:14 61:8,22 62:3,5 62:13,16,21 63:1,7,15 71:15 72:3 77:10 79:6,13 80:4,7 81:1 82:1,5 83:6 <b>Claytor's</b> 80:2 <b>clear</b> 42:3 64:4 69:18 71:6 <b>clearly</b> 4:21 56:5 82:20 <b>clerk</b> 3:15 15:24 16:19 17:7 19:7 23:25 24:10 34:5 37:20 38:14 39:12,14 46:11 46:24 48:14,22 49:1 50:2,9 53:9,10 54:8 54:12,13 70:19 <b>clerk's</b> 40:22 48:13 53:2 69:24 <b>clerks</b> 7:10,17 15:8 34:21 <b>client</b> 67:23 <b>close</b> 3:22 13:7 31:1 49:15 74:25 <b>closest</b> 64:1 <b>closet</b> 81:14 <b>closing</b> 9:17 <b>Co-director</b> 76:11 <b>co-taught</b> 11:21 <b>code</b> 13:11,20 14:11 26:6 33:11 35:14 41:21 74:14 75:5,20 <b>collectively</b> 5:7 21:14 <b>come</b> 20:14 27:3 33:25 41:10 52:8 58:6 83:4 <b>comes</b> 3:11	30:13 64:1 <b>coming</b> 29:23 82:11 <b>commanders</b> 7:8,15 <b>comment</b> 37:1 52:4 83:7 <b>comments</b> 20:19 27:19 30:5 34:15 49:3 52:15 54:25 67:19 69:4 <b>Commission</b> 1:4 2:1 3:2,4,9,19 4:2,13,14,23 5:4,18 8:7 9:2 12:3,5,17,19 14:11 15:20 16:18 19:14 20:5,7,10,22 21:11 22:18 26:11,22 27:17 30:12,16 31:15 32:19 34:12 35:5 37:13 50:19 51:22 54:2 55:6,19 59:23,25 65:23 74:7 75:21 76:9,22 82:4 83:3,5,21 84:17,18 <b>Commission's</b> 13:8 38:14,21 52:17 75:1 <b>Commissioner</b> 4:8,9 23:14 35:1,25 43:9 54:18,24 63:12 73:18 79:11 <b>commissioners</b> 55:2 73:16 <b>committee</b> 51:6 83:5 <b>committeeman</b> 22:24 45:22,25 49:15,17,20,21 <b>committeemen</b> 51:11 <b>common</b> 32:12	<b>complete</b> 27:16 27:16 78:13 <b>completing</b> 41:16 <b>completion</b> 70:10 <b>comply</b> 35:15 59:24 <b>comport</b> 61:22 <b>comports</b> 61:19 <b>computer</b> 18:10 18:14 46:25 73:6,9 <b>computers</b> 72:22 <b>conceivably</b> 47:20 <b>concern</b> 46:2 56:1,1 <b>concerned</b> 68:14 <b>concerns</b> 21:22 55:15 <b>concluded</b> 83:24 <b>conditions</b> 51:12 <b>conduct</b> 18:20 33:13 59:16 <b>conducted</b> 50:18 51:16 <b>conducting</b> 3:11 <b>Conference</b> 1:8 <b>confidence</b> 3:23 3:24 <b>confident</b> 50:24 <b>confidential</b> 69:14,24 70:10 70:14 71:7 <b>confirm</b> 9:19 55:24 <b>confirmation</b> 6:6 9:17 <b>conflict</b> 11:22 <b>confused</b> 72:21 <b>confusion</b> 53:7 58:15 <b>Congressional</b> 32:15 <b>consent</b> 11:11 12:5,9,10 <b>consequences</b> 27:5,6 56:3	<b>consider</b> 28:3 79:9 <b>consideration</b> 34:13 37:14 <b>consistent</b> 41:13 <b>constitutes</b> 30:1 <b>consulted</b> 5:24 <b>contacts</b> 7:9 <b>contain</b> 18:1 37:21 <b>container</b> 17:21 <b>contemplated</b> 38:7 40:13 <b>contest</b> 70:2,9 70:11,18 <b>context</b> 23:24 35:17 <b>continue</b> 82:8 <b>continued</b> 4:3 81:25 <b>control</b> 7:23 <b>Convention</b> 25:25 45:15,16 51:4,6,8 <b>conventions</b> 26:1 <b>coordination</b> 32:16 <b>copy</b> 48:20 <b>correct</b> 12:23 20:2 24:6 29:3 29:8 50:15 54:14 60:4 62:21 64:25 69:2 80:4 84:8 <b>corrected</b> 53:13 <b>correction</b> 76:12 <b>correctly</b> 11:20 14:2 33:4 42:25 43:6 68:25 75:12 <b>couch</b> 25:15 <b>council</b> 49:19,23 <b>counsel</b> 2:7,8,9 4:13,15 8:9 12:18 15:14 20:3,19,25 21:18 26:21 27:21 28:16 30:4 37:9
---	--	--	--	--

41:12 47:1	<b>county</b> 3:14,15	<b>cross</b> 45:17	<b>declare</b> 28:14	<b>determines</b> 51:7
55:9,16 58:6	6:5,6,18 7:7,8	<b>cross-over</b> 45:13	29:14 40:2	<b>dialogue</b> 16:13
59:7 64:2	7:16 8:12,13	<b>cross-petition</b>	<b>defer</b> 26:16	<b>Diego</b> 2:2 3:7
67:19,21 69:9	11:17 13:6	76:1,2 78:18	27:20 28:16	<b>dies</b> 55:3
69:22 79:1	15:8,19,24	78:23	30:4 47:1	<b>difference</b> 13:12
83:22	16:3,15,18	<b>crossed</b> 41:18	48:14 76:5	36:18 74:16
<b>count</b> 3:24 18:14	17:6 18:7,8	<b>curious</b> 41:11	<b>definitely</b> 26:24	80:13
19:19,21 23:1	22:20,22 24:23	<b>currently</b> 15:1	<b>Delegate</b> 45:15	<b>different</b> 10:4
34:4,6,11,18	25:9,10,13,19	<b>custom</b> 5:23	45:16 51:8	26:18 28:21
34:20,22,23,24	25:20 26:24	40:20	<b>Delegates</b> 51:4	30:9,13 31:14
35:3,12,15,23	28:1,3,19		<b>Democrat</b> 54:10	41:9 42:15
43:10 44:10,13	30:25 31:1	<b>D</b>	56:11,16 58:3	48:6 57:8 59:1
44:14,17 45:12	33:8,17 34:10	<b>D</b> 44:5 46:14,15	61:9,15 64:14	78:12 80:11
46:7,9 48:5	36:5 38:1,2,3,4	46:21 79:17	<b>Democratic</b> 2:3	<b>direction</b> 40:25
49:11,16,22	38:22 39:15	<b>D-e-b-b-i-e</b>	2:8 24:11	53:4 64:19
52:3,16 54:21	40:12,20 41:16	22:19	32:14 38:13	<b>directly</b> 31:10
57:5,6 61:9	41:18 43:3	<b>D-o-n</b> 27:25	42:9,18 49:11	<b>director</b> 2:16
62:1,6,12	44:5,6 45:12	<b>Danville</b> 82:21	52:5	5:10 20:11
66:12,22 67:9	49:19 50:10,11	82:23	<b>Democrats</b> 62:8	26:12 30:16
73:5 77:4,7,8	50:20 52:10,14	<b>date</b> 66:2	<b>depending</b> 7:13	32:7,24 37:11
78:13	52:22 54:8	<b>day</b> 5:25 6:3	<b>deposit</b> 13:12,17	54:4
<b>counted</b> 14:2	58:13,21 60:16	7:12 17:14,14	14:13 74:14,15	<b>disagree</b> 50:9
16:1 17:15,19	60:16 61:2,6	17:17 39:17,18	74:21 75:23	<b>disclosure</b> 11:15
19:17 22:3,23	64:8 65:25	47:10 64:20,22	<b>deposits</b> 13:2	11:24
23:2 24:15	68:6,12 70:18	68:20 72:18	<b>deputy</b> 11:16	<b>discretion</b> 30:15
25:18 31:8	70:20 72:5,17	77:14 84:6,11	22:20 53:9	<b>discuss</b> 15:17
37:16,22 38:25	74:24 76:21	<b>days</b> 7:12 51:19	64:7	<b>discussed</b> 56:23
39:3,6 40:1,8	78:11,12 79:8	<b>deadline</b> 12:25	<b>described</b> 10:23	61:3
42:10,20 45:6	79:8,21 81:3,8	19:16 24:6	17:1 19:9	<b>discussing</b> 6:10
56:22 57:15,18	81:10 84:2,4	28:9,13 29:2,3	78:23	32:5
57:20 59:4	84:20	29:4,6,23 33:3	<b>description</b>	<b>discussion</b> 10:21
61:16 67:11	<b>County's</b> 43:22	50:13 60:17	15:14	11:4 37:12
75:13 77:4	44:23	70:2 74:12	<b>descriptions</b>	52:2 53:22
78:22 81:13	<b>couple</b> 6:16	76:2,3	7:22	58:2 59:7 63:3
<b>counterpart</b>	67:23	<b>deadlines</b> 6:22	<b>designation</b>	72:2,2 73:19
27:21	<b>course</b> 7:11	17:4 25:23	47:15	82:4
<b>counties</b> 3:13,17	11:21 28:5,15	31:8 41:17,18	<b>desires</b> 13:21,22	<b>discussions</b>
7:18 27:15	30:4 31:2 34:9	<b>deal</b> 33:21 44:1	75:6,7	16:14 63:13
28:24 29:6,9	36:13	51:21	<b>destroyed</b> 69:16	72:8
30:23 32:15	<b>court</b> 1:22 4:16	<b>dealing</b> 25:5	<b>detailed</b> 3:21	<b>disenfranchised</b>
33:4,5 42:7	4:17,19 17:7	29:21 77:11	52:8	49:10,20
48:2 50:22	<b>cover</b> 44:3	80:8,9	<b>details</b> 15:22	<b>disenfranchises</b>
51:19 57:8	<b>coverage</b> 33:25	<b>dealt</b> 23:10	<b>detectives</b> 7:15	83:10
<b>counting</b> 27:7	<b>covers</b> 14:17	<b>Debbie</b> 22:19	<b>determination</b>	<b>dispute</b> 36:3
29:12 31:23	31:18	23:3	36:5	<b>disputed</b> 9:25
34:19 36:8,20	<b>crafted</b> 30:2	<b>December</b> 30:19	<b>determine</b> 28:25	10:4,5
44:16 49:7	<b>crafting</b> 56:2,4,5	<b>decide</b> 28:2	31:11 32:9	<b>disruption</b>
54:20,20 66:1	<b>create</b> 56:3	<b>decided</b> 24:19	46:19 49:17	33:22
66:19,21	<b>credentials</b> 51:6	<b>decision</b> 20:10	<b>determined</b> 7:10	<b>dissension</b> 80:7
<b>counts</b> 45:1	<b>crime</b> 7:16,22	49:13	33:16	<b>distinction</b>

14:15 45:8 <b>distinguish</b> 35:25 <b>distributed</b> 51:18 <b>district</b> 5:20,21 6:7,8 7:8 12:7 12:15 13:4 14:12,18 18:4 18:6 23:11 24:4,13 25:4 25:17 28:19 31:18 32:2,15 38:20 42:10 45:13,17,25 49:19 54:5,10 54:11 56:17 58:22,23 60:1 60:8,10,23,24 61:9 64:15,16 64:24 65:21,25 69:2 70:13 72:4 74:4,10 75:22 76:1 77:18,20,21,22 77:24 79:19 80:8,10 <b>divide</b> 66:14,16 <b>Division</b> 4:11 5:25 12:22 74:10 83:21 <b>divisions</b> 54:10 <b>document</b> 6:15 11:12 15:3 <b>doing</b> 16:15 23:10 66:17,20 <b>Don</b> 27:25 52:22 <b>door</b> 28:10 29:13,16 30:3 33:20 <b>doors</b> 40:16 <b>Ds</b> 61:12 <b>DS450</b> 18:11 <b>due</b> 6:22 16:2 <b>duties</b> 41:20	26:23 <b>early</b> 7:12 17:16 19:24 47:12 83:8,9 <b>easier</b> 8:21 10:6 24:19 <b>EDT</b> 1:7 <b>either</b> 30:16 31:9 40:20 41:12 45:18 61:12,13 <b>election</b> 3:10 4:11 5:24 6:5 12:21,22 13:6 14:12 15:1,5,7 15:8,10,10 17:14,14,17 18:10,13,16 23:2 24:3,6 25:12 26:9 28:1,3,11 29:11 30:21 31:3,13 32:8 33:9,14,17,23 34:10 36:6,22 39:17,18 40:2 40:3,20 47:10 48:9,10 51:8 51:19,20 52:23 53:1,9,11 60:16,16 64:20 64:22 70:1,9 70:18,20 71:3 71:4,4 72:18 73:12 74:9,10 74:24 75:22 76:1 77:2,9,14 83:21 <b>elections</b> 3:12,20 33:10 50:7 51:16 64:8 <b>electronic</b> 46:23 47:1 48:19 <b>elements</b> 13:19 14:6 75:4,16 <b>eligible</b> 51:7 <b>Elkhart</b> 6:6,18 7:7 8:13 13:5 15:19 17:6 18:7,8 22:22	25:10 33:8 34:9 37:23 38:1,2,3 40:12 45:12 50:10 52:14 64:8 68:1 70:18 72:4 78:12 79:8 80:6 81:8 82:17 <b>emergency</b> 28:14 29:14,22 30:1 33:21 40:2 <b>employees</b> 40:21 <b>empty</b> 39:19 <b>enemy</b> 50:8 63:20 <b>ensure</b> 8:14 20:13 27:15 43:15 <b>ensures</b> 9:10 <b>enter</b> 61:17 <b>entered</b> 13:5 15:8 74:23 <b>entire</b> 14:12 23:15 25:20 79:19 80:8 <b>entirely</b> 78:5 <b>entitled</b> 13:23 75:8 <b>entity</b> 41:15 <b>entry</b> 7:23 <b>envelope</b> 64:11 <b>envelopes</b> 18:1 36:7 <b>envisioned</b> 52:18 56:25 57:1 <b>equal</b> 13:17 74:21 <b>equipment</b> 34:7 36:14,17 61:6 66:12 72:11,17 <b>ERM</b> 18:9,13 46:25 <b>err</b> 22:9 <b>erring</b> 20:12 <b>errors</b> 53:14 <b>especially</b> 48:17 <b>essentially</b> 69:15	70:24 <b>et</b> 39:2 <b>ethics</b> 11:21 <b>evening</b> 7:7 <b>eventually</b> 59:8 <b>everybody</b> 19:4 45:4 55:25 <b>evidence</b> 16:9 <b>evidenced</b> 14:25 <b>examined</b> 35:24 <b>examiner</b> 11:16 <b>example</b> 3:20 33:15 52:1 <b>excuse</b> 7:18 <b>execute</b> 19:9 41:20 <b>executed</b> 65:17 65:23 <b>execution</b> 8:11 <b>exemption</b> 34:1 <b>exhibits</b> 10:5 <b>exist</b> 56:21 <b>exit</b> 7:23 <b>expanding</b> 70:25 <b>experience</b> 57:7 <b>experienced</b> 26:20 <b>Expires</b> 84:18 <b>explained</b> 71:13 <b>extent</b> 22:14 32:23 52:1 54:4 <b>extremely</b> 83:10	<b>fashion</b> 8:20 22:7 <b>fattening</b> 54:1 <b>favor</b> 11:4 63:16 71:20 73:20 81:18 83:15 <b>federal</b> 51:20 71:4,4 <b>fellow</b> 30:4 <b>FEMALE</b> 21:5 21:7 <b>fewer</b> 78:2 <b>figure</b> 42:14 <b>figuring</b> 42:1 <b>filed</b> 12:21 14:25 26:23 29:19 60:13 70:9,18 74:10 76:2 <b>files</b> 49:4 <b>filing</b> 12:25 14:8 14:13 29:7 74:12 75:18,23 76:1 83:7 <b>filled</b> 9:20 <b>final</b> 24:8 25:19 27:8 29:6 34:2 <b>find</b> 48:13 56:3 <b>fine</b> 73:13 <b>first</b> 3:6,14 20:21 22:4 25:25 26:22 29:2 30:11 38:9,12 39:11 43:10 51:23 57:21 67:23 72:15 <b>five</b> 10:11 49:15 77:13 <b>flesh</b> 68:4 <b>floor</b> 5:16 7:3 <b>folks</b> 28:18 <b>follow</b> 27:2 <b>following</b> 7:12 31:9,12 33:17 42:25 43:6 55:7 <b>foregoing</b> 84:7 <b>form</b> 9:4,10,13 9:15,16,22 10:1,9,11,13
<hr/> <b>E</b> <hr/> <b>E-poll</b> 48:19 49:4 <b>earlier</b> 14:17			<hr/> <b>F</b> <hr/> <b>face</b> 14:4 75:14 <b>facetious</b> 19:18 <b>facilitate</b> 8:20 <b>fact</b> 3:23 16:3 22:10 44:18 <b>factor</b> 61:10 <b>facts</b> 14:25 <b>factual</b> 5:19 80:13 <b>fair</b> 78:25 <b>faith</b> 14:1 50:24 75:11 <b>far</b> 41:10 68:14 78:2 82:10	

<b>forms</b> 8:22 9:1 9:20,21 10:3 10:15	<b>given</b> 33:21 48:7 53:4 55:15 63:21	<b>groups</b> 60:5,22	69:3 79:1,2,5 80:17 81:7,15	<b>hour</b> 28:10
<b>forth</b> 6:2 13:20 32:2 63:3 75:5	<b>giving</b> 25:13 33:19 42:6	<b>guess</b> 53:6 58:1 58:8 68:8	<b>HD</b> 44:6,7	<b>hours</b> 16:16 19:15 33:21
<b>fortunately</b> 47:4	<b>go</b> 8:23 15:7 19:4,9 25:20	<b>guidance</b> 32:23 53:15,16	<b>head</b> 26:19	<b>House</b> 5:20,21 6:7,8 12:7,14
<b>forum</b> 20:16	<b>going</b> 9:25 10:7 19:20,20,23	<b>guidelines</b> 6:12 9:2 10:16,22	<b>hear</b> 16:18	13:4 14:18
<b>forward</b> 6:14 48:11	27:24 29:11 34:17,17 38:15	31:19 32:3,11 38:5 59:24 61:23	<b>heard</b> 11:6 37:5 52:13,15 63:23	18:4,6 23:11
<b>found</b> 78:8	43:19 53:16 55:14 56:9	<hr/> <b>H</b> <hr/>	71:22 73:22 81:19 83:16	24:4,12 25:3
<b>framework</b> 6:13	57:19 67:13 79:14 82:16	<b>H-o-d-s-o-n</b> 27:25	<b>hearing</b> 40:3 41:11,22 46:19 52:24	25:17 28:19
<b>franchise</b> 19:23	<b>goes</b> 44:5,6 45:19 48:11 67:24	<b>H-o-s-k-i-n-s</b> 22:20	<b>heck</b> 71:17	31:17 32:1
<b>frankly</b> 19:25	<b>going</b> 9:25 10:7 19:20,20,23	<b>Hajicek</b> 12:22	<b>held</b> 53:5	38:19 42:10
<b>Friday</b> 24:5 28:9 29:8 33:4 53:2 54:15 70:16 77:9 82:15,18	20:24 25:21 30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>half</b> 10:1	<b>help</b> 10:5 17:1 23:23 28:17 47:7	54:4,10,11 56:17 58:22 60:1,7,10,23 60:24 61:9 64:24 65:21,24 69:1 70:13 72:4 74:4,9 77:18 79:19 80:8,9
<b>front</b> 25:12 29:16	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>hand</b> 4:25 5:5 34:4,6,11,18 34:20,24 35:3 35:12,23 36:20 46:9 52:2,16 63:16 66:12,14 66:16 69:11 84:10	<b>helpful</b> 32:24 42:12 64:6	<b>hundred</b> 11:15 44:11 77:19,23
<b>full</b> 11:15,23 44:3 78:13 84:8	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>handful</b> 77:14	<b>helps</b> 8:20	<hr/> <b>I</b> <hr/>
<b>full-on</b> 62:1	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>handle</b> 7:11 43:3	<b>Hendricks</b> 6:5 7:7 8:12 22:20 28:1,3,18 33:8 50:11 52:22 74:23 76:21 78:11 79:8 81:3,9	<b>identical</b> 80:3
<b>function</b> 41:14	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>handled</b> 26:17 83:8	<b>hereunto</b> 84:10	<b>identified</b> 74:9
<b>further</b> 14:21,23 34:14 50:17 59:6 63:13 72:2 73:19 76:17 79:14 83:4	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>hands</b> 67:14	<b>high-level</b> 8:24	<b>identify</b> 4:19 18:22 39:5 58:25 60:7 65:2,13,18
<hr/> <b>G</b> <hr/>	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>handwriting</b> 10:10	<b>high-speed</b> 18:12 39:15	<b>identifying</b> 4:20 39:5
<b>gamut</b> 25:8	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>hang</b> 62:8	<b>historically</b> 9:14 57:9,10,15	<b>IDs</b> 17:16
<b>gathered</b> 67:10	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>hanging</b> 61:18	<b>hit</b> 26:19	<b>illegal</b> 54:1
<b>general</b> 8:9 9:24 26:9 30:2,14 30:21 31:12 33:11 37:9 51:19 77:18	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>happen</b> 7:20 68:5,8 81:23	<b>Hodson</b> 27:25 27:25 52:22,22 78:17,24 80:19 80:24 81:2,6 82:9	<b>imagine</b> 52:10 59:5
<b>generally</b> 9:7,22 10:15 57:12	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>happened</b> 21:22	<b>hold</b> 51:15,15,17 61:15	<b>immoral</b> 54:1
<b>generically</b> 36:15	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>happens</b> 36:6 68:8,9 69:10	<b>hope</b> 36:23 42:8 47:23	<b>impact</b> 6:19 11:22
<b>germane</b> 23:21	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>happy</b> 8:23 10:17 14:19 34:14 37:7	<b>Hoskins</b> 22:19 22:19 76:23 77:1,12,19 81:12 82:22,25	<b>impacted</b> 22:3
<b>getting</b> 24:22 42:1 43:1	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>hard</b> 77:5		<b>impermissible</b> 35:9
<b>Gibson</b> 30:23,25	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>Harper</b> 2:13 6:25 7:4		<b>implemented</b> 30:24
<b>give</b> 8:24 15:21 32:23 45:9 64:21 78:25	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6	<b>Harter</b> 20:23,25 21:2,16,18 67:15,20,21 68:13,17,21		<b>important</b> 20:9 31:24 33:24 35:6
	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6			<b>importantly</b> 70:7
	30:9 37:17 38:10 43:1,3 43:25 44:8,9 44:10,12,13,14 44:17,23 46:20 46:20,25 48:4 48:13 49:8,16 53:24 57:18 62:18 63:16 64:15 66:14,15 66:24 67:25 68:5,5,7,7,11 68:12,21,22,24 70:15 73:3 82:12 83:6			<b>impound</b> 5:25

19:15 20:12 51:24 54:16,16 70:15 71:13 <b>impounded</b> 8:15 16:5 17:10,18 18:25 19:3,13 21:24,25 22:11 22:14 24:21 48:10,21 49:5 77:3 <b>impounding</b> 6:4 53:4 76:25 <b>impoundment</b> 5:15 6:19 7:6 7:19,25 8:12 15:17,25 16:2 16:8 18:23,23 18:25 19:2,24 23:15,19 26:12 30:12,15,20 31:6,16,25 32:19 49:12 52:6 54:3 55:7 60:9,9 61:5 65:10 66:2 67:7,24 68:4 68:15,19 69:12 77:1 78:10 79:15 82:7,20 83:9 <b>impoundments</b> 7:12,19 <b>inclination</b> 21:10 <b>include</b> 14:5 65:8 72:11 75:15 <b>included</b> 13:7 14:18 64:16 75:1,25 <b>includes</b> 14:7 75:17 <b>including</b> 4:1 11:18 17:12 <b>incorporated</b> 9:2 10:15 <b>Indiana</b> 1:4,11 2:12 3:2,7,8 5:4 12:7,14 13:11,20 14:8	14:11 15:11 26:6 33:9,11 33:14 35:14 41:13 42:23 54:22 71:3,6 74:4,14 75:5 75:18,20 84:1 84:5 <b>Indiana's</b> 3:10 <b>Indianapolis</b> 1:11,23 <b>indicating</b> 45:20 <b>individual</b> 3:22 13:23 75:8 <b>individuals</b> 31:9 32:22 <b>inform</b> 29:18 <b>information</b> 14:22 31:20 39:8,13 48:20 48:23 55:13 65:7 76:6,7 <b>initially</b> 36:25 37:2 <b>inspection</b> 32:6 32:17,18 41:25 44:2,3 69:14 70:5 71:8 <b>instance</b> 67:11 <b>integrity</b> 20:13 21:24 22:10 31:25 <b>intended</b> 30:2 80:3 <b>intention</b> 43:18 59:5 72:13 <b>intervening</b> 69:17 <b>inventory</b> 67:15 <b>investigative</b> 7:8 7:14 <b>investigators</b> 7:16 <b>invite</b> 56:2 <b>involve</b> 34:6 <b>involved</b> 32:16 80:20 <b>irrelevant</b> 56:11 <b>issuance</b> 5:15 31:6	<b>issue</b> 16:7 20:14 24:18,24 25:13 34:11 37:2 38:18 40:9 43:9,16,24 48:3 52:16 56:13,24 78:2 <b>issued</b> 5:25 30:20 32:20 54:3 56:10 <b>issues</b> 6:11 15:18 22:12 32:10 <b>it'll</b> 78:7 <b>items</b> 37:15,21 39:25 43:21 <hr/> <b>J</b> <b>January</b> 31:12 <b>Joanna</b> 14:10 <b>job</b> 41:1 43:5 53:12 <b>join</b> 4:5 <b>joined</b> 4:8 <b>judgment</b> 27:14 <b>judicial</b> 69:17 <b>June</b> 84:11,19 <b>jurisdiction</b> 24:23 <hr/> <b>K</b> <b>K-e-n-d-r-a</b> 8:8 <b>keep</b> 8:19 10:5 22:2 47:8 56:20 58:20 <b>Kendra</b> 2:21 8:2 8:5,7 16:14,16 28:22 37:9 41:22 46:11 58:16 66:5 79:25 80:1 <b>kept</b> 48:6 <b>kind</b> 6:15 8:19 8:20 9:6,16,22 10:5 28:12 37:12,20 38:24 39:11,24 40:4 40:10,25 41:5 41:7,9 45:3 55:23 59:6,9	<b>King</b> 2:9 4:13 5:24 10:24 11:12 12:13,16 12:18 14:10 15:14 20:20 27:21 30:5,7 35:1,25 42:12 49:2 50:4 52:20,24 59:22 60:12 69:6,22 71:1,10 74:2,5 74:6 76:11,15 78:17,20 79:22 79:23 80:1,5 80:12,23 <b>knew</b> 40:7 <b>know</b> 3:9 10:14 14:24 16:6,12 16:16,25 18:3 18:5 19:1 20:16,17,19 21:20 22:4,13 25:25 27:1,4 28:12 31:22 34:18,22 37:1 37:5,16,19 38:14 40:1,7 40:17,23,25 41:4 42:11,14 43:2,4,8,15,24 44:18 46:1,14 47:5 49:24 52:21 53:13 55:23 56:23,23 57:8,13,21 58:5,19,22 61:10,19,23 62:1,14,18,22 62:23 63:5 64:6,9,11,12 64:19,23 65:21 67:12 72:25 77:10,12,16,20 77:20,23 81:7 82:16 <b>know--and</b> 24:10 <b>knowing</b> 48:4 <b>knowledge</b> 15:12 50:25	<b>known</b> 9:7 <b>knows</b> 48:16 <b>Kochevar</b> 2:8 4:14 5:1,3,8 14:23 21:1,3,6 21:9,15 23:23 27:6 28:15 31:10,17 33:18 41:14 47:3,12 69:7,21,22 71:1,9,11 76:5 76:7,19 77:16 78:4 <hr/> <b>L</b> <b>L</b> 84:15 <b>L-e-a-t-h-e-r-...</b> 8:9 <b>labeled</b> 56:10 <b>language</b> 56:16 <b>large</b> 37:20 54:6 84:5 <b>law</b> 13:6 26:5 27:18 28:10 29:13,13,16 30:2,3 33:9,20 34:1 35:12,22 36:13,20 41:13 47:5 50:14 61:20,23 63:24 69:13,20 71:3 71:4 74:25 78:20 <b>lays</b> 46:2 <b>Leatherman</b> 2:21 8:3,6,8,8 37:7,9,25 40:15 41:4 43:7 44:8,11 44:21,25 45:2 46:17,22 47:11 55:23 56:8 57:1,4,6,12,16 58:1,18 59:11 59:14 60:18 61:1,21,24 62:4,10,14,18 62:22 66:4,13 66:18,20,24 67:8,17 68:11
--	--	--	--	---

68:14,18 69:1 72:13,16,24 73:3,8 <b>leave</b> 15:22 27:14 79:25 80:1 <b>left</b> 29:24 38:24 <b>legal</b> 20:4 58:8 59:20 <b>legally</b> 20:18 42:17 <b>legislation</b> 35:10 <b>legislative</b> 26:8 <b>level</b> 34:2 47:4 <b>liaison</b> 11:17 <b>lift</b> 27:11 <b>likewise</b> 51:11 <b>limited</b> 31:20 <b>lines</b> 42:16 <b>list</b> 39:16 47:8 <b>little</b> 8:21 10:6 19:18 28:21 42:23 61:25 64:5,9 <b>live</b> 63:18 <b>living</b> 6:15 <b>local</b> 25:9 31:3 <b>location</b> 7:17 48:18 <b>locations</b> 7:17 7:18 17:10,18 17:23 <b>lock</b> 42:4 <b>locked</b> 28:7 68:19 81:14 <b>locks</b> 7:21,24 <b>logs</b> 7:22 <b>long</b> 29:17 73:11 <b>longer</b> 68:16 <b>look</b> 3:22 47:19 47:21 49:6 65:13 <b>looking</b> 26:4 <b>lose</b> 19:23 <b>lot</b> 10:1 44:3 53:7 55:13 <b>lots</b> 10:1 <b>love</b> 37:6	<b>machine</b> 54:13 54:20 <b>mail</b> 17:20 47:18 64:22 <b>maintain</b> 31:25 <b>major</b> 8:1 25:25 31:19 <b>majority</b> 4:13 12:18 <b>making</b> 42:15 55:14 <b>MALE</b> 65:4,6 <b>manner</b> 56:2 59:1 72:1 74:1 <b>manual</b> 35:15 <b>margin</b> 13:8 75:2 <b>Marion</b> 84:1,2,5 84:20 <b>mark</b> 2:4 4:9 39:6,8 59:1 <b>markers</b> 43:14 <b>marks</b> 10:1,2 <b>Mary</b> 1:16 4:16 4:17 84:4 <b>match</b> 9:11 <b>material</b> 30:15 32:8 69:10 70:9 71:6 72:18 <b>materials</b> 6:1,5 6:19,21 8:14 16:5,8,9 20:13 22:13 29:8 38:9 40:19,23 42:1,2,4 43:5 54:15 78:13 <b>matter</b> 11:14,14 14:5,9,16 24:21 27:20 32:20 34:3 51:4 70:5,21 75:15 78:14 81:24 <b>matters</b> 5:23 11:20 <b>Matthew</b> 2:8 4:14 5:1,9 14:21 15:16 16:21 21:5	30:8 <b>McCarty</b> 1:16 4:16 84:4 <b>mean</b> 22:1 35:13 41:8 44:12 46:4 53:7,9 57:12 61:2 66:10 72:24 <b>meaning</b> 24:2 35:14 <b>means</b> 16:19 38:5 48:11 70:12 <b>meant</b> 76:16 <b>mechanism</b> 32:4 33:13 59:15 <b>media</b> 29:18 39:17,19 72:25 73:11,12 <b>meet</b> 3:15 6:22 17:3 18:22 19:15 29:11 40:3 <b>meeting</b> 3:1,5,19 4:4 5:14 20:5 33:17 53:2,5 53:17,18,18 83:20 <b>meetings</b> 28:11 <b>member</b> 2:3,4 3:8 28:1 <b>members</b> 2:1 3:4 4:2 5:18 8:7 12:3,5,16 15:6 59:22 64:2 74:7 76:9 83:21 <b>memory</b> 11:20 <b>mentioned</b> 28:8 33:18 38:3 39:12 46:10 56:15 70:21 72:14 <b>messing</b> 22:13 <b>met</b> 7:16 17:8 <b>method</b> 60:14 <b>Michael</b> 2:3 4:9 <b>Michelle</b> 20:25 67:21 <b>Middlebury</b>	49:23,25 <b>military</b> 17:12 23:9 39:1 64:18 77:13,21 <b>mind</b> 80:19 <b>mini</b> 67:15 <b>ministerial</b> 10:18 <b>minor</b> 10:8 <b>minority</b> 4:14 <b>minutes</b> 55:9 72:16 <b>mishearing</b> 76:14 <b>mispronounce</b> 12:23 <b>missed</b> 41:17 <b>missing/mism...</b> 17:16 <b>mixed</b> 81:10 <b>mixture</b> 39:1 <b>modification</b> 41:24 51:24 52:1 56:5 67:24 81:24 82:7 <b>modifications</b> 81:23 <b>modified</b> 82:20 <b>modify</b> 27:12 30:12 32:19 54:3 55:6 60:15 63:2 71:12 79:15 <b>modifying</b> 23:18 <b>Module</b> 18:10 18:13 <b>moment</b> 41:6 50:25 55:17 <b>Monday</b> 29:4 33:6 <b>months</b> 3:14 <b>Morales</b> 2:2 3:1 3:7 4:8 5:9,13 6:24 8:1 10:20 10:25 11:3,7,9 12:2,12 14:20 15:16 19:10 20:21 21:17 22:16 23:3	27:23 34:17 45:7,9 48:25 50:2 52:20 53:21 54:18,24 55:10,18 57:22 58:15 63:11 64:2 66:8 67:18 69:4 71:10,18,20,23 71:25 72:7,12 73:15,18,23,25 76:19,24 77:25 78:16,25 79:3 79:10,22 80:15 81:16,20,22 82:6 83:1,13 83:15,17,19 <b>morning</b> 17:8 23:8 30:24 40:12 45:12 82:15,17,18 <b>motion</b> 10:21 11:5 12:8 53:22,23,25 55:1,3,6 57:22 62:25 63:5,6,7 63:10,11,17 66:6 71:14,16 71:21 72:10 73:15,21 79:7 79:12 80:2,3 80:15,20 81:18 81:18 <b>motions</b> 55:4 <b>mouth</b> 46:4 60:20 <b>move</b> 54:2 71:15 71:16 72:3 79:14 82:2 83:7,12 <b>moved</b> 7:20 10:24 71:16 <b>moving</b> 6:14 8:19 24:22 32:18
<hr/> <b>M</b> <hr/>				<hr/> <b>N</b> <hr/>
				<b>N</b> 84:15 <b>nail</b> 26:19 <b>name</b> 4:20 8:7

12:23 22:17,17 64:7 <b>names</b> 13:25 75:10 <b>narrow</b> 32:10 41:7 47:23 <b>narrowing</b> 43:24 <b>nature</b> 10:18 <b>nay</b> 11:7 71:23 73:23 81:20 <b>nearly</b> 26:22 <b>necessary</b> 22:15 33:18 52:7 59:16 72:11 <b>need</b> 3:16 6:20 11:11 17:2 18:22 22:9 24:2,5 27:16 43:5 44:18 46:12 47:7 50:14 51:16 63:5 72:22,25 82:14 <b>needed</b> 16:1 <b>needing</b> 22:3 <b>needs</b> 26:25 34:13 41:19 53:20 <b>neither</b> 53:10 <b>never</b> 25:18,18 57:10 59:4 <b>new</b> 49:21 63:5 <b>night</b> 15:5 18:16 30:20 36:22 73:12 <b>nominated</b> 13:13 74:16 <b>nomination</b> 12:7 12:14 13:24 14:2 74:4 75:9 75:12 <b>non-disputed</b> 9:24 10:4 <b>non-germane</b> 23:21 <b>non-impounded</b> 19:13 20:1 <b>non-Republican</b> 59:25	<b>noon</b> 24:6 28:4,9 29:1,5,8 33:4 54:14 70:17 76:4 <b>normal</b> 34:8 36:12 <b>normally</b> 26:16 27:2 41:24,25 47:3 48:2 <b>notarial</b> 84:11 <b>Notary</b> 1:17 84:4 <b>note</b> 28:18 34:10 <b>noted</b> 14:16 30:12 78:6 <b>notes</b> 65:8,9 84:9 <b>notice</b> 6:3 14:8 28:11 29:15 33:19,21 75:18 <b>noticed</b> 9:23 <b>notices</b> 14:14 29:19 75:24 <b>notification</b> 7:5 15:18 <b>notified</b> 15:24 <b>notify</b> 29:21 <b>November</b> 26:9 <b>nuanced</b> 20:15 <b>nuances</b> 6:18 <b>number</b> 24:1 25:22 30:9 31:14 51:1 52:9 58:7 61:4 62:7 63:9 65:19 84:17 <b>numbers</b> 50:18 50:19	<b>occurs</b> 78:23 <b>offends</b> 19:25 <b>office</b> 4:12 13:21 25:6 26:9 31:11 40:22 53:3,15 69:25 75:5 <b>Officer</b> 3:10 <b>offices</b> 15:9 25:7 25:17 51:2 53:9 <b>official</b> 9:11,12 44:15 77:7 <b>officials</b> 15:9 <b>oh</b> 16:12 21:16 64:6 67:21 <b>okay</b> 11:11 17:5 21:3,16 44:14 59:21,21 65:12 67:5 68:4,17 68:21 69:3,3 71:20 73:3,14 78:24 79:3,13 81:15 82:5,8 <b>once</b> 9:10 21:3 25:20 38:15 46:24 58:24 67:2,3 68:15 <b>one's</b> 70:15 <b>ones</b> 10:4 22:2 24:19 33:24 35:23 38:17 39:9,9 65:24 67:6 72:25 73:1,4 <b>online</b> 15:7 <b>open</b> 3:20 27:14 28:10 29:13,15 30:3 33:20 40:16 46:20 <b>opened</b> 36:4,7 <b>operate</b> 41:2 <b>opinion</b> 33:24 34:23 <b>opportunity</b> 32:22 45:10 79:1 <b>opposed</b> 11:7 71:23 73:23 81:20 83:17	<b>option</b> 20:18 26:10 27:13,15 <b>options</b> 16:15 31:14 <b>orange</b> 17:25 38:9 43:19 44:4 54:6 56:9 58:20 64:10 67:12,13 81:8 <b>order</b> 3:3 5:25 6:21 8:19 9:4,6 10:21 11:9 14:12 15:17,25 18:25 23:19 26:12 30:12,20 30:24 31:6 32:19 39:13 40:25 51:24 52:6 53:23 54:3,16,23 55:7 56:4 69:12 72:4 75:21 76:25 78:10 79:9,15 80:25 82:20 <b>ordered</b> 32:6 74:1 81:25 <b>orders</b> 5:15 7:6 7:25 71:13 77:1 <b>organized</b> 19:1 <b>original</b> 19:21 34:21 <b>originally</b> 21:1 <b>outline</b> 57:25 <b>outlined</b> 55:8 <b>outside</b> 18:6 19:5 <b>overseas</b> 17:12 23:9 64:17 <b>oversee</b> 18:20 <b>overview</b> 15:21	70:24 <b>paper</b> 39:2 44:18 64:14 <b>parsing</b> 34:19 <b>part</b> 10:13 20:4 31:22 33:13 34:6 35:16 36:24 39:11 44:15 49:12 59:8 78:22 <b>participating</b> 47:15 <b>particular</b> 14:25 15:10 25:6 27:20,22 29:17 36:14 42:6,24 43:16 48:8,15 50:13 56:24 70:4,12 78:9 <b>particularly</b> 40:9 <b>particulars</b> 47:6 <b>parties</b> 6:4 7:25 20:17 40:18 51:3 52:15 69:5 72:8 <b>partly</b> 16:2 <b>parts</b> 35:2 <b>party</b> 2:8,9 12:6 12:14 26:1 31:19 47:14,15 51:2,5,9,13 60:6,23,25 64:12,19,23 65:18 74:3 <b>party's</b> 31:21 48:8 <b>pass</b> 12:3 <b>passed</b> 25:23 70:2 76:2,3 <b>pending</b> 14:16 36:11 78:9 <b>people</b> 19:23 34:15 53:8 <b>percent</b> 13:9,14 44:11 49:8,9 49:14 74:17 75:3 77:19,23 <b>perfect</b> 50:7 51:14 63:20
	<b>O</b>			
	<b>O</b> 84:15 <b>oath</b> 4:25 5:2,6,7 16:21,23 20:24 21:1,13,14 <b>observance</b> 19:5 <b>observe</b> 29:14 <b>obviously</b> 21:22 26:16 28:20 <b>occur</b> 51:13 76:3 78:3 82:10			
			<b>P</b>	
			<b>P</b> 84:15 <b>p.m</b> 1:7 83:24 <b>P.O</b> 1:23 <b>Paasch</b> 74:11 <b>packet</b> 8:23 <b>page</b> 10:2 15:6	

<b>perfected</b> 6:12	58:19	<b>possibly</b> 6:21	<b>presumably</b>	69:11,18 74:1
<b>perform</b> 38:6	<b>Philip</b> 2:17	25:24 41:19	31:12	81:23 82:8
<b>period</b> 61:6	<b>Photo</b> 17:16	<b>practical</b> 50:6	<b>presume</b> 29:23	<b>proceedings</b>
69:25 75:25	<b>photographs</b>	<b>practice</b> 32:12	41:1	66:2 83:24
<b>permission</b>	7:21	40:20	<b>pretty</b> 10:18	84:7
38:21	<b>phrase</b> 32:10	<b>practices</b> 56:19	28:19 40:20	<b>process</b> 3:21
<b>permit</b> 33:20	<b>pieces</b> 44:18	56:20	<b>prevented</b> 41:15	18:21 25:14
<b>permitted</b> 36:19	<b>place</b> 7:20 19:2	<b>pre-recount</b>	<b>preventing</b>	27:3,4,17
<b>person</b> 4:23	23:23	32:5,17,18	43:22	29:12 31:25
17:21 19:16	<b>placed</b> 15:4	41:25 44:2	<b>previous</b> 40:17	33:18 34:7
45:17,19 48:7	<b>plain</b> 35:13	<b>precedence</b>	57:7	35:16 36:13
<b>personal</b> 11:14	<b>plan</b> 37:13 40:10	26:13	<b>previously</b>	38:10 39:11
<b>personally</b>	41:5 58:5,7	<b>precedent</b> 30:18	29:19 42:13	43:2,12 44:16
29:25	63:4,8,25	31:3	50:20 72:18	48:11 53:7,10
<b>persons</b> 44:22	66:10,12 71:12	<b>precinct</b> 9:5,11	73:4 78:6 80:5	57:20 58:25
<b>perspective</b>	71:19	9:12,18 16:4	<b>primaries</b> 31:19	59:6,9 60:17
31:24 35:11	<b>planning</b> 66:11	22:24 38:6,19	<b>primary</b> 7:2 8:4	67:8 78:3,7
41:6 42:16	82:16	45:22,24 49:14	14:10 15:11	80:10
43:12,22 45:3	<b>plans</b> 4:23	49:17,19,21	19:19 24:11,17	<b>process--actu...</b>
56:14	<b>please</b> 4:5,24 5:4	51:11 52:9	25:3,8,9,17	18:20
<b>pertinent</b> 59:23	5:5 12:23 21:9	61:11 64:23	30:14 31:10,21	<b>processed</b> 29:10
71:2	21:12 22:17	65:2	32:14 34:10	42:19 61:11
<b>petition</b> 6:2 12:6	34:17 80:22,25	<b>precincts</b> 6:1	38:11 42:9,18	<b>professionalized</b>
12:13,20 13:1	<b>Pledge</b> 4:6,7	12:21 13:4,15	47:15 48:8	26:14
13:20 14:3,4	<b>point</b> 35:7,7	13:25 14:18	51:9 52:6	<b>promise</b> 55:24
14:17 15:1	46:10 54:19	24:4,12 25:3	54:21 77:2	<b>proof</b> 14:7,13
21:21 25:5	59:12 60:12	38:18 56:13	78:21	75:17,23
26:23 29:7	76:18	58:23 64:16	<b>prior</b> 7:10 12:24	<b>properly</b> 9:20
34:25 35:4	<b>pointing</b> 71:2	74:9,19 75:7	17:13 74:12	34:9
36:11,11 42:6	<b>points</b> 30:9	75:10 77:17,18	<b>privilege</b> 11:14	<b>proposal</b> 37:19
42:17 53:23	<b>police</b> 2:12 6:3	78:22 79:18,19	<b>probably</b> 37:14	58:9,14 59:10
60:13 70:8,17	7:1,1,5,9 14:8	80:9,20,21	48:4,6,13,22	59:21 60:20
74:8,13 75:4	17:9 19:5 28:5	81:4	49:24 53:25	61:3 65:19
75:13,15,25	30:23 40:15	<b>precise</b> 56:16	58:16 59:7	67:13 79:16
81:3 82:2 83:8	42:5 48:23	<b>prejudiced</b>	77:14 82:14	<b>propose--to</b>
83:9	54:8 68:20	16:11	<b>problem</b> 43:25	18:21
<b>petitioner</b> 13:13	75:18 82:11	<b>prepared</b> 8:18	43:25 47:22	<b>proposed</b> 37:13
13:21,22 14:1	<b>Police's</b> 39:22	62:1	50:6	40:10 41:5
20:25 21:19	<b>political</b> 51:2,5	<b>preparing</b> 51:17	<b>procedural</b>	43:8 58:1,5,7
34:3 69:9	<b>poll</b> 46:12,23	<b>presence</b> 32:21	59:20	<b>proposing</b> 19:7
74:17,22 75:6	47:1,13	<b>present</b> 2:1,7	<b>procedure</b> 35:8	58:18
75:7,11	<b>polls</b> 13:7 74:25	3:5 32:8,23	35:9,17 36:21	<b>prosecutor</b>
<b>petitioners</b>	<b>Posey</b> 30:22	40:14	60:21 67:9	11:19
67:22	<b>position</b> 19:3	<b>preserve</b> 21:24	<b>procedures</b> 6:14	<b>prosecutors</b>
<b>petitions</b> 5:20	<b>possession</b> 70:19	22:9 60:8,9	<b>proceed</b> 12:2	11:18
13:22 14:9	<b>possibility</b> 25:16	71:5	21:17 29:21	<b>provide</b> 3:6 5:13
74:3 75:19,22	27:13	<b>preserving</b> 16:9	36:8 72:1	8:3 12:13
75:24 81:1	<b>possible</b> 19:14	<b>President</b> 45:14	<b>proceeding</b> 31:3	15:22 20:3,17
<b>Phil</b> 5:11 26:16	27:10 78:5,7	<b>Presidential</b>	34:12 52:3	30:5 32:4 37:8
26:19 28:22	82:21	25:9	53:23 60:2	39:16 49:1



59:13 <b>provided</b> 6:7 8:22 19:8 27:8 34:22 63:24 78:5 <b>provides</b> 4:12 33:9 50:15,17 69:13 70:8 78:20 <b>provision</b> 26:10 29:13 46:9 <b>provisional</b> 17:12,15 18:1 19:21 23:9 25:2 26:25 29:9,12 33:15 36:2,10 39:2 40:6 46:12,15 47:14,19 48:4 77:3,8 81:12 <b>provisionals</b> 22:23 39:25 64:10 65:4 77:13 <b>provisions</b> 33:20 51:12 <b>public</b> 1:5,17 3:23 15:6 29:21 31:21 33:19 69:14,20 70:5,21 71:8 81:2 84:4 <b>publicly</b> 15:6 <b>pulls</b> 18:14 <b>purpose</b> 42:3 70:16 <b>purposes</b> 8:17 10:20 39:4 43:18 53:21 67:8 71:3,5 <b>pursuant</b> 13:6 74:24 <b>purview</b> 68:16 <b>put</b> 16:16 42:5 46:4 60:19	29:2 31:22 35:2,7,21 36:23 37:15 51:22,25 52:17 57:17,19 58:8 59:23 60:3 61:8 66:8 68:2 69:8,9 78:17 80:17 81:7 82:9 <b>questions</b> 8:24 8:25 10:17 14:19 28:17 30:6,8 34:14 41:5 59:20 67:20,23 <b>quick</b> 23:7 45:11 81:7 83:7 <b>quite</b> 19:25 <b>quorum</b> 3:5	24:2 26:5,19 35:2 40:5,23 41:22 42:24 51:23 56:15 57:2 <b>reason</b> 20:5 36:3 61:15 62:8 <b>reasons</b> 21:20 32:2 33:7 <b>recalculation</b> 27:10 <b>recall</b> 32:14 <b>received</b> 5:19 6:6 7:5 17:13 51:1 <b>recitation</b> 5:6 21:12 <b>recited</b> 4:7 <b>recognize</b> 5:1 8:2 <b>recommendat...</b> 55:7,15 <b>reconcile</b> 9:10 9:15 62:9,11 62:19 <b>reconciliation</b> 9:13 56:18 61:16,17 <b>reconciling</b> 61:10 <b>record</b> 1:16 11:23 14:9 24:3 48:6,14 48:15,18 53:1 53:20 69:25 70:22 80:21,22 81:2 <b>recorder</b> 31:1 <b>records</b> 13:3 21:24 25:21 68:5,10 69:20 70:1,3,13,16 70:19 81:10 <b>recount</b> 1:4 2:1 2:16 3:2,8,19 3:21 4:12 5:4 5:20 6:11,20 8:10,19 9:2,19 10:22 12:6,13 12:20 13:1,19	13:21,23,23 14:4,12,16,17 16:6,10 19:17 19:18,19,19,22 20:11 21:21 22:5 24:5,16 25:1,6,20 26:11,12,21 29:7 30:19 31:2,5 32:3,7 32:24 34:20,25 35:4,11,17 37:11 38:6 40:8 42:18,25 43:3,10 50:18 50:19 53:22,23 54:2,4,21 55:6 56:11,21 57:21 58:11,12 59:8 59:16,24 60:13 66:2 67:4 70:4 70:8,10,17 71:25 72:4 73:25 74:3,8 74:13 75:4,6,7 75:8,14,19,21 75:25 76:9 77:6 78:9,20 78:22 79:21 81:1,23 82:3,8 83:2,8,9 <b>recounted</b> 13:16 74:19 <b>recounting</b> 34:20 70:2 <b>recounts</b> 3:21 9:23 10:11 25:22 26:8,9 26:14 38:4 50:17 <b>refer</b> 76:16 <b>referenced</b> 31:17 33:3 34:5 35:6,10 <b>referred</b> 76:15 79:16 <b>referring</b> 29:2 <b>regard</b> 21:23 30:11,15,18 32:1 33:2,8	36:9,12 50:11 51:2 52:2,14 52:15,16 60:13 80:5 <b>regarding</b> 7:1 39:25 52:5 76:24 <b>regardless</b> 60:23 60:25 <b>regards</b> 14:23 69:23 <b>registered</b> 47:25 <b>registration</b> 13:3 40:22 48:1 <b>reinforced</b> 33:12 <b>reinstated</b> 54:17 <b>rejected</b> 58:6 <b>related</b> 6:20 <b>relative</b> 60:10 <b>release</b> 19:14 22:2,8 58:3,14 58:21 60:10 61:1,5 67:2,3 72:17 <b>released</b> 18:23 23:15 24:15 38:13,21 52:10 58:13 60:1 65:25 68:15,22 68:24 69:2,10 79:21 <b>releasing</b> 56:25 57:1 <b>relevant</b> 6:1,5 8:14 17:2 32:9 38:17 40:6 58:10,11 60:7 60:23,24 61:8 65:21,24 69:1 <b>relief</b> 52:18 <b>remade</b> 25:2 <b>remain</b> 66:1 67:6 70:14 <b>remains</b> 35:5 70:10 <b>remarks</b> 3:6 <b>remember</b> 68:3 <b>remind</b> 4:18
<hr/> <b>Q</b> <b>question</b> 8:15 17:11 19:12 27:22 28:2,8	<hr/> <b>R</b> <b>R</b> 2:8 46:14,16 46:21 79:17 84:15 <b>race</b> 8:14 13:10 22:25 31:1 40:6 45:22 49:18,19 60:14 75:3 <b>races</b> 3:22 5:21 22:24 23:12 25:10 45:12,13 45:16,18,25 49:15 <b>raise</b> 4:24,24 5:4 43:9 <b>raised</b> 30:10 34:12 37:2 55:16 56:14 59:19 69:9 <b>raising</b> 63:15 <b>ran</b> 39:20 <b>re-enter</b> 73:12 <b>reached</b> 53:3,15 <b>reads</b> 81:3 <b>ready</b> 40:11 51:18 71:14 <b>realize</b> 27:3 <b>really</b> 3:22 9:15			

<b>remix</b> 23:10	<b>resolved</b> 31:2	<b>rule</b> 9:24 33:10	<b>security</b> 32:1	<b>Sicuso</b> 2:17 5:11
<b>report</b> 5:19 6:23	<b>resources</b> 3:16	40:3	<b>see</b> 5:18 15:7	5:12,12,17
8:17 39:13,21	<b>respect</b> 6:11,18	<b>ruled</b> 53:25	23:22 27:2	15:18,21 16:25
74:2	20:12	<b>rules</b> 51:10	64:22,23 79:23	18:18 20:3,9
<b>reported</b> 76:11	<b>respectfully</b>	<b>run</b> 47:22 54:12	82:13	23:14,20,22
<b>reporter</b> 1:17	50:9	<b>runs</b> 25:8	<b>seen</b> 26:23 27:1	27:5 37:4,6,11
4:16,19	<b>respondents</b>		64:13	44:2 45:5,8
<b>reporting</b> 1:22	11:25	<b>S</b>	<b>segregate</b> 22:6	46:3 56:25
4:17 15:5	<b>responsibilities</b>	<b>S</b> 1:16	59:2,11 65:20	57:3,5,10,14
18:10,13	3:11 41:21	<b>safe</b> 3:11	<b>segregated</b>	57:17,23 58:8
<b>representative</b>	<b>rest</b> 17:19	<b>saying</b> 4:5 31:16	17:18 46:7	59:10,13,15
2:12,20 5:22	<b>restate</b> 64:4	46:4,8,18 48:6	54:9 58:20	60:3,19 64:3
30:22 76:21	72:20	62:3 63:19	81:9,11	64:25 65:9,12
<b>representatives</b>	<b>restatement</b>	67:1 70:24,25	<b>segregating</b> 59:5	65:15,17 66:5
32:7	66:6	80:20	<b>sense</b> 38:11	66:17,19,22
<b>represented</b>	<b>result</b> 13:11	<b>says</b> 28:10	42:22 66:21	67:2,6 72:15
69:5	30:25 31:7	<b>SBOA</b> 8:22 9:18	70:23	76:20 78:1
<b>Republican</b> 2:4	<b>results</b> 3:25 13:5	10:15 58:4,7	<b>separate</b> 9:7	79:25 81:3
2:9 5:21 12:6	15:1,7 18:15	<b>scanned</b> 24:2	17:24 38:17	82:12,23
12:14 24:16	21:23 24:7	<b>scanner</b> 18:12	43:16 60:6,22	<b>side</b> 20:12 22:9
25:3,7,17,24	25:12 33:6	39:20	65:20	<b>sign</b> 11:12 12:2
38:11,15,16,18	39:21 43:23	<b>scanners</b> 39:15	<b>separated</b> 16:4	<b>signature</b> 77:15
42:18 49:8	50:10,13 62:20	39:16 72:24	38:20 39:10	<b>signatures</b> 17:17
56:12 58:22	74:23	<b>scenario</b> 40:1	44:9 46:6	<b>signed</b> 47:12,13
64:15 74:3	<b>retain</b> 59:15	45:5	49:15	<b>significant</b>
<b>request</b> 18:8,11	<b>retention</b> 69:25	<b>scene</b> 7:16,22	<b>separation</b>	32:16
18:19 29:19	<b>return</b> 51:14	<b>scheduled</b> 28:4	49:23	<b>Silence</b> 11:8
30:21 31:5	54:15 68:5	53:2,17	<b>serve</b> 3:7,10	71:24 73:24
36:19 78:21	<b>returned</b> 14:3	<b>scheduling</b>	6:13 51:7	81:21 83:18
<b>requested</b> 34:4	65:8 68:7	32:24	<b>served</b> 6:3 7:24	<b>similar</b> 32:4
35:3,12 75:21	75:13 77:15	<b>scope</b> 63:21	<b>serves</b> 4:13,14	78:1,3,6
<b>require</b> 12:8	<b>reviewed</b> 54:6	<b>screen</b> 15:4	11:20	<b>simply</b> 31:8 60:7
58:25	<b>right</b> 5:5 16:9,10	<b>seal</b> 69:24 84:11	<b>service</b> 4:3,10	76:13
<b>required</b> 13:12	19:3 21:4 23:7	84:14	6:6 14:7,14	<b>single</b> 9:9
13:17,19 14:3	35:18 38:13,18	<b>sealed</b> 17:25	75:17,23	<b>Sir</b> 36:25
14:5 27:17	39:1 44:20,20	46:15	<b>serving</b> 12:18	<b>site</b> 15:5
32:25 33:5,5	45:6 47:11	<b>second</b> 10:25	<b>SESSION</b> 1:5	<b>situation</b> 22:22
34:24 74:15,20	57:3,16 58:8	11:2 55:2,3,10	<b>set</b> 13:20 32:2	33:22 78:2
75:4,14,16	62:16 64:4	63:10,11 71:18	75:5 84:10	<b>situations</b> 31:4
<b>requirement</b>	65:10 66:24	71:19 72:6	<b>sets</b> 54:13	<b>six</b> 10:11 45:24
29:15 71:5	68:13 80:7	73:16,17 80:16	<b>seven</b> 22:25	49:16
<b>requirements</b>	81:6	81:17 83:13,14	49:24,24	<b>slightly</b> 80:10
32:21 74:24	<b>rise</b> 5:4	<b>seconded</b> 66:7	<b>share</b> 63:19	<b>small</b> 6:16
<b>requires</b> 28:10	<b>risk</b> 50:7	<b>Secretary</b> 3:7,9	<b>sheet</b> 9:5,23	<b>Smith</b> 64:5,7
29:10 50:12	<b>role</b> 20:10	4:11 5:17 7:4	<b>shelf</b> 81:13	65:3,5,7,11,14
<b>requisite</b> 69:25	<b>rolls</b> 48:1	8:6 30:7 50:4	<b>shift</b> 33:2	65:16 67:1,5
<b>reservation</b>	<b>room</b> 1:8 7:21	74:6	<b>shortly</b> 15:24	72:20 73:11
52:11	7:22	<b>section</b> 26:6	<b>show</b> 13:8 75:1	<b>solution</b> 20:2
<b>Residence</b> 84:20	<b>Rs</b> 61:12	<b>secure</b> 3:12	<b>sic</b> 13:22 14:9	<b>somebody</b> 54:23
<b>resolve</b> 24:19	<b>rubber</b> 43:13	<b>secured</b> 17:10	75:22	<b>soon</b> 70:1 82:21

<b>sorry</b> 21:7 41:3 55:12 63:15 64:7	3:2,7,8,9,18 4:3 5:22 6:3,16 7:1,5,9 8:3,10 10:23 11:17 13:6 14:8 15:5 16:13 17:8,9 18:19 19:5,6,8 24:7 25:24 28:5,5,10 30:22,23 31:2 32:13 34:8 36:13 37:2,10 39:14,21,22 40:15 41:15 42:5,13 45:15 45:16 47:4 48:23 50:12,14 50:17 51:3,6,7 52:4,7,11,18 54:7,8 55:8,19 58:9 59:17 60:20 63:2,4,7 63:24 65:12,15 66:9 68:19 69:13 71:12 74:25 75:18 79:24 82:9,11 82:13,19 84:1 84:5	<b>stopped</b> 27:6 <b>stops</b> 3:14 <b>Street</b> 1:10 <b>strict</b> 51:21 <b>strong</b> 3:17 <b>stronger</b> 3:18 <b>stuck</b> 39:19 <b>Stuerwald</b> 11:18 <b>stuff</b> 43:14 68:12,18,23 69:1 <b>stuff's</b> 68:21 <b>subject</b> 16:2,6 18:24 24:4,16 25:1 35:23 42:6,17,24 51:9 52:6 67:3 69:11,19 70:4 71:8 78:8,10 79:20 <b>subsection</b> 26:7 70:7,7 76:15 76:16 <b>substantive</b> 10:8 <b>subtly</b> 26:18 78:11 <b>sue</b> 54:23 <b>suggest</b> 79:11 <b>suggested</b> 8:21 10:14,16 19:8 22:7 23:15 <b>suggesting</b> 23:17,18 <b>suggestion</b> 20:1 48:1 <b>suggestions</b> 37:3 <b>supersede</b> 50:20 <b>supervise</b> 24:20 <b>supervised</b> 22:7 <b>supervision</b> 39:22,23 54:7 <b>supervisor</b> 8:10 18:7 <b>supervisors</b> 9:19 <b>supervisory</b> 23:19 <b>support</b> 4:12 <b>sure</b> 3:16 5:17 9:5,6 20:8 21:3 24:24 28:16,19	41:19 42:15 43:1 47:5 55:14 67:21,25 72:19 79:4 80:23 <b>SVRS</b> 47:21 <b>swear</b> 21:11 <b>system</b> 13:3 <b>systems</b> 34:5	<b>T</b> <b>T</b> 84:15 <b>tab</b> 18:11,11 <b>table</b> 9:18 57:17 57:23 58:9,14 59:17 66:7 <b>tabulate</b> 18:12 61:2 73:6 <b>tabulated</b> 18:2 24:14 36:4,16 50:1 <b>tabulating</b> 54:12 66:11 <b>tabulation</b> 52:3 <b>take</b> 3:21 12:5 16:21 20:23 21:1,8 34:13 38:12 56:10 64:21 81:17 <b>taken</b> 7:23 28:7 <b>takes</b> 18:14 31:11 83:2 <b>talk</b> 6:17 28:22 38:4 82:12 <b>talked</b> 23:13 61:4 <b>talking</b> 37:23,25 38:1 48:16 73:8 78:19 80:22 <b>tallies</b> 9:11 <b>tally</b> 9:5,22 <b>tallying</b> 44:16 44:21 66:25 <b>tasked</b> 63:22 <b>team</b> 40:11 48:12,12 <b>technically</b> 18:24 <b>techniques</b>	31:23 <b>tell</b> 25:11 38:25 39:3 62:14 <b>temporarily</b> 23:16 <b>ten</b> 26:22 <b>tendered</b> 74:21 <b>terms</b> 39:12 <b>testimony</b> 23:5 <b>thank</b> 4:1,9 5:8 5:9,17 6:24 7:4 8:1,6 11:3,12 12:1,16 14:20 15:16 19:10 21:15,18 22:16 23:3 30:7 35:1 48:25 50:2,4 52:20 54:18 63:12 69:6 71:1,10 72:1 73:18 74:6 76:19 77:25 78:24 79:5 80:14 81:6,16 83:1,20,20 <b>thing</b> 26:13 38:12 46:10 49:6 61:3,18 <b>things</b> 8:18,20 9:1,3,15 21:22 24:21 26:17 40:4 42:7 43:17 48:16 67:9 81:8 <b>think</b> 6:10 8:17 8:22 10:11 11:15 18:18 19:7 20:4,9,18 22:1,8,9 24:18 24:24 26:6,18 26:19 27:9,12 27:12,19 28:17 28:21,22 31:14 32:18 34:2 35:6 37:14,14 38:10 39:24 40:17,18 42:3 42:25 43:11 45:5 46:3,8,11 46:22 47:3,22
<b>speak</b> 4:20,21 4:21 5:3 20:24 24:10 68:11 82:19 <b>SPEAKER</b> 65:4 65:6 <b>speaking</b> 4:22 48:16 52:13 <b>special</b> 42:3 <b>specific</b> 8:25 <b>specifically</b> 5:14 10:9 32:20 52:14 54:20,22 66:9 71:6 77:17 <b>specified</b> 12:21 13:24 75:9 <b>speculation</b> 37:17 <b>spell</b> 4:20 22:17 <b>spells</b> 36:13 <b>split</b> 10:3 <b>SS</b> 84:1 <b>staff</b> 5:24 8:13 48:13 82:17 83:22 <b>stage</b> 60:2 <b>stamps</b> 43:13 <b>stand</b> 4:5 <b>standard</b> 18:22 <b>standpoint</b> 43:12 56:18 <b>start</b> 4:4 31:15 40:11 <b>state</b> 1:4 2:12,20	<b>State's</b> 4:11 <b>stated</b> 31:10 <b>statement</b> 44:4 <b>statewide</b> 13:2 <b>stating</b> 50:5 <b>status</b> 17:1 36:10 <b>statute</b> 29:5,17 34:23 35:8 36:20 43:6 50:12 54:22 70:6 <b>statutes</b> 30:13 52:19 71:2 <b>statutory</b> 28:17 33:13 <b>stenographic</b> 1:16,17 84:9 <b>stenographica...</b> 84:7 <b>Stepping</b> 32:3				

51:22 53:19 56:5,13,15,18 57:7,10,17 58:4,13 59:23 61:2,22,24 63:19,23,24 65:17,23 66:6 70:23 72:13 78:25 82:6 83:2 <b>thinks</b> 48:17 <b>third</b> 34:2 <b>this--is</b> 24:11 <b>thought</b> 20:15 <b>thoughts</b> 16:17 20:17 69:7 <b>three</b> 3:4,14 54:9,13 60:5 <b>threshold</b> 51:23 <b>throw</b> 26:3 <b>Thursday</b> 17:8 28:6 53:3 <b>tick</b> 10:1,2 <b>tie</b> 45:22 <b>time</b> 4:22 5:1,10 11:19,21 12:7 16:10 19:1 22:4 26:23 32:6 41:13 53:8 57:21 61:7 76:8 78:16 79:9,10 82:6 <b>timelines</b> 51:21 <b>times</b> 39:25 43:14 <b>timing</b> 31:5 <b>Title</b> 35:8 <b>today</b> 3:19 4:2 4:16,24 6:11 6:17 20:5 24:19 28:25 35:22 56:4 64:1 83:3 <b>today's</b> 4:4 <b>told</b> 53:17 <b>tomorrow</b> 40:12 62:2 67:25 82:14,17 <b>tools</b> 3:16	<b>top</b> 17:24,25 45:19 48:19 <b>tossed</b> 39:24 <b>total</b> 13:9,14,16 27:8 61:10 62:9,11,19 74:17,20 75:3 <b>totaling</b> 13:2 18:16 <b>totals</b> 24:8,14 25:19 42:15,21 54:14 60:15 <b>touch</b> 40:19,24 82:18 <b>touched</b> 44:7 <b>town</b> 49:23 <b>township</b> 22:25 44:24 <b>track</b> 10:5 <b>traditional</b> 17:15 <b>training</b> 48:2 <b>transcript</b> 84:8 84:8 <b>transparent</b> 61:25 <b>travel</b> 17:20 47:18 <b>traveled</b> 3:13 <b>tread</b> 28:20 <b>tried</b> 20:11 <b>true</b> 13:16 62:13 64:10 66:20 74:19 84:8 <b>truly</b> 3:17 <b>trusted</b> 3:20 <b>trying</b> 41:7 <b>Tuesday</b> 76:4 <b>turn</b> 49:11 <b>turned</b> 47:18 64:18 <b>turnout</b> 49:7 <b>two</b> 7:17,18 10:3 13:1 17:10,25 22:23 25:25 35:2 37:20 38:9 43:19,20 43:25 44:1,4 45:16 54:6 60:5,22 61:13	64:9 69:15 80:13 81:8 <b>type</b> 9:9 17:17 36:14 <b>types</b> 22:24 36:1 <b>typical</b> 27:3,4 45:4,5 <hr/> <b>U</b> <b>U</b> 84:15 <b>ultimately</b> 51:5 <b>unclear</b> 42:23 <b>uncounted</b> 16:1 24:1 25:1 35:23 39:9 54:5,9 60:22 65:1 67:7 <b>undergo</b> 32:25 <b>understand</b> 19:12 21:25 33:7 35:13,21 41:25 43:8 45:11 63:20 77:5 <b>understanding</b> 23:8,12,25 45:2 46:23 59:3 68:25 <b>undervotes</b> 9:7 9:8 10:10 <b>UNIDENTIFI...</b> 21:5,7 65:4,6 <b>unintended</b> 56:3 <b>unique</b> 20:15 <b>unofficial</b> 13:5 62:20 74:23 <b>upcoming</b> 29:7 <b>update</b> 5:13 7:1 8:4 9:4 12:13 78:14 <b>updates</b> 8:21 <b>upset</b> 83:10 <b>use</b> 25:21 31:19 34:8 35:15 36:14,16,20 54:13 63:8 73:1 <b>usually</b> 48:3 <b>utilized</b> 18:10 <b>utilizing</b> 66:11	<hr/> <b>V</b> <b>vacancies</b> 51:13 <b>valid</b> 18:4,6 24:2 57:19 <b>validity</b> 33:16 36:2 <b>validly</b> 19:17 <b>Vanderburgh</b> 30:23 <b>variation</b> 31:22 <b>various</b> 15:8,9 <b>verified</b> 5:20 6:2 6:9 12:20 14:4 74:8 75:14 <b>verifying</b> 44:16 <b>version</b> 41:7 <b>versus</b> 19:13 30:14 52:3 <b>view</b> 8:24 <b>virtue</b> 18:25 <b>VOICE</b> 21:5,7 <b>void</b> 35:10 <b>vote</b> 3:23 17:23 38:3,6 39:7 45:24 47:9,10 47:14 60:15 63:16 64:3 73:20 81:17 <b>voted</b> 13:24 19:17 50:19 62:7,7 75:9 <b>voter</b> 13:3 40:21 47:9,25 <b>voters</b> 49:10 83:10 <b>voters'</b> 3:24 <b>votes</b> 13:10,14 14:1 16:3 22:25 25:16 28:5 31:7 35:23 42:19 44:17,21 45:18 45:20,21 51:1 57:18 66:22,23 74:17 75:3,12 <b>voting</b> 17:16 34:5 47:12 <hr/> <b>W</b> <b>Wabash</b> 1:8	<b>walk</b> 38:10 68:9 <b>want</b> 4:1,18 20:6 21:21 22:6,12 28:12,15 32:20 33:2 34:2 35:19 41:8 60:19 62:14 63:17 67:20 68:8 69:18 79:3 <b>wanted</b> 3:15 16:25 57:25 68:23 <b>Washington</b> 1:10 81:4 <b>way</b> 16:11 27:12 31:20 36:4 41:9 45:15 46:5 60:4 68:9 83:8 <b>we'll</b> 6:10 21:3 21:11 66:16,22 82:17,20 <b>we're</b> 19:7,20,22 22:21 26:4 34:19,19 35:16 37:17,23,25 38:1 43:25 44:16,17,21 47:4 49:16 50:5 51:20 63:22 64:4 66:14,15,17,18 68:5 70:23 71:4 73:13 80:8,9,21 82:12 <b>we've</b> 6:13 8:21 10:8 16:13 36:18 37:5 41:9 43:14 49:14 52:2,4 52:13,14 58:2 61:4 67:10 <b>Wednesday</b> 1:6 <b>week</b> 6:23 17:3 33:6 <b>weekend</b> 17:13 <b>weeks</b> 25:22 <b>welcome</b> 4:17
--	---	--	---	---

16:20	<b>year</b> 3:13 9:3,13	<b>2:00</b> 1:7	<b>402</b> 1:10
<b>went</b> 52:25 53:4	26:2 29:19	<b>20</b> 64:17,20,21	<b>45</b> 72:16
<b>weren't</b> 40:7	51:20 71:4	<b>2010</b> 30:19	<b>46278-0261</b> 1:23
<b>West</b> 1:10	<b>years</b> 6:12 11:15	<b>2016</b> 32:14	<b>47</b> 63:9
<b>WHEREOF</b>	26:22 48:3	<b>2023</b> 33:12	<b>48</b> 16:16 19:15
84:10	50:22 69:15	35:10	28:10 33:21
<b>whichever</b> 48:18	<b>yesterday</b> 37:12	<b>2023-3</b> 10:21	<b>48-hour</b> 29:15
<b>willing</b> 63:18	56:24	<b>2024</b> 1:6 7:2 8:4	34:1
<b>window</b> 50:15	<hr/>	10:22 12:24	<b>49</b> 5:21 6:8 12:7
<b>winning</b> 13:9	<hr/> <b>Z</b> <hr/>	15:11 74:11	12:15 13:4
75:2	<b>zero</b> 47:23	76:4 84:6,11	14:18 18:4,6
<b>wish</b> 79:13	<hr/>	<b>2024-3</b> 10:22	23:11 24:4,13
<b>WITNESS</b>	<hr/> <b>0</b> <hr/>	<b>2025</b> 84:19	25:4,17 31:18
84:10	<hr/> <b>1</b> <hr/>	<b>21</b> 32:15	32:2 38:20
<b>words</b> 34:19	<b>1</b> 9:4,16 13:9,14	<b>22</b> 1:6	42:10 44:6,7
35:14 45:10	58:5 63:9	<b>22nd</b> 84:6	45:13,17,25
46:4 60:19	74:17 75:3	<b>24</b> 16:16	54:5,10,11
<b>work</b> 6:15 27:16	81:4	<b>28th</b> 76:4	56:17 58:3,22
40:11,21 41:16	<b>1-1-4-1</b> 35:14	<b>29</b> 5:14 17:22,23	60:1,8,10,23
48:24 52:12	<b>10</b> 13:15 62:5	<hr/>	60:24 61:9
<b>worked</b> 11:19	74:9,18 77:12	<hr/> <b>3</b> <hr/>	64:15,16,24
11:24	<b>100</b> 17:11 74:14	<b>3</b> 9:22 35:8 81:4	65:21,25 69:2
<b>works</b> 46:23	74:21	<b>3-10-1-31.1</b>	70:13 72:4
<b>wouldn't</b> 60:6	<b>11</b> 45:18,20 62:5	69:15,23 70:6	<b>4th</b> 84:11
65:18	78:8 81:4	<b>3-12-11-10</b>	<hr/>
<b>wrestling</b> 50:5	<b>12</b> 45:20 77:12	13:11	<hr/> <b>5</b> <hr/>
<b>writer</b> 48:9,10	77:15	<b>3-12-11-10(c)</b>	<b>5</b> 81:4
<b>wrong</b> 43:2	<b>12:00</b> 28:4	74:15	<b>50</b> 51:19
<b>www.alliancec...</b>	<b>13</b> 81:4	<b>3-12-11-12</b>	<hr/>
1:24	<b>14</b> 62:6	76:13	<hr/> <b>6</b> <hr/>
<b>Wynn</b> 2:4 4:9	<b>15</b> 64:10 74:11	<b>3-12-11-12(b)</b>	<hr/>
11:2 12:8,11	81:4	14:11 75:20	<hr/> <b>7</b> <hr/>
16:20 35:19	<b>15th</b> 5:22 6:7	<b>3-12-11-16(a)</b>	<b>7</b> 8:4 81:4
36:25 37:5,23	7:6 12:24	26:7	<b>701431</b> 84:17
40:13 41:3,11	<b>16th</b> 6:8	<b>3-12-11-3(a)</b>	<b>76</b> 64:13
54:24 55:12,21	<b>17</b> 81:4	13:20 75:5	<b>78261</b> 1:23
56:1 57:24	<b>17th</b> 28:4	<b>317.875.3914</b>	<b>7th</b> 7:2
62:24 63:2,10	<b>18,221</b> 18:16	1:24	<hr/>
63:19 71:19	<b>19</b> 81:5	<b>35</b> 12:21 13:3	<hr/> <b>8</b> <hr/>
72:6 73:17	<b>1980s</b> 11:16	<b>36-1-3-8(a)(12)</b>	<b>8</b> 32:15 45:18
80:16 83:14	<b>1986</b> 26:15	33:11	84:19
<hr/>	<b>1st</b> 31:12	<b>3s</b> 10:1	<b>8:00</b> 7:14 17:8
<hr/> <b>X</b> <hr/>	<hr/>	<hr/>	40:12 67:25
<hr/>	<hr/> <b>2</b> <hr/>	<hr/> <b>4</b> <hr/>	<b>85</b> 49:7,8,9,14
<hr/> <b>Y</b> <hr/>	<b>2</b> 58:7 60:20	<b>4</b> 1:8 10:9 49:19	<hr/>
<b>Y</b> 84:15	61:4 63:4,9,25	<b>4:01</b> 83:24	<hr/> <b>9</b> <hr/>
<b>yeah</b> 57:14,23	65:19 66:10	<b>40</b> 5:20,21 6:7	<b>9</b> 81:4
60:18 67:17	71:19 79:16	28:19 74:4,10	<b>92</b> 3:13
79:10 81:2	<b>2,600</b> 13:2,18	77:18,20,21,22	
82:22		77:24	