

Indiana Election Commission
Minutes
March 12, 2008

Members Present: Thomas E. Wheeler, II, Chairman of the Indiana Election Commission ("Commission"); S. Anthony Long, Vice Chairman of the Commission; Daniel A. Dumezich, Commission member; Sarah Steele Riordan, Commission member; Matthew Hammond, proxy for Sarah Steele Riordan.

Members Absent: None.

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Pamela Potesta, Co-Director of the Election Division; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Michelle Thompson, Campaign Finance staff, Election Division; Michelle Brzycki, Special Projects Election Division staff.

Also Attending: Mr. Allen; Michael Beeles; Thomas Blondell; Doug Brown; Terry Burns; Thomas Cook; Mr. Farag; Toby Fields; Doug Garner; Stephen Gerald Gray; William Groth; Tobin McClamrock; Kevin Quinn; Greg Reising; George Rogge; F. Schwartz; Bob Spear; Al VerPlanck; Dylan Vigh; The Honorable Brent Waltz, Indiana State Senator; Barbara Wyly; James Wyly.

1. Call to Order

The Chair called the March 12, 2008 meeting of the Commission to order at 1:00 p.m. in the Indiana Government Center South Conference Center Rooms 1 and 2, 402 West Washington Street, Indianapolis, Indiana.

The Chair noted that proper notice of the meeting had been given, as required by state law. A copy of the meeting notice, agenda, and designations of proxy are incorporated by reference in these minutes. *[Copies of all documents incorporated by reference are available for public inspection and copying at the Election Division Office.]*

2. Transaction of Business

The Commission transacted the business set forth in the Transcript of Proceedings prepared by Rhonda J. Hobbs of Connor Reporting. A copy of this document is incorporated by reference in these minutes.

The following corrections of scrivener's errors in this document are approved by the Commission:

Page 132, line 1, replace "a." with "A."

Pages 132 through 196: "D. WALTZ" with "B. WALTZ".

3. Adjournment

There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Ms. Riordan moved, seconded by Mr. Dumezich, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting "aye" (Mr. Wheeler, Mr. Long, Mr. Dumezich, and Ms. Riordan), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 5:00 p.m.

Respectfully submitted,



Trent Deckard
Co-Director



J. Bradley King
Co-Director

APPROVED


Daniel A. Dumezich
Chairman

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INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

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Conducted On: Wednesday, March 12, 2008

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Location: Indiana Government Center South
Conference Center, Conference Rooms 1-2
402 West Washington Street
Indianapolis, Indiana 46204

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Rhonda J. Hobbs, RPR
Notary Public
Stenographic Reporter

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A P P E A R A N C E S

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INDIANA ELECTION COMMISSION:

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Mr. Thomas E. Wheeler, II - Chairman

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Mr. S. Anthony Long - Vice Chairman

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Mr. Sarah Steele Riordan - Commission Member

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Mr. Daniel A. Dumezich - Commission Member

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INDIANA ELECTION DIVISION STAFF:

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Mr. Bradley King - Co-Director

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Ms. Pam Potesta - Co-Director

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Mr. Dale Simmons - Co-Legal Counsel

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Ms. Leslie Barnes - Co-Legal Counsel

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Ms. Michelle Thompson

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1 **CHAIRMAN T. WHEELER:** All right. Since the
2 State has not seen fit yet to give me a gavel,
3 despite my three or four years as Chairman of the
4 Election Commission, I will go ahead and bring this
5 meeting to order.

6 This is a meeting of the Indiana Election
7 Commission properly noticed pursuant to notice sent
8 out by the Division for Wednesday, March 12th,
9 2008, at 1:00 p.m. We are meeting in Rooms 1 and 2
10 of Indiana Government Center South.

11 Looking around, I see that I am joined by all
12 the other commission members. The Vice Chair,
13 Anthony Long, from Evansville.

14 **VICE CHAIR A. LONG:** Boonville.

15 **CHAIRMAN T. WHEELER:** Boonville. There is a
16 difference in Southern Indiana for that, and I
17 apologize. Mr. Dumezich from...

18 **COMMISSION MEMBER D. DUMEZICH:** Beautiful
19 Schererville, Indiana.

20 **CHAIRMAN T. WHEELER:** Schererville. See, I
21 wouldn't (indiscernible), and then Commissioner
22 Riordan who joins me from Indianapolis. I see that
23 we have a quorum of all four commission members.

24 The first thing I do is -- I sound like in
25 movie theatres, ask you to silence your beepers,

1 pagers, cell phones so they don't go off during the
2 course of the meeting.

3 With respect to that, that being said, we have
4 as our first agenda item, the approval of the
5 commission minutes. I'll accept a motion.

6 VICE CHAIR A. LONG: With regard to the
7 minutes from January 17th, 02, I'd ask those be --
8 that we table those until the next meeting, give me
9 a fair chance to -- I started reviewing it.
10 There's too much other important stuff today at the
11 meeting to get completely through.

12 CHAIRMAN T. WHEELER: I have a motion, do I
13 have a second?

14 COMMISSION MEMBER S. RIORDAN: Second.

15 CHAIRMAN T. WHEELER: Motion's been made and
16 seconded, any further discussion?

17 *(No response.)*

18 CHAIRMAN T. WHEELER: Hearing none, all in
19 favor of approving the commission minutes from
20 March 20th, 2006, April 28th, 2006, July 25th,
21 2006, and October 22nd, 2007, and tabling the
22 commission minutes from January 17th, 2002, signify
23 by saying aye?

24 THE COMMISSION: Aye.

25 CHAIRMAN T. WHEELER: Those opposed, same

1 sign?

2 (No response.)

3 CHAIRMAN T. WHEELER: Motion carries. Order
4 2008-1, approval of forms.

5 MR. B. KING: Mr. Chairman.

6 CHAIRMAN T. WHEELER: That's what I was doing.
7 Who's doing it? Are you doing this?

8 MR. B. KING: I am going to present that. In
9 the binder behind the minutes is a tab designated
10 forms. Following that is Order 2008-1 which was
11 several forms that would be updated -- approved for
12 the first time or made obsolete. I can discuss
13 individual forms if the commissioners do have
14 questions.

15 The biggest single change with regard to
16 updating is with regard to the dates. Many of our
17 forms have dates of 2007 or the year that they're
18 applicable to. These are updated in many cases to
19 read 2008. There are other changes involved.
20 There are typos corrected.

21 There is a format problem on one of the
22 declarations of candidacy where the signature was
23 on the second page. At the top of Page 2 of the
24 order, CAN-25 is for a new office. It was created
25 by the General Assembly, the County Board of Tax

1 and Capital Projects Review.

2 On Page 3, the Election Commission Series
3 application for voter registration, the data has
4 been updated to reflect current state law. With
5 regard to Section 2 of the Order, that's on Page 3,
6 the Secretaries of State of Ohio, Kentucky, and
7 Indiana offices have been working on a -- modeled
8 on the federal voter registration form but with
9 instructions for voters in those three states as
10 opposed to all 50.

11 Section 3 is with regard is with regard to the
12 device that's used on absentee ballots when the
13 clerk is an incumbent running for re-election or a
14 candidate for another office. LaPorte County
15 clerk's office has requested approval for the
16 device that they have used in past elections which
17 is included.

18 Section 4 is the Voter's Bill of Rights, which
19 is unchanged, except for both the 2008 primary and
20 general election dates are set forth on that form.
21 On Page 4, Section 5 lists the forms for use in a
22 special election for the office of U.S.
23 Representative. These are forms that can be used
24 in future elections for that office that are held
25 under those circumstances. But obviously, we had

1 to develop, at the request of several entities, a
2 response to the election that was held yesterday.

3 Section 6 was forms that are obsolete for a
4 couple of reasons. One would be with regard to
5 changes in state law. For example, the CEB-2
6 Application for Assignment to a Specific Poll, is
7 no longer useful because the law has changed
8 requiring that all precincts be accessible.

9 And the several other reports listed are
10 superseded by the electronic version and the
11 statewide voter registration system. And I'll be
12 happy to answer further questions.

13 **CHAIRMAN T. WHEELER:** Any questions from the
14 commission members?

15 **VICE CHAIR A. LONG:** No. As I said, the
16 co-directors did a nice job of putting this
17 together. I looked through this when the packet
18 was sent out -- a lot smaller, but you guys -- you
19 guys did a good job.

20 **MR. B. KING:** Thank you.

21 **CHAIRMAN T. WHEELER:** Any further comment from
22 the commission members?

23 *(No response.)*

24 **CHAIRMAN T. WHEELER:** I'll accept a motion.

25 **VICE CHAIR A. LONG:** I'll move to -- I guess,

1 formally, the order would be to move to approve the
2 order or form?

3 CHAIRMAN T. WHEELER: Order No. 2008-1.

4 VICE CHAIR A. LONG: I move we approve Order
5 No. 2008-1.

6 COMMISSION MEMBER D. DUMEZICH: Second.

7 CHAIRMAN T. WHEELER: All right. The motion's
8 made and seconded, any further discussion?

9 *(No response.)*

10 CHAIRMAN T. WHEELER: Hearing none, all in
11 favor of approving order No. 2008-1, signify by
12 saying aye?

13 THE COMMISSION: Aye.

14 CHAIRMAN T. WHEELER: Those opposed, same
15 sign?

16 *(No response.)*

17 CHAIRMAN T. WHEELER: Motion carries. Next on
18 the agenda is the ratification of campaign finance
19 settlement agreements. For those of you, and I'll
20 make a brief pitch for candidates and the campaigns
21 that are here.

22 The Commission has what I will call -- call a
23 pretrial version program for those candidates or
24 candidate or PACs, for that matter, that have --
25 there's been allegations regarding campaign finance

1 either inadvertent or otherwise, and rather than
2 having to come and meet with the commission in a
3 forum like this and go through our process, there's
4 the opportunity to engage in a settlement agreement
5 prior to that, and many entities do do that, and
6 that is what we are looking at right now.

7 Who is presenting the settlement agreements?

8 MS. M. THOMPSON: Mr. Chairman and Commission
9 Members, this morning I gave you the most current
10 list of committees.

11 VICE CHAIR A. LONG: Is it in the binder?

12 MS. M. THOMPSON: It's not in your binder.
13 It's on top of your packet.

14 CHAIRMAN T. WHEELER: Oh, there it is.

15 MS. M. THOMPSON: Okay. This is the most
16 current list to ratify. They've agreed to pay the
17 settlement and waive the hearing.

18 CHAIRMAN T. WHEELER: And I see from there,
19 we've got about \$11,000.00 in campaign violations
20 from various candidates and committees. Do all the
21 commission members have a version -- a version?

22 VICE CHAIR A. LONG: Yes. It' \$11,050.00;
23 correct?

24 MS. M. THOMPSON: Yes.

25 CHAIRMAN T. WHEELER: That is correct. Is

1 there any discussion from the commission members or
2 for Miss Thompson?

3 (No response.)

4 CHAIRMAN T. WHEELER: I will entertain a
5 motion for settlement -- approval of the settlement
6 agreements?

7 COMMISSION MEMBER S. RIORDAN: I move that we
8 approve and ratify the settlement agreements set
9 forth on these provided by our staff.

10 CHAIRMAN T. WHEELER: Do you have a second to
11 the motion?

12 VICE CHAIR A. LONG: Second.

13 CHAIRMAN T. WHEELER: Motion's been made and
14 seconded, any further discussion from the
15 commission members?

16 (No response.)

17 CHAIRMAN T. WHEELER: Hearing none, all in
18 favor of approving the settlement agreements as the
19 current version that was handed out to the
20 commission members this morning, all in favor,
21 signify by saying aye?

22 THE COMMISSION: Aye.

23 CHAIRMAN T. WHEELER: Those opposed, same
24 sign?

25 (No response.)

1 **CHAIRMAN T. WHEELER:** Motion carries. The
2 fifth item on our agenda is the Adoption of the
3 Campaign Finance Enforcement Orders. As opposed to
4 the settlement agreements, the Campaign Finance
5 Enforcement Orders are those that the Commission
6 has entered after hearing. With respect to those,
7 I believe they're under -- where are they, Brad?

8 **MR. B. KING:** Mr. Chairman, just because of
9 their size, were not included in the binders.

10 **CHAIRMAN T. WHEELER:** Okay.

11 **VICE CHAIR A. LONG:** Those are the orders, the
12 only ones we...

13 **CHAIRMAN T. WHEELER:** The ones we approved at
14 the last -- last commission meeting.

15 **MS. M. THOMPSON:** Yes. Mr. Chairman, Orders
16 2008-02 through 2008-165 have been prepared for the
17 actions taken at the October 22nd, 2007 meeting,
18 and those orders are ready for adoption.

19 **CHAIRMAN T. WHEELER:** And those are orders
20 based upon the vote of the commission members at
21 the last meeting to impose various sanctions
22 against various campaigns and candidates correct?

23 **MS. M. THOMPSON:** Correct.

24 **CHAIRMAN T. WHEELER:** Any discussion or
25 questions for Miss Thompson regarding those?

1 (No response.)

2 CHAIRMAN T. WHEELER: I'll accept a motion.

3 VICE CHAIR A. LONG: I would move that we
4 approve Orders --

5 MS. M. THOMPSON: -- 2008-2 through 2008-165.

6 VICE CHAIR A. LONG: As orders -- the actions
7 taken at the last meeting, and authorize the
8 fixation of the signature stamp to those orders.

9 CHAIRMAN T. WHEELER: Do I have a second to
10 the motion?

11 COMMISSION MEMBER S. RIORDAN: Second.

12 CHAIRMAN T. WHEELER: The motion's been made
13 and seconded, any further discussion from
14 commission members?

15 (No response.)

16 CHAIRMAN T. WHEELER: Hearing none, all in
17 favor of approving Orders 2008-2 through 2008-165,
18 approving the prior decisions of this commission,
19 signify by saying aye?

20 THE COMMISSION: Aye.

21 CHAIRMAN T. WHEELER: Opposed, same sign?

22 (No response.)

23 CHAIRMAN T. WHEELER: Motion carries. Next
24 issue on the agenda is the receipt of a letter
25 concerning Trident Air, LLC. Is someone doing

1 that, Miss Taylor or Miss Thompson?

2 MS. M. THOMPSON: Yes. Mr. Chairman, on March
3 4th, we received two letters regarding Trident Air,
4 and a follow-up letter on March 10th.

5 VICE CHAIR A. LONG: This is the letter you
6 forwarded out to us, and I think you've given us a
7 couple supplements to that?

8 MS. M. THOMPSON: I think Leslie provided the
9 most current, yes.

10 COMMISSION MEMBER D. DUMEZICH: Is counsel for
11 the parties here?

12 CHAIRMAN T. WHEELER: Is there anybody here
13 for either the Schellinger campaign?

14 MR. A. VerPLANCK: I'm the troublemaker who
15 filed the complaint, yes.

16 CHAIRMAN T. WHEELER: Mr. VerPlanck?

17 MR. A. VerPLANCK: Yes.

18 CHAIRMAN T. WHEELER: Al, and I believe we've
19 had litigation together?

20 MR. A. VerPLANCK: Yes, we have, and we took a
21 beating for it.

22 CHAIRMAN T. WHEELER: I appreciate that. And
23 then who is here for...

24 MR. D. BROWN: I'm Doug Brown representing
25 Trident Air and the Schellinger campaign.

1 **CHAIRMAN T. WHEELER:** And the Schellinger
2 campaign. We do have counsel here.

3 **COMMISSION MEMBER S. RIORDAN:** If I may,
4 Mr. Chairman?

5 **CHAIRMAN T. WHEELER:** Please.

6 **COMMISSION MEMBER S. RIORDAN:** I think that
7 the right step would be for the Commission to
8 simply acknowledge receipt of these letters and
9 thank them for submitting them and thank you for
10 your response and refer them to the Division.

11 **COMMISSION MEMBER D. DUMEZICH:** With one
12 comment. I know we all try to be advocates in our
13 role as an attorney, but please, let's not have the
14 (indiscernible) seeing these things. It's --
15 there's no -- no -- no place for it in this -- in
16 this -- in front of this commission.

17 **MR. A. VerPLANCK:** I don't believe I said
18 anything.

19 **COMMISSION MEMBER D. DUMEZICH:** I'll rest with
20 my comment. Thank you for your time.

21 **CHAIRMAN T. WHEELER:** Thank you. I think the
22 Commissioner may have been referring to comments
23 made by the commission members. With respect
24 to -- do I have a motion?

25 **COMMISSION MEMBER S. RIORDAN:** I don't think a

1 motion's necessary.

2 CHAIRMAN T. WHEELER: In the past, we have
3 made a motion, for -- for example, on
4 (indiscernible).

5 COMMISSION MEMBER D. DUMEZICH: I make a
6 motion to refer the Trident Air matter to staff.

7 CHAIRMAN T. WHEELER: For review?

8 COMMISSION MEMBER D. DUMEZICH: For review.

9 CHAIRMAN T. WHEELER: Do I have a second?

10 VICE CHAIR A. LONG: I'll second that.

11 CHAIRMAN T. WHEELER: Motion's been made and
12 seconded, any further discussion?

13 *(No response.)*

14 CHAIRMAN T. WHEELER: All in favor of
15 referring the letter concerning Trident Air to the
16 Division staff --

17 VICE CHAIR A. LONG: You call a discussion?

18 CHAIRMAN T. WHEELER: I'm sorry.

19 VICE CHAIR A. LONG: The discussion I would
20 have is that it's my belief that these letters were
21 directed to the Division, and I would hope that the
22 Division would complete their investigation before
23 it is sent off to us, their investigation review or
24 inquiry or research or whatever they do, because I
25 don't see any -- anything to be gained by having

1 the complainant and the campaign come here
2 prepared, I'm sure, for some sort of proceeding
3 when the matter simply should be handled at the
4 Division level before it gets here.

5 MS. L. BARNES: Mr. Chairman?

6 CHAIRMAN T. WHEELER: Yes.

7 MS. L. BARNES: There's also a state statute
8 that supports Commissioner Long's opinion,
9 3-9-4-14, directs the Division to make a
10 determination so it may not be necessary to refer
11 this to the Division. They're already required
12 under state statute.

13 COMMISSION MEMBER D. DUMEZICH: You've got a
14 motion on the floor and it's seconded. We'll see
15 where it goes and take it from there.

16 VICE CHAIR A. LONG: So okay, we do have a
17 motion. So the question is, I guess, your opinion
18 would be that we don't need to refer it?

19 MS. L. BARNES: Correct.

20 VICE CHAIR A. LONG: Okay.

21 CHAIRMAN T. WHEELER: Counsel from the...

22 MR. B. KING: Mr. Chairman -- go ahead, Dale.

23 MR. D. SIMMONS: Mr. Chairman, Members of the
24 Commission, we also have two statutes,
25 3-6-4.2-10(b), as well as 3-9-4-15, which

1 acknowledges a rule for the Commission in referring
2 a matter to the Division for investigation.

3 CHAIRMAN T. WHEELER: Dale, I'm looking, which
4 statute was the first one, 3-6-4.2 what?

5 MR. D. SIMMONS: 4.2-10(b).

6 VICE CHAIR A. LONG: Cite it one more time,
7 3-....

8 MR. D. SIMMONS: 3-6-4.2-10(b).

9 CHAIRMAN T. WHEELER: Now which part of that
10 are you -- I'm looking for it?

11 MR. D. SIMMONS: Subsection B.

12 CHAIRMAN T. WHEELER: I'm looking at that.
13 Notwithstanding subsection (a) or any statutory
14 provisions to the contrary, the co-directors shall
15 assist in the following actions upon authorization
16 of the commission, is what you're referring to?

17 MR. D. SIMMONS: Uh-huh.

18 CHAIRMAN T. WHEELER: A hearing or an
19 investigation, so the contention is that this is a
20 campaign finance violation; is that what you're
21 saying?

22 MR. D. SIMMONS: Yeah. And -- and more
23 directly, there's a cross reference there to
24 3-9-4-15.

25 CHAIRMAN T. WHEELER: Right, that says

1 campaign...

2 MR. D. SIMMONS: Which -- which mentions that
3 a member of the commission, the co-directors with
4 the authorization of the commission, may conduct a
5 hearing or an investigation.

6 CHAIRMAN T. WHEELER: So that's -- that's the
7 basis for the -- the Commission has to refer to the
8 Division, is that what you're saying?

9 MR. D. BROWN: Well, has to or has the
10 discretion to?

11 COMMISSION MEMBER D. DUMEZICH: May, may.

12 CHAIRMAN T. WHEELER: Leslie, would you agree
13 there's discretion there?

14 MS. L. BARNES: Yes.

15 CHAIRMAN T. WHEELER: Okay. And then you had
16 another cite?

17 MR. D. SIMMONS: No, those were the two.

18 CHAIRMAN T. WHEELER: Oh, those were the two
19 cites. I'm sorry.

20 VICE CHAIR A. LONG: What was your cite?

21 MS. L. BARNES: 3-9-4-14.

22 CHAIRMAN T. WHEELER: And as I understand it,
23 you would agree with Dale that there's a discretion
24 for the Commission to do that?

25 MS. L. BARNES: And the point I was making

1 earlier was that when this letter was received
2 under 3-9-4- 14, it was my legal opinion that the
3 Division...

4 CHAIRMAN T. WHEELER: Already had the
5 authority to do that without the Commission.

6 MS. L. BARNES: Already had that authority.

7 VICE CHAIR A. LONG: And...

8 MS. L. BARNES: And already not just the
9 authority but the responsibility to make
10 that -- that determination.

11 VICE CHAIR A. LONG: Could I ask the
12 directors, has the Division done anything in
13 regards to this?

14 MS. P. POTESA: Commissioner Long, as a
15 Division, together, we have not conducted an
16 investigation. I myself as co-director will get to
17 it to the extent that I'm able to verify if we had
18 a PAC registered under Trident's name, which we did
19 not.

20 And I also looked at the campaign finance
21 reports submitted, and all -- all contributions
22 that were recorded in the letters that we received
23 were all acknowledged on his report, and none of
24 them said that they came from a PAC. They are
25 labeled as LLCs.

1 **CHAIRMAN T. WHEELER:** Miss Potesta, did you
2 have the information from Mr. VerPlanck and
3 the -- whether he filed in time in conducting that
4 investigation?

5 **MS. P. POTEESTA:** Yes.

6 **CHAIRMAN T. WHEELER:** You have that
7 information?

8 **MS. P. POTEESTA:** Yes.

9 **CHAIRMAN T. WHEELER:** All right. Motion has
10 been made, seconded that we refer this to the
11 Division for -- at this point it's just been your
12 side, the Division, that's investigated; correct,
13 that being...

14 **MS. P. POTEESTA:** Yes.

15 **CHAIRMAN T. WHEELER:** Okay. Motion's been
16 made and seconded that the Division -- I guess the
17 Division as a whole review this. Any further
18 discussion?

19 *(No response.)*

20 **CHAIRMAN T. WHEELER:** All in favor of the
21 division as a whole reviewing this, signify by
22 saying aye -- aye. Those opposed, same sign.

23 **VICE CHAIR A. LONG:** I'll abstain.

24 **CHAIRMAN T. WHEELER:** You're abstaining?

25 **COMMISSION MEMBER S. RIORDAN:** Abstaining.

1 **CHAIRMAN T. WHEELER:** You're abstaining?

2 **VICE CHAIR A. LONG:** I'm just -- I'm troubled
3 that the Division didn't do their work.

4 **CHAIRMAN T. WHEELER:** All right. As a
5 practical matter then, I think the commission
6 members and I think the division staff has agreed
7 that this is really in the purview of the Division.
8 The only issue is whether or not we actually direct
9 the Division to do that, is that -- as I understand
10 it, at least from the ability of accounts, the
11 motion fails.

12 As a consequence of that, I would ask that
13 the -- I guess as the Chair of the Commission asks
14 the Division, as one member of the commission, that
15 the two sides of the Division get together and
16 investigate this as quickly as possible and resolve
17 this.

18 It sounds like Miss Potesta has already done
19 that. I would assume that the -- this side of the
20 aisle would cooperate back and get that done as
21 quickly as possible and move on. Anything further
22 from the commission members?

23 **MR. B. KING:** Just to add for myself on behalf
24 of Mr. Simmons, we want to have the record to show
25 we do not agree with the analysis set forth by Miss

1 Barnes, but we'll follow the direction of the Chair
2 and the staff.

3 CHAIRMAN T. WHEELER: The results are the
4 same, which is the Division is going to investigate
5 it as a whole, and report back as quickly as
6 possible.

7 All right. With that being said, that takes
8 Item No. 6 off the table. Item No. 7 and 8 are
9 Cause No. 08-171 and Cause No. 08-176. At this
10 point in time any individuals who anticipate giving
11 testimony in any of the cause numbers listed in
12 08-171 through 08-178 (sic), the campaign
13 challenges, I'm going to ask you to stand, and I'm
14 going to have the Vice Chair give the oath, which
15 he was just notified that he was going to.

16 VICE CHAIR A. LONG: (Indiscernible).

17 CHAIRMAN T. WHEELER: And I appreciate that.
18 If you're going to give testimony in anything at
19 all...

20 UNIDENTIFIED SPEAKER: (Indiscernible) was
21 called back to session and not here to take the
22 oath.

23 CHAIRMAN T. WHEELER: We will administer the
24 oath to him when he returns.

25 UNIDENTIFIED SPEAKER: Thank you.

1 **VICE CHAIR A. LONG:** Everyone stand, right
2 hands?

3 *(Participants complied.)*

4 **VICE CHAIR A. LONG:** I do solemnly, or do each
5 of you solemnly affirm that the testimony you're
6 about to give in this cause is the truth, the whole
7 truth, and nothing but the truth, so help you, God?

8 **THE PARTICIPANTS:** I do.

9 **CHAIRMAN T. WHEELER:** Thank you very much.
10 All right. Cause No. 08-171 -- check in the
11 commission member's packets that it's under that
12 same tab number.

13 **VICE CHAIR A. LONG:** I've got 171.

14 **CHAIRMAN T. WHEELER:** 08-171.

15 **VICE CHAIR A. LONG:** 08, that's 176.

16 **CHAIRMAN T. WHEELER:** And 1 -- 176. As I
17 understand it, there were -- if Pam or Brad or
18 whoever is going to handle this, just from a
19 procedural standpoint, why do we have two of these?

20 **MR. B. KING:** Mr. Chairman, I can address
21 that. The cause numbers are assigned in the order
22 in which they were filed with the Election
23 Division. In the case of the presidential primary
24 petition for John McCain, the Division received two
25 complaints, which are in your binder behind the

1 08-171, which was received on February 20th, 2008
2 from Mr. Thomas Cook.

3 On February the 22nd, or excuse me
4 February 29th, Mr. Cook filed a second challenge
5 which is behind Tab 08-176 and amended his initial
6 challenge in the form of a letter dated
7 February 29th, 2008 that follows the first CAN-1
8 complaint. If I can clarify further, I'll be happy
9 to do that.

10 **CHAIRMAN T. WHEELER:** So as I understand it,
11 the initial complaint is 171 filed February 20th,
12 2008 by Mr. Cook, which says and I quote, failure
13 to collect 500 signatures in the 4th Congressional
14 District; correct?

15 **MR. B. KING:** That is correct.

16 **CHAIRMAN T. WHEELER:** Then the -- that was
17 then followed up by a supplemental file of
18 February 29th, 2008, which says, quote, John
19 McCain's second statement of candidacy filed on
20 2/22/08, failed to meet the minimum signature
21 requirements for that office.

22 **MR. B. KING:** Yes, Mr. Chairman.

23 **CHAIRMAN T. WHEELER:** And then you
24 supplemented that with a letter of that same date
25 referred to as a supplement of my initial filing

1 which is back under 171, is the only
2 (indiscernible) in front of the commission members.

3 **MS. L. BARNES:** Mr. Chairman, we had treated
4 the -- the two different challenges as two separate
5 challenges. Mr. King referred to them as -- as a
6 supplemental challenge, the second challenge is a
7 supplemental one. I believe that would be a
8 decision up to the commission whether they have to
9 supplement and aggregate the challenges together or
10 treat them as two separate ones.

11 **MR. B. KING:** Mr. Chairman, I think Miss
12 Barnes just misunderstood my comment. What I
13 indicated was that the second filing contained a
14 letter from Mr. Cook dated February 29th in
15 which -- let me read the first line, Dear Sir or
16 Madam: This letter is to serve as a supplement to
17 my initial filing on February 20th, 2008,
18 challenging the placement of John McCain.

19 **CHAIRMAN T. WHEELER:** So you've used the
20 word -- which document are you referring to,
21 what...

22 **MR. B. KING:** I'm quoting from the letter
23 that...

24 **VICE CHAIR A. LONG:** Just from the letter.
25 The letter supplements the first one?

1 **MR. B. KING:** That's right.

2 **VICE CHAIR A. LONG:** It's my understanding
3 there was -- there was an interim filing of some
4 more petitions between Challenge No. 1 and
5 Challenge No. 2. Is that -- am I mistaken?

6 **MR. B. KING:** I believe that is correct.

7 **VICE CHAIR A. LONG:** Well, that's what I
8 understood the -- precipitated the -- well, I don't
9 know about precipitated, but the chronological
10 sequence, we had the filing of the division
11 challenge under 171, the filing of either another
12 petition or some more petitions, whatever party is
13 nominated, and then the filing of the challenge
14 under 176. Is that the proper sequence?

15 **CHAIRMAN T. WHEELER:** That's my -- that's my
16 understanding, and I understand the
17 intervening -- the intervening time frame is that
18 the petitions were filed -- the first challenge was
19 filed, there was still a day or two -- as I
20 understand it, it was the 22nd, I believe is the
21 cut-off date, so the challenge was filed on the
22 20th.

23 So the McCain campaign had the opportunity
24 apparently to respond to the challenge by obtaining
25 additional petitions or additional signatures that

1 were certified, which is I assume we're going to
2 get into here in just a moment. Are we good on the
3 procedure?

4 (No response.)

5 CHAIRMAN T. WHEELER: All right. With respect
6 to the challenger -- is Mr. Cook here, in person or
7 represented by counsel?

8 MR. T. COOK: I am, sir.

9 CHAIRMAN T. WHEELER: All right. Mr. Cook.
10 You've been sworn; correct?

11 MR. T. COOK: Yes, sir. And I actually have a
12 more visual aid than testimony just for the members
13 themselves so I don't know how that's quoted but...

14 CHAIRMAN T. WHEELER: When you get there, you
15 can hand them out to us.

16 MR. T. COOK: All right. That's fine.

17 CHAIRMAN T. WHEELER: Or if you want to just
18 do it now. Is there one for each commissioner?

19 MR. T. COOK: There is, and one for the
20 counsel for Senator McCain.

21 COMMISSION MEMBER S. RIORDAN: Is this going
22 to be an exhibit?

23 CHAIRMAN T. WHEELER: Are you intending to
24 just use these as exhibits or just use them as a
25 visual aid?

1 **MR. T. COOK:** They are just visual.
2 They're -- the probably most salient issue is
3 photocopies of signatures that I think exist in the
4 physical form in the hands of the election division
5 at this point so...

6 **CHAIRMAN T. WHEELER:** Which are already a
7 matter of record for the Division; correct,
8 Mr. King?

9 **MR. B. KING:** Mr. chairman, if I could answer
10 and respond. The original filing and the second
11 filing are behind your Chair and Vice Chair Long's
12 chair. They were sealed and signed by the four
13 staff members of the Election Division and to be
14 brought forward at the Commission's request.

15 **CHAIRMAN T. WHEELER:** And that purpose then is
16 to ensure the security of the petition?

17 **MR. B. KING:** That's correct.

18 **CHAIRMAN T. WHEELER:** I suppose we could bring
19 them up and put them in front of Mr. Simmons, or
20 we've got letters somewhere. We need to refer to
21 them. From the Division's standpoint, those are
22 the actual original petitions that were filed;
23 correct?

24 **MR. B. KING:** That's correct, Mr. Chairman.

25 **CHAIRMAN T. WHEELER:** And that would include

1 both the original filing and cut-off filing?

2 MR. B. KING: Yes. The first filing are the
3 bottom two boxes. The second filing on February
4 the 22nd is the top, the smaller box.

5 CHAIRMAN T. WHEELER: And then let me note
6 just for the record, in addition to Mr. Cook, we
7 also have -- do you have a representative from the
8 McCain campaign here?

9 MR. T. McCLAMROCH: Tobin McClamroch from
10 Bingham McHale.

11 CHAIRMAN T. WHEELER: And you represent the
12 McCain campaign; correct?

13 MR. T. McCLAMROCH: Yeah, that's correct.

14 CHAIRMAN T. WHEELER: What we're going to do
15 is go down the challenges. Because the challenger
16 has the burden of proof, we'll let the challenger
17 take a swing at this and we'll have some discussion
18 and then allow -- allow the McCain campaign to
19 respond. Mr. Cook, I have these documents.

20 As I understand it, they're simply
21 demonstrative of exhibits, but we have -- the
22 commission members have these in front of them. So
23 go ahead. It's your floor.

24 MR. T. COOK: There are really two issues that
25 I'd like the Commission to rule on today when

1 regarding these petitions. As you addressed
2 earlier, I did in fact file two challenges, and
3 that's really the first issue that I believe needs
4 to be addressed here.

5 There were two CAN-7 forms filed for Senator
6 John McCain which are the statements requesting
7 ballot placement for presidential candidate. Those
8 are the first two -- two pages of the packet that
9 I've given you are these filings. The first one
10 was filed on February 12th by Senator McCain's
11 campaign surrogates here in the state.

12 That is what prompted my initial challenge,
13 due to the fact that there were less than 500
14 signatures accompanying those. Now after my
15 initial challenge, there were additional signatures
16 turned in on behalf of Senator John McCain.
17 Unfortunately --

18 CHAIRMAN T. WHEELER: Let me -- let me stop
19 you just real quick. The -- you've given us two
20 documents which are the CAN-7s.

21 MR. T. COOK: Uh-huh.

22 CHAIRMAN T. WHEELER: All right. The first
23 CAN-7 is file stamped February 12th, 2008?

24 MR. T. COOK: Yes.

25 CHAIRMAN T. WHEELER: And that would have been

1 accompanied by -- and that's also attached to a
2 challenge as well, so it's already in the book, but
3 the commission member's packets as a matter of
4 record here under 08-171; correct?

5 MR. T. COOK: Yes.

6 CHAIRMAN T. WHEELER: You agree that that's
7 your CAN-7 or your CAN-1?

8 MR. T. COOK: Do you have additional concerns
9 or...

10 CHAIRMAN T. WHEELER: Now this -- this
11 document would have also had a variety of documents
12 attached; is that correct?

13 MR. T. COOK: It would have had CAN-8 forms
14 which are the petitions accompanying them as
15 required by the document itself.

16 VICE CHAIR A. LONG: Just so I can be sure of
17 our record, those -- the original petition for
18 Senator McCain and his signatures are in the boxes,
19 are just the signatures in the boxes, or his filing
20 CAN-7s?

21 MS. L. BARNES: The original CAN-7s are in the
22 box along with all the CAN-8s.

23 CHAIRMAN T. WHEELER: So a complete document.
24 The one he's referring to, that complete document
25 is sitting right there, and those are the

1 originals?

2 MS. L. BARNES: Yes.

3 VICE CHAIR A. LONG: I just want to make sure
4 that our record is square.

5 CHAIRMAN T. WHEELER: Okay. Go ahead. I'm
6 sorry.

7 MR. T. COOK: Now -- now after my initial
8 complaint was filed, there were initial petitions
9 turned in by John McCain. Now these weren't turned
10 in in any relation to the first CAN-7. Actually,
11 what they did is they came in a few minutes before
12 the deadline and filed an additional CAN-7 form.
13 They essentially filed for him to be on the ballot
14 twice.

15 There were two statements requesting his
16 placement on the presidential ballot, one on
17 February 12th, the second one filed on
18 February 22nd, and that is the second page of the
19 packet that I provided you, which additionally
20 requested his name to be placed on the ballot.

21 Both were notarized and signed by Senator
22 McCain and both were accompanied by a certain
23 number of petitions statewide. I make the argument
24 that neither one of these were --

25 CHAIRMAN T. WHEELER: Let me -- let me...

1 MR. T. COOK: Yeah.

2 CHAIRMAN T. WHEELER: I only say this because
3 I do them all the time in court. If you slow down
4 a little bit.

5 MR. T. COOK: Okay.

6 CHAIRMAN T. WHEELER: I know -- I know it's --
7 it's a little nerve racking particularly while the
8 campaign person...

9 MR. T. COOK: No, it's -- it's moving fine.

10 CHAIRMAN T. WHEELER: And I appreciate -- I
11 appreciate that if you slow down, though, we'll
12 follow you a little better.

13 MR. T. COOK: No, that's -- just let me know.

14 VICE CHAIR A. LONG: This isn't a courtroom.
15 You're not on a clock.

16 MR. T. COOK: But -- so that second form, I
17 believe, represents an additional request for
18 ballot placement on the part of John McCain. And I
19 think the chief part of -- when you look at these
20 is if you look on the first box at the top of these
21 forms, it says that I, John McCain, the
22 undersigned, request that you place my name on the
23 primary election ballot as the
24 Republican -- Republican Party or the office of the
25 President of the United States to be voted at the

1 primary election to be held on May 6th, 2008. The
2 following sentence says this request is accompanied
3 by the petition required under Indiana Code
4 3-8-3.2.

5 Now if we look 3-8-3.2, which I believe is
6 going to be the third page in your packet, the
7 section of code that it refers to states that a
8 request filed under section 1 of this chapter must
9 be accompanied, which I believe is a key part of
10 that line, must be accompanied by a petition signed
11 by at least four thousand five hundred (4,500)
12 voters of the state, including at least five
13 hundred (500) voters from each congressional
14 district.

15 Now I would argue that each of these as has
16 been dealt with the commission as far as assigning
17 them different administrative cause numbers and
18 addressing them for each of my complaints, should
19 be viewed as separate requests for ballot
20 placement.

21 And I believe that if each of these are shown
22 to separately contain less than 500 signatures from
23 each congressional district, that he should be
24 ruled as not having collected the requisite number
25 of signatures, and therefore, should be kept from

1 the ballot.

2 CHAIRMAN T. WHEELER: Let me ask you this
3 question. So your argument -- your argument is not
4 that in the aggregate before the 22nd, is your
5 argument that he didn't have 500 signatures or that
6 he just filed them in two batches?

7 MR. T. COOK: I believe the second part of my
8 argument is going to address the aggregate as well.
9 The first portion of my argument deals strictly
10 with how they should be viewed by the Commission,
11 and I believe that they should be viewed as
12 separate ballot requests.

13 And I believe that if these forms are treated
14 as statute intended, he should at -- at best be
15 placed on the ballot twice, and at worst, be kept
16 off the ballot, because there are essentially two
17 requests filed.

18 CHAIRMAN T. WHEELER: All right. Let
19 me -- let me stop you there and let me poll the
20 commission members. Do we want to handle -- he's
21 got two arguments. Do you want to handle one at a
22 time or do you want to hear both and go back and
23 forth?

24 VICE CHAIR A. LONG: Well, honestly, I'd
25 like to choose the challenger. I do have a

1 question?

2 MR. T. COOK: Yes, sir.

3 VICE CHAIR A. LONG: Your first challenge
4 seems to be directed at District 4?

5 MR. T. COOK: Yes, sir.

6 VICE CHAIR A. LONG: And second challenge is
7 to the entire state?

8 CHAIRMAN T. WHEELER: That is true. The
9 second challenge...

10 VICE CHAIR A. LONG: Is that the position
11 you're taking here today, that if we're dealing
12 with them separate and distinct, that your argument
13 as to the first challenge, the 171 Cause Number,
14 only deals with District 4?

15 MR. T. COOK: In terms of that, yes. And I
16 believe the second filing contained over a hundred
17 odd signatures statewide so I don't think there's
18 any argument to be made even by Senator McCain's
19 counsel, but if that's viewed independently, it
20 contained enough signatures.

21 So I would make the argument that the second
22 form was invalid basically on all levels of
23 statute, that the first ballot is invalid due to
24 the fact that it lacked 500 signatures in the 4th
25 District, and should for some odd reason the

1 Commission choose to view them in aggregate, I also
2 believe that he lacks 500, should they be viewed
3 similarly together.

4 All right. So that's really the first issue
5 that I believe which is that these should be viewed
6 as separate. The second major issue that I really
7 want to deal with is the fact that the first
8 request for ballot placement, I believe was
9 accompanied by 498 certified signatures. Now of
10 those --

11 CHAIRMAN T. WHEELER: And the first one is the
12 CAN-7 --

13 MR. T. COOK: Yes, sir.

14 CHAIRMAN T. WHEELER: -- stamped received
15 February 12th, 2008?

16 MR. T. COOK: Yes, sir. I believe that that
17 was accompanied by 498 certified signatures. Now
18 I -- I wouldn't make.

19 VICE CHAIR A. LONG: In the 4th District?

20 MR. T. COOK: I'm sorry?

21 VICE CHAIR A. LONG: The 4th District?

22 MR. T. COOK: In the 4th District.

23 CHAIRMAN T. WHEELER: You don't dispute, for
24 purposes of your first petition, --

25 MR. T. COOK: Other districts.

1 **CHAIRMAN T. WHEELER:** -- all the other
2 districts have the appropriate numbers?

3 **MR. T. COOK:** True.

4 **CHAIRMAN T. WHEELER:** We're only dealing with
5 the 4th District?

6 **MR. T. COOK:** True.

7 **CHAIRMAN T. WHEELER:** And we're off by how
8 many, two signatures?

9 **MR. T. COOK:** Well, I would say that there
10 were 498 certified signatures accompanying that.
11 Of those, I believe that there are a good number
12 that probably should be viewed as invalid by this
13 commission.

14 **COMMISSION MEMBER D. DUMEZICH:** If I
15 understand your position correctly, if we determine
16 that there are 500 signatures, at least 500
17 signatures on the first filing, the rest of the
18 points are moot?

19 **MR. T. COOK:** If -- if the Commission were to
20 find more than 500 signatures, obviously, but I
21 don't believe that's...

22 **COMMISSION MEMBER D. DUMEZICH:** But if that
23 was the case? If we would find there were more
24 than 500 signatures, none of your other complaints
25 would -- would stand; is that accurate?

1 **MR. T. COOK:** True, because if the first
2 complaint is viewed as valid, obviously, the second
3 one is a nonissue because it wouldn't have even
4 been necessary. Accompanying the first CAN-7 form
5 were a number of petitions from Tippecanoe County.

6 Now Tippecanoe County has a unique system in
7 which they certify signatures, in that they and
8 Lake County are unique to having a board of
9 registration of election or election and
10 registration. It's a combined board.

11 Now it's represented by the clerk and a
12 Republican and Democratic co-director.

13 **CHAIRMAN T. WHEELER:** So the Commission would
14 have -- in that case, there would be three members,
15 one being the clerk -- this is by statute, there
16 are two -- there are two counties that are in this
17 individual situation?

18 **MR. T. COOK:** True.

19 **CHAIRMAN T. WHEELER:** Tippecanoe County by
20 statute, their board has No. 1, the clerk; No. 2, a
21 Republican appointee; and No. 3, a Democratic
22 appointee; correct.

23 **MR. T. COOK:** And I might note that the clerk
24 as well is a Republican because I believe that's
25 going to be an issue of note here. Because in

1 Tippecanoe County, it's my understanding that when
2 these larger counties were required to create
3 boards of registration, the intent was to create a
4 bipartisan board of registration in which these
5 larger counties could be dealt with in a manner in
6 which both parties, rather than the small counties,
7 which -- counties which just have one clerk
8 certifying these signatures.

9 Now in Tippecanoe County, there were 47
10 signature or petition sheets -- well, not sheets.
11 There were multiple sheets accumulating --

12 CHAIRMAN T. WHEELER: Can I just hold you for
13 one second?

14 MR. T. COOK: Yeah.

15 CHAIRMAN T. WHEELER: The statute creating
16 Tippecanoe, does anybody have a statutory cite?

17 MR. T. COOK: It's in my packet.

18 MR. T. McCLAMROCH: It's 3-6-5.4.

19 CHAIRMAN T. WHEELER: 3-6 what?

20 MR. T. McCLAMROCH: 3-3-5.4-1.

21 MR. D. SIMMONS: That's on Page 71.

22 VICE CHAIR A. LONG: 3-6-5.4, 71?

23 CHAIRMAN T. WHEELER: Page 71. And when you
24 refer to members of this board, you're referring to
25 3-6-5-4-4 which says the board consists of one

1 member appointed by the county chair of each of the
2 major political parties and the circuit court
3 clerk?

4 MR. T. COOK: Yes, sir.

5 CHAIRMAN T. WHEELER: Okay. This wasn't --
6 this -- this -- unlike this commission, for
7 example, it wasn't set up as a bipartisan review by
8 the commission?

9 MR. T. COOK: I believe that would represent
10 one of your opinions than anything else.

11 CHAIRMAN T. WHEELER: It's got three members,
12 though?

13 MR. T. COOK: That is in fact true, sir.

14 CHAIRMAN T. WHEELER: They can't -- they can't
15 have a motion die for a 2-2 vote, for example?

16 MR. T. COOK: True.

17 CHAIRMAN T. WHEELER: Okay.

18 MR. T. COOK: But I -- the argument that I
19 would make here is that this commission, or this
20 election board had been treated previously to
21 this -- to this as a bipartisan board.

22 And if you look at the statute itself, it
23 states that before it has all the powers and duties
24 given in this title to the board of registration,
25 which I'm willing to address in a minute.

1 What I think might be more useful, if it
2 pleases the Commission, I actually have the
3 Democratic co-director from Tippecanoe County who
4 would like to just enter testimony as to general
5 procedure within her office and as to her knowledge
6 of the 47 signatures that I believe were invalidly
7 certified within that office.

8 So if it's all right with the Commission, I
9 would like to give her an opportunity. She drove
10 down here from Tippecanoe County today to speak to
11 that matter.

12 **CHAIRMAN T. WHEELER:** I guess what we're
13 trying to figure out is what is your challenge to
14 the Tippecanoe -- are you arguing they're invalidly
15 certified?

16 **MR. T. COOK:** I'm invalidly -- I'm arguing
17 that they were certified without the knowledge of
18 the Democratic co-director within that county, that
19 they were certified without a Democratic signature,
20 without having any opportunity to evaluate this and
21 that the legislative intent behind the creation of
22 the Tippecanoe County would have still wished that
23 you remain a bipartisan spirit and that there is no
24 general operating procedure within that county in
25 which clerks' signatures have ever been viewed as

1 acceptable -- acceptable replacements for the
2 signature of the opposition party's co-director.

3 **MR. T. McCLAMROCH:** Mr. Chairman, I think that
4 Mr. Cook is doing a fine -- he is doing a good job
5 of presenting the case. He's made some good
6 points. But as it relates to Tippecanoe County, I
7 guess my point is the statute with respect to -- I
8 mean I'm representing Senator McCain in terms of
9 what he -- what he has to comply with in terms of
10 getting on the ballot, Mr. McCain can't be
11 responsible for election disputes or the governance
12 structure in Tippecanoe County.

13 What we have from Tippecanoe County -- well,
14 let me back up. The statute requires that the
15 county voter registration office in the county
16 where the petitioner was registered must certify
17 whether each petitioner is a voter of the county.

18 We have to take what -- what's given to us by
19 Indiana law. I mean whether -- whether we like it
20 or not in terms of how Tippecanoe County is
21 structured, that's what we're given. What we have
22 from Tippecanoe County, each one of these
23 signatures has been certified by the county
24 registration office in that county is valid.

25 And.

1 **COMMISSION MEMBER S. RIORDAN:** Mr. Chairman,
2 if I may? I'm looking forward to having what I'm
3 sure will be a very enlightening presentation by
4 counsel for Senator McCain, but I think
5 procedurally speaking, we should try to have some
6 sort of, you know, order, and that may be that the
7 petitioner continue with his presentation and move
8 along, and then I'm looking forward to what he has
9 to say.

10 **CHAIRMAN T. WHEELER:** I understand that. My
11 problem is I'm concerned whether we have a
12 jurisdictional issue which I believe has been
13 addressed, which is whether or not the Commission
14 has the right to go and review, and I'll be
15 interested in hearing after that, I want to hear
16 comments of counsel, whether the Commission has the
17 right to go in and review these certifications.

18 Or as I believe as Mr. McClamroch has said,
19 just like a candidate, the candidate, does the
20 Commission have the obligation to accept the
21 certifications from any of these counties -- Marion
22 County, Johnson county, Tippecanoe County, if we
23 have the obligation?

24 Or do we -- more importantly, do we
25 have -- you know, is it the position of the

1 Commission -- does the Commission have the
2 obligation to go through each signature and
3 reverify every single signature and see if that in
4 fact is a valid signature that that person is
5 addressing or has the legislature given that power
6 to the county clerk and it's simply our obligation
7 to review the overall process?

8 And that's -- that's, I believe, what Mr.
9 McClamroch was addressing and I believe that's
10 relevant to the jurisdiction of this commission,
11 and in fact, as I understood it, he wants to
12 present a witness -- it's similar to recalling a
13 juror to impeach the voters of jury.

14 The question is: Do you call an individual
15 juror to impeach the verdict of the jury? The
16 answer is generally no, unless there's some type of
17 misconduct.

18 **COMMISSION MEMBER S. RIORDAN:** Well, I guess I
19 would say two things in response. The first is
20 that, you know, we are in an agency proceeding and
21 the Rules of Evidence and the Rules of Trial
22 Procedure don't apply quite strictly so -- and
23 we're dealing with someone who is representing
24 himself, and you are not a lawyer; is that right?

25 **MR. T. COOK:** No. I'm not even an

1 undergraduate diploma holding individual at this
2 point. So no, I'm far from it.

3 **COMMISSION MEMBER S. RIORDAN:** I think that if
4 there was a jurisdictional challenge, it would be
5 probably more appropriately raised by a motion,
6 something that might have reached the Commission
7 before just now.

8 I think what would be fair for everybody who's
9 come to listen to this dispute would be to give the
10 parties an opportunity to present where they are.
11 I don't think anybody has requested that we open up
12 the boxes and we start taking a look at
13 certifications -- I don't think we're there yet.

14 I would really like to hear what Mr. Cook has
15 to say and I think maybe we should give him an
16 opportunity to do that, and then hear from Mr.
17 McClamroch.

18 **CHAIRMAN T. WHEELER:** That's fair enough. And
19 let's do it this way procedurally. Procedurally,
20 I'm going to treat this as an opening statement.
21 I'm not interested in hearing a witness right now,
22 okay?

23 **MR. T. COOK:** Okay.

24 **CHAIRMAN T. WHEELER:** Now we'll let Mr.
25 McClamroch respond with his opening statement, then

1 you can both call witnesses to support your
2 individual petitions, and if there are
3 jurisdictional issues, they can be raised.

4 **COMMISSION MEMBER D. DUMEZICH:** Well, the
5 one --

6 **VICE CHAIR A. LONG:** I think -- go ahead. Go
7 ahead. I'm sorry.

8 **COMMISSION MEMBER D. DUMEZICH:** What I'd like
9 to know is to take a look at your pleadings because
10 I would like to see where you specifically allege
11 this -- this issue in your pleadings, that there
12 was a failure of regulations?

13 **MR. T. COOK:** I alleged A) that there was a
14 failure to collect the requisite number of
15 signatures, and I believe that -- that issue as I
16 said with my first point is one that the Commission
17 will have to deal with. I think in terms of the
18 Commission evaluating the number of valid
19 signatures that Senator John McCain received in the
20 district, there is a precedent.

21 In terms of -- I was looking -- there was a
22 Supreme Court case, which is *Sammons v. Conrad*, in
23 which the conclusion by the court, and it's my
24 understanding this is a 5-0 decision by the State
25 Supreme Court, ruled that -- in the case of this

1 ruling, there was a Republican within the election
2 division who certified a candidate without a
3 Democratic signature.

4 And this became an issue that -- that of the
5 court. And the courts ruled that -- and this is
6 quoted, and this is actually included in the packet
7 if for some reason you'd like to follow along, said
8 that because there is no explicit statutory
9 procedure for challenging an invalid certification
10 from the election division, the question is what
11 remedy is appropriate?

12 And they essentially find that the proper way
13 to challenge an allegedly invalid certification is
14 provided in Indiana Code 3-8-1-2, which I believe
15 the information I received from this body relating
16 to this procedure, that said that this was an
17 evaluation of Senator McCain's validity on the
18 ballot pursuant to 3-8-1-2.

19 So it's my understanding that this is within
20 the realm of your scope in terms of what...

21 **CHAIRMAN T. WHEELER:** And your argument is
22 because there wasn't a Democratic signature on
23 that, that invalidates those petitions; correct?

24 **MR. T. COOK:** I believe that as far as in
25 *Sammons v. Conrad*, they are dealing with the

1 legislative intent in these bipartisan bodies, and
2 there, obviously, referring to the election
3 division, was that there was to be bipartisan
4 decision making and the lack of that. And they --

5 CHAIRMAN T. WHEELER: And I -- I understand
6 the lack of division. We are split. We have
7 two of -- as you can see, we have two of
8 everything.

9 MR. T. COOK: And -- and that's...

10 CHAIRMAN T. WHEELER: The difference that I'm
11 struggling with is that Tippecanoe County, the
12 statute you just read for me and cited for me
13 creates a two -- it specifically creates majority.
14 It's unusual in that regard; correct?

15 MR. T. COOK: But it doesn't, because if you
16 look at the statute, it uses the exact same, or
17 very similar language to the election division and
18 to the bipartisan election boards, in the sense it
19 requires for equal staffing and equal funding,
20 which I would make the argument was created if not
21 verbatim in the exact same light as the election
22 division and they were created during the exact
23 same legislature.

24 CHAIRMAN T. WHEELER: You agree with me that
25 the General Assembly specifically says that

1 Tippecanoe County Board of Elections and
2 Registration shall consists of three members, one
3 appointed by each party, and adding the circuit
4 court clerk?

5 MR. T. COOK: Yes.

6 CHAIRMAN T. WHEELER: And I would note just
7 for the -- this commission there has been -- there
8 have been bills over the last ten years -- I
9 believe it's Senate Bill 500, attempting to
10 Secretary of State as the fifth member of this
11 commission, and that has not passed.

12 COMMISSION MEMBER S. RIORDAN: Mr. Chairman?

13 CHAIRMAN T. WHEELER: Yes.

14 COMMISSION MEMBER S. RIORDAN: I would
15 respectfully request that we give Mr. Cook an
16 opportunity to lay out his points and then maybe we
17 could have some discussion once he's had a chance.
18 Mr. Cook, as I understand it, on the second part of
19 your argument?

20 MR. T. COOK: Yes, ma'am.

21 COMMISSION MEMBER S. RIORDAN: In your view is
22 that -- your view is that there are required to be
23 500 validly certified signatures in every
24 Congressional district and it's your position that
25 there are a certain number of signatures that were

1 submitted for certification in Tippecanoe County
2 that did not have the appropriate certification?

3 MR. T. COOK: Yes, that's...

4 COMMISSION MEMBER S. RIORDAN: Why would you
5 think -- how many are we talking about in your
6 view --

7 MR. T. COOK: There were --

8 COMMISSION MEMBER S. RIORDAN: -- was just a
9 problem with the certification?

10 MR. T. COOK: I believe there are 81
11 signatures to come out of Tippecanoe County. Of
12 those 47, did not have the Democratic co-director's
13 signature on them. And beyond that, she...

14 COMMISSION MEMBER S. RIORDAN: So if you -- if
15 we accepted that, what number are we left with?

16 MR. T. COOK: If we take the original 498
17 minus the 47, I believe it's 451, would that be
18 what it is -- I just did that in my head, so if
19 somebody has pen and paper and...

20 VICE CHAIR A. LONG: I want to point out that
21 this since we're not having you call witnesses,
22 there are factual issues that you think are a part
23 of your argument, you should say it, and then I'm
24 prepared to offer evidence on or I can establish by
25 testimony. And I would assure that's because of

1 your knowledge of it. We try to be pretty laid
2 back.

3 MR. T. COOK: Well, I appreciate that. And I
4 think as far as procedural issues within that
5 office, the Democratic co-director who's here, I
6 think would, obviously, be much more of an expert
7 on that and that's why I requested that she speak
8 as to what her office has done and her experience,
9 specifically, with whether or not she was made
10 aware of these signatures that were being certified
11 without her knowledge?

12 COMMISSION MEMBER S. RIORDAN: I'm -- I think
13 we should go with the chairman's plan to hold off
14 on that --

15 MR. T. COOK: Okay.

16 COMMISSION MEMBER S. RIORDAN: -- until you
17 get into your overview.

18 VICE CHAIR A. LONG: But just to be -- I
19 want -- you can say I can establish by testimony,
20 if that's important to your argument.

21 MR. T. COOK: No. And really, the -- the
22 Tippecanoe County signatures I believe -- I sort of
23 have touched on it at various points here in the
24 last interchange, was set up to be a bipartisan
25 party, and I believe that because it has the powers

1 and duties of a normal board of registration which
2 is obviously a much more straight forward
3 bipartisan split and because it shares the language
4 in terms of splitting staffing and funding levels,
5 I believe that there is clear legislative intent
6 there that one party would not be made to -- to be
7 completely outside the scope of whatever that
8 office is doing.

9 And I think that for the commission to allow
10 these signatures would, in essence, be creating a
11 precedent that these three-person bodies can
12 certify signatures without the knowledge, first of
13 all, and without the -- the acknowledgment and the
14 proper amount of cooperation within the two
15 parties.

16 And I think this is a dangerous precedent to
17 set, considering that Lake County shares a similar
18 set-up, and if one party controls the other, I mean
19 you're essentially going to be opening the door for
20 what kind of decisions can be made without
21 bipartisan support.

22 And so I think the Commission's responsibility
23 here would be to determine whether or not this is a
24 bipartisan body and whether it should be treated as
25 such. I believe the fact that the statute requires

1 within 3-6-5.4-5, to have all of the powers and
2 duties of a board as registration, and the fact
3 that it shares within 3-7-12.3.

4 For larger counties to have a bipartisan board
5 of registration, to state that Tippecanoe County,
6 simply because it does have this set-up can
7 completely abandon any sort of bipartisanship
8 simply because they have that majority, is not
9 something this body may want to -- to acknowledge
10 because I think it's -- it's honestly a dangerous
11 course, and for that reason, I think that these 47
12 signatures are -- are invalid, lacking in any sort
13 of spirit of bipartisanship that I believe the
14 legislature intended when they created that body.

15 **COMMISSION MEMBER D. DUMEZICH:** Have you
16 investigated any of the 47 signatures? Do you know
17 any of those signatures to be false?

18 **MR. T. COOK:** I have not, personally,
19 investigated that. It was my understanding
20 that -- that that was to be done at the county
21 level and that is one of the reasons I think it's
22 extremely troubling that we could have this process
23 occurring without the Democrat being aware of it
24 because -- or essentially stating that this process
25 of certification and investigation can occur

1 without the Democrat knowing, and the fact that we
2 don't know how widespread this may have been. It's
3 a troubling precedent, I think, to sort of
4 acknowledge.

5 CHAIRMAN T. WHEELER: So -- so as you sit here
6 today, you don't have any evidence that any of
7 those 47 signatures are incorrect?

8 MR. T. COOK: I don't believe it was my
9 responsibility to be because I don't...

10 COMMISSION MEMBER D. DUMEZICH: No. No. No.

11 MR. T. COOK: That's not the...

12 COMMISSION MEMBER D. DUMEZICH: I just want to
13 know where your evidence ends and where it starts.

14 MR. T. COOK: No. My claim is that because
15 there was no proper bipartisan approach to the
16 investigation at the county level that they should
17 not be deemed appropriate by this body.

18 CHAIRMAN T. WHEELER: Okay. That was 1 and 2,
19 is that it?

20 MR. T. COOK: Yes, and that -- those are the
21 two major points. If you have any questions for
22 me, I'll gladly...

23 CHAIRMAN T. WHEELER: I suspect you've got
24 them all...

25 MR. T. COOK: Additional questions, yeah.

1 **COMMISSION MEMBER S. RIORDAN:** I just have a
2 couple. If you -- is it your position that some of
3 the petitions or signatures submitted would be
4 February 22nd filing by the Senator and that is the
5 second of the Senator's filings, are there -- let
6 me ask you this: Are there additional Tippecanoe
7 County signatures in that bunch?

8 **MR. T. COOK:** I believe it was 13 signatures
9 from Morgan County, I believe -- it may be
10 Montgomery -- it was one of the M ones, but it --
11 they were not from Tippecanoe County, no.

12 **COMMISSION MEMBER S. RIORDAN:** So if we
13 looked -- there are 498 certified from Tippecanoe
14 or from the 4th Congressional District, 81 of those
15 are from Tippecanoe?

16 **MR. T. COOK:** Yes, ma'am.

17 **COMMISSION MEMBER S. RIORDAN:** And it's your
18 view that 47 of those lack the required bipartisan
19 certification?

20 **MR. T. COOK:** That is correct.

21 **COMMISSION MEMBER S. RIORDAN:** And there
22 aren't any other Tippecanoe signatures or 4th
23 District -- actually, there are 4th District --

24 **MR. T. COOK:** In the second...

25 **COMMISSION MEMBER S. RIORDAN:** -- in those

1 other two counties?

2 MR. T. COOK: And in the second filing, there
3 were 13 signatures from the 4th District of the
4 hundred odd that were put forward. And -- and I
5 would assume that -- that the argument that may be
6 made by my counterpart here is that they should
7 somehow be viewed as part of the first filing,
8 which I believe is false, because there were two
9 CAN-7 form requests put in. They were both
10 separately signed and separately...

11 COMMISSION MEMBER S. RIORDAN: Okay. But in
12 that second group, if the numbers for the 4th
13 Congressional District, in the first filing are as
14 you think they are, which is 498 minus 47?

15 MR. T. COOK: Yes, ma'am.

16 COMMISSION MEMBER S. RIORDAN: Does the second
17 filing bring the Senator over the required 500?

18 MR. T. COOK: No. He would -- he would, I
19 believe, have somewhere around 465, 6, somewhere in
20 that range, but no, if those 47 signatures are
21 disqualified, even if the commission were to decide
22 that both separate CAN-7 forms should for some
23 reason be combined, he would be short in terms of
24 the -- the statutory requirement of 500 for the 4th
25 District.

1 **COMMISSION MEMBER S. RIORDAN:** Okay. Do you
2 know the process that is undertaken by a clerk or a
3 board of voter registration to actually certify a
4 signature as valid?

5 **MR. T. COOK:** That was the reason that I
6 requested that the co-director from Tippecanoe
7 County come down to speak to procedure. It's my
8 understanding that that is usually done in a
9 bipartisan fashion.

10 As far as the specifics go, I'm not extremely
11 well versed on what those may be, but that was part
12 of the reason that I requested that Miss Maddox
13 make -- make her trip down here today just because
14 I -- I did not want to misrepresent the inner
15 workings that's in the county office such as that.

16 **COMMISSION MEMBER S. RIORDAN:** Do you know
17 what -- what is a valid signature? What
18 constitutes a valid signature?

19 **MR. T. COOK:** On the back of these CAN-8 --

20 **COMMISSION MEMBER S. RIORDAN:** My -- my
21 question actually is: If I, Sarah Riordan, signed
22 a petition, how would it be valid? What is
23 required to make that valid? And I would address
24 that to our counsel as well, what is a valid
25 signature?

1 **MR. D. SIMMONS:** Mr. Chairman, and Members of
2 the Commission, we often get calls during the
3 certification process. We have a chapter of the
4 code. It begins on Page 48 of the code book. It
5 talks about standards for certifying documents.

6 And it talks about, in general, matching the
7 address and name of the voter. It does provide
8 standards about substantial variation of the
9 address, substantial variation of the name. It
10 does provide additional direction that when there
11 is no standard and that there is a reasonable
12 uncertainty, reasonable doubt must be resolved in
13 favor of the registered voter, and the signature
14 must certify the ballot.

15 Those are all standards we discuss with
16 the -- sometimes circuit court clerks who certify
17 these in many counties, notwithstanding there being
18 bipartisan boards in other counties, and boards as
19 well as a place like Tippecanoe County, where they
20 have a combined board, or Lake County, where they
21 have a combined board.

22 **COMMISSION MEMBER S. RIORDAN:** Thank you.

23 **CHAIRMAN T. WHEELER:** Let me follow up on the
24 question that Commissioner Riordan asked you. As I
25 understand it, you acknowledge that -- even under

1 your count, there were 498 with the first CAN-7;
2 correct?

3 MR. T. COOK: I believe that certified by
4 the -- at the county level, there were in fact 498.
5 Of those that are valid, I can't speak to,
6 obviously.

7 CHAIRMAN T. WHEELER: Let me go back. The
8 total signatures that were filed with the CAN-7,
9 regardless of validity or anything else, how many
10 were filed with the first one?

11 MR. T. COOK: I believe that were certified by
12 the county level, on the back they have to -- to
13 write down the amount certified. I believe when
14 all those are added up, the number was 498.

15 CHAIRMAN T. WHEELER: Okay. And then as I
16 understand it, your challenge to that first batch
17 and this challenge only applies to that first
18 batch, and so there wasn't a second filing for
19 Tippecanoe, is on 47 signatures that did not have
20 the Democratic member, the division signature on
21 the petition sheets; correct?

22 MR. T. COOK: I believe that my challenge is
23 that 498 is less than 500, and that when you
24 subtract 47, it's even more less than 500 so...

25 CHAIRMAN T. WHEELER: I understand that. And

1 so the 47 is dependent upon this issue of not
2 having a Democratic signature?

3 MR. T. COOK: Yes. I believe that they --
4 they should be valid. I believe that even if those
5 are included, that first filing was invalid, but I
6 believe...

7 CHAIRMAN T. WHEELER: Because they were under,
8 two under?

9 MR. T. COOK: Because they were two under,
10 yeah.

11 CHAIRMAN T. WHEELER: You're not challenging
12 individual signatures or anything like that. The
13 only batch, you're saying No., they had two under
14 when they originally filed?

15 MR. T. COOK: Yes, sir.

16 CHAIRMAN T. WHEELER: And I assume that's easy
17 for us to count. We can just go count or somebody
18 else can count. No. 2, you're saying secondarily,
19 even if somehow that count goes over 500 or there's
20 some other ones, secondarily, because there wasn't
21 a Democratic signature on these 47 out of
22 Tippecanoe County it's invalid because that 47
23 brings him back under 500?

24 MR. T. COOK: Yes, sir.

25 CHAIRMAN T. WHEELER: All right. Now tell me

1 this: As I understand it, there are 81 certified
2 from Tippecanoe County; is that correct?

3 MR. T. COOK: I believe so.

4 CHAIRMAN T. WHEELER: And you're only --
5 you're only contending 47 shouldn't be counted?

6 MR. T. COOK: Yes, because the other 34 were
7 correctly, in my opinion, signed by the Republican
8 and Democratic co-directors.

9 CHAIRMAN T. WHEELER: So the Democratic
10 co-director was involved at least in part; correct?

11 MR. T. COOK: Yes.

12 CHAIRMAN T. WHEELER: Okay. All right.
13 Now -- and that -- and that encompasses both of
14 your two challenges?

15 MR. T. COOK: Well, the second challenge,
16 obviously, deal with the second filing, as far as
17 it being invalid based on the amount of petitions
18 that were accompanied with it.

19 CHAIRMAN T. WHEELER: Right. The fact that
20 it's not -- not a -- they can't supplement, in your
21 opinion? It's --

22 MR. T. COOK: I believe they had plenty of
23 avenues by which they could have supplemented.
24 They could have, obviously, withdrawn the original
25 CAN-7, requested the petitions be returned to them,

1 attach the new ones and put forward -- they could
2 have -- potentially, the Commission -- I mean this
3 would probably have been questionable, too, but
4 just submitted new petitions on behalf of the first
5 CAN-7 form.

6 But in my opinion, they chose to not do either
7 of those things, but rather filed an additional
8 request for ballot placement. And I don't
9 understand how two requests for ballot placements,
10 both of which legally assume to point to the fact
11 that they must be accompanied by 4,500 signatures
12 statewide and 500 from each congressional district
13 should be viewed as the same when they're signed on
14 different days, notarized on different days, and
15 were accepted on different days by the Election
16 Division.

17 **COMMISSION MEMBER S. RIORDAN:** Mr. Cook, have
18 you had an opportunity to review all of the
19 original petitions yourself?

20 **MR. T. COOK:** Not the originals. I have seen
21 scanned copies, but I was not in a position to
22 review the originals, no.

23 **COMMISSION MEMBER S. RIORDAN:** Were you -- did
24 you make a request to review the original
25 petitions?

1 **MR. T. COOK:** I was given scanned copies. I
2 understand that the McCain people themselves were
3 the ones who requested that they be copied, so
4 those were the ones I reviewed with the assumption
5 that those were correct facsimiles of -- of the
6 originals.

7 **COMMISSION MEMBER S. RIORDAN:** So you can't
8 actually say based upon personal knowledge that you
9 have seen original signatures in ink for 498?

10 **MR. T. COOK:** In terms of -- no, I have not
11 sat with them in front of them so...

12 **COMMISSION MEMBER S. RIORDAN:** You've only
13 seen duplicates?

14 **MR. T. COOK:** I have seen, yes, facsimiles and
15 the like.

16 **CHAIRMAN T. WHEELER:** And you don't care about
17 specific signatures, you only care about the
18 totals?

19 **COMMISSION MEMBER S. RIORDAN:** Well, let's let
20 him define what he cares about. That's so unfair.

21 **CHAIRMAN T. WHEELER:** Well, I asked him that
22 question.

23 **MR. T. COOK:** I believe as I --

24 **CHAIRMAN T. WHEELER:** Your challenge is not --
25

1 MR. T. COOK: Said five different times, yeah.

2 CHAIRMAN T. WHEELER: Your challenge is not to
3 individual signatures, it's to the total?

4 MR. T. COOK: My knowledge of individual
5 signatures is very limited.

6 CHAIRMAN T. WHEELER: I'm trying to figure out
7 what we're going to do on the commission to look at
8 that, and I think I -- we should look at the
9 totals, is what you're saying, the totals don't add
10 up, depending on how we count those 47?

11 MR. T. COOK: I will say yes, in the sense
12 that I believe that he was short, and those were my
13 initial filings. I'm not exactly certain what sort
14 of stipulation you're trying to attach to that
15 but...

16 CHAIRMAN T. WHEELER: I'm not -- I'm not
17 trying to -- I just want to understand what role
18 you're asking us to do here?

19 MR. T. COOK: I'm asking you to look at the
20 lack of 500 signatures and rule that to be a direct
21 violation of statute.

22 CHAIRMAN T. WHEELER: Fair enough. Anything
23 else? Mr. McClamroch?

24 MR. T. McCLAMROCH: Is this my opening
25 statement or --

1 CHAIRMAN T. WHEELER: Yes.

2 MR. T. McCLAMROCH: -- my presentation of...

3 CHAIRMAN T. WHEELER: Could be, depending on
4 the questions.

5 MR. T. McCLAMROCH: Mr. Chairman, Members of
6 the Commission, I am Toby McClamroch from the law
7 firm of Bingham McHale. We represent Senator
8 McCain. Let me state very clearly that Senator
9 McCain submitted more than 500 signatures in the
10 first filing and in the second filing. The second
11 filing -- I shouldn't say that. There was a
12 supplement to it -- it didn't include over the 500
13 amount, I'll agree to that.

14 But in the first filing, he was over 500, and
15 it continues to be over 500 after the second
16 filing. I have two arguments. It's very short.

17 CHAIRMAN T. WHEELER: Let me stop you there,
18 and I apologize again. If -- as you sit here right
19 now, he says 498 and you say it's well over 500.
20 When you guys filed your first CAN-7 on
21 February 12th, you're telling us that when we open
22 that box, there's going to be more than 500
23 signatures attached to that?

24 VICE CHAIR A. LONG: From the 4th speak top
25 from the 4th. And you're saying there's only 498?

1 **MR. T. McCLAMROCH:** I'm saying that if you
2 count the amount that were certified at the county
3 level -- yeah, and that's what I want to address.

4 **CHAIRMAN T. WHEELER:** Well, that's what I'm
5 trying to understand. Okay. Fair enough.

6 **MR. T. McCLAMROCH:** Under -- Commissioner
7 Riordan had two arguments. The first one is
8 procedural, the second one is substantive. The
9 procedural argument is this, and I don't have this,
10 and I've never received a copy of it, but if you
11 look at the original challenge filed by Mr. Cook,
12 and could we take a look at that, because when
13 Mr. Cook says --

14 **CHAIRMAN T. WHEELER:** Hold on one second. You
15 don't have a copy of that?

16 **MR. T. McCLAMROCH:** I do not have a copy.

17 **CHAIRMAN T. WHEELER:** Did you give him a copy?

18 **MR. T. McCLAMROCH:** I mean I don't have the
19 attachment. I have the cover sheet. I don't have
20 the attachment.

21 **MR. T. COOK:** Which attachment?

22 **MR. T. McCLAMROCH:** But the important point is
23 Mr. Cook keeps referring to at the county level,
24 and that's very very important, because we need to
25 go over this -- this issue. What is attached to

1 that, I believe, is -- let's see -- the -- my point
2 is this, is that I believe that there is a
3 misunderstanding about the count based on the fact
4 that I think that there's been a reliance based
5 upon, you know, the -- well, it has a lot of
6 different names, but essentially the tracking
7 system.

8 The statewide voter registration system has a
9 module attached to it that provides for an
10 opportunity for the information at the county level
11 to be submitted directly to the state. That system
12 is in my view outside the -- the framework, the
13 statutory framework for how you're supposed to be
14 certified on a state level.

15 And let me explain this to you. The process
16 very simply is this, and it's set forth in Indiana
17 laws -- it's just cited, but it's essentially
18 3-8-3-1, which is this, the candidates are
19 responsible for going out between January 1st, and
20 then ten days before the filing deadline, to have
21 the petitions signed, and then ten days before the
22 filing deadline, for a declaration of candidacy,
23 they are to submit those to the county voter
24 registration boards and then -- for the purpose of
25 certifying, for the voter registration board to

1 certify those, that then happens. Those are
2 certified.

3 It is then the responsibility of the candidate
4 to take those petitions to the election division
5 here in Indianapolis. There is a module
6 that -- attached to the statewide voter system that
7 allows on a voluntary basis for the number of
8 certifications to be tracked up -- and the division
9 understands a lot more than I do, but that
10 information is reported to the division directly,
11 but it is voluntary and it is outside the statutory
12 framework.

13 And what's happened in this case is very clear
14 to me is that the -- this tracking system --
15 there's no question. When you look at the McCain
16 campaign and you look at Congressional District 4,
17 at the time that we filed our initial filing, that
18 reflected fewer than 500 votes. There's no
19 question about it.

20 CHAIRMAN T. WHEELER: You're saying that being
21 the tracking software?

22 MR. T. McCLAMROCH: Yes.

23 CHAIRMAN T. WHEELER: All right.

24 MR. T. McCLAMROCH: The voluntary nonstatutory
25 tracking software shows less than 500 voters -- no

1 question about it. But an important issue, there's
2 an important problem with that, which is it leaves
3 off Lawrence County, and Lawrence County shows 12
4 voters. We filed 12 voters, certified voters from
5 Lawrence County.

6 When we -- when we came to -- to this body, to
7 the Division and filed CAN-7 and the CAN-8 on
8 February 12th, 2008, we filed over 500 signatures.
9 And there is -- because what we did is we went to
10 the counties, collected the data, or not the data,
11 the petitions -- it was certified.

12 **CHAIRMAN T. WHEELER:** In other words,
13 collected the originals?

14 **MR. T. McCLAMROCH:** Brought them here and
15 filed them. If you -- if you read the press
16 release from -- that was released at the time of
17 the filing of Mr. Cook's and you read his blog and
18 you read the complaint, it's clear to me that
19 what's happened is -- what they've done is read
20 that tracking system.

21 The -- there is -- what then happened is that
22 we filed an additional 13 signatures from Morgan
23 County after we filed the original. There's no
24 question about it. I will agree, Mr. Cook is
25 correct. He's correct that we didn't -- when we

1 filed the CAN-7, we did not file with that the
2 original 500 signatures.

3 CHAIRMAN T. WHEELER: The second, when you
4 filed the second one?

5 MR. T. McCLAMROCH: That's correct. I mean
6 I'll stipulate to that. We didn't -- we didn't
7 file the -- all we did was supplement it with the
8 additional 13, which really leads me to my second
9 argument. If you -- under any set of
10 circumstances, the John McCain campaign filed with
11 the Election Division within the statutory
12 deadlines over 500 signatures.

13 The first time, and the second time, and then
14 total -- if you do the count today, and I've done
15 the count, and I've put up my end and I said I was
16 under a -- I've done the count. I've read the -- I
17 have not, Commissioner Riordan, looked at the
18 originals because they've been impounded under that
19 tape right there, but what I have done is read all
20 of the copies, about the count is 514.

21 CHAIRMAN T. WHEELER: Which count?

22 MR. T. McCLAMROCH: The count today, after
23 filing the supplemental, filing is 514. And so my
24 substantive argument very simply is that we
25 have -- I have verified that -- I don't -- I think

1 it's important to note that in my view that
2 when -- I don't think there's any other evidence of
3 any amount other than 514 that's before you because
4 I've done -- I've done that count. And so the
5 substantive argument is that's what you have,
6 legally filed.

7 Now as it relates to Tippecanoe County, I just
8 simply want to make this point, that Tippecanoe
9 County has a different system than other counties,
10 but under the statutory construction law of the
11 State of Indiana, specifically, found at Indiana
12 Code Section 1-1-4-1, when any body has the -- has
13 three members, then they are authorized to act by
14 the action of two of the members.

15 And what we have is -- you're right, there may
16 not be a Democrat, but is John McCain really
17 supposed to go to Tippecanoe County to check -- is
18 he supposed to check, as a matter of policy, to go
19 to Tippecanoe County and verify the signatures of
20 the certifying members of the voter registration
21 board.

22 I mean I -- I respect Mr. Cook's argument.
23 It's a very -- it's a very good argument. It's a
24 substantive argument. We can't go to Tippecanoe
25 County and verify those signatures, and I don't

1 think the law -- if you'll look at the law set
2 forth at 3-8-3-3 -- I mean it requires us to have
3 the signatures verified. It does not require us to
4 go to the legislature and change the law with
5 respect to bipartisanship -- bipartisan approaches
6 to signatures.

7 So that's the response. I mean I just think
8 the evidence in front of you is that we have over
9 500 signatures on a timely basis.

10 COMMISSION MEMBER S. RIORDAN: Mr. Chairman, I
11 have a question or two?

12 CHAIRMAN T. WHEELER: Please.

13 COMMISSION MEMBER S. RIORDAN: Mr. McClamroch,
14 you have not looked at the originals?

15 MR. T. McCLAMROCH: I have not looked at the
16 originals.

17 COMMISSION MEMBER S. RIORDAN: So you don't
18 know whether any of the Tippecanoe County or 4th
19 Congressional District petitions are photocopies of
20 each other? You can't say that because you've not
21 seen the originals?

22 MR. T. McCLAMROCH: Well, I can say that I
23 have reviewed all the signatures in Tippecanoe
24 County because I -- I had heard that there was an
25 issue with respect to Tippecanoe County and so I

1 went through all of those, and there are 81 voters
2 that have been certified from Tippecanoe County,
3 and it's my observation there are no duplicates
4 among those -- among those, and that they all seem
5 to have valid signatures.

6 I mean I -- again, I have copies of the
7 originals, but each one of them has signatures in
8 the line designated for the voter registration
9 body.

10 COMMISSION MEMBER S. RIORDAN: Has anyone from
11 the McCain campaign had an opportunity to review
12 the original petitions filed with the candidate's
13 campaigns?

14 VICE CHAIR A. LONG: After they were filed?

15 COMMISSION MEMBER S. RIORDAN: After they were
16 filed? Has anyone from the McCain campaign had an
17 opportunity -- I asked Mr. Cook the same question,
18 since his challenge is filed, and he's had a chance
19 to look at the originals, and my question is has
20 anyone from the McCain campaign done that?

21 MR. T. McCLAMROCH: No. I want to make sure
22 I'm not -- say that again?

23 COMMISSION MEMBER S. RIORDAN: The challenge
24 was filed -- well, it's been filed a couple of
25 times. Has anyone -- since those original

1 petitions were brought to the Election Division,
2 has anyone from the McCain campaign had an
3 opportunity to sit down and take a look at the
4 originals, if you know?

5 **MR. T. McCLAMROCH:** Well, I haven't looked at
6 the originals and I don't know -- I don't have
7 knowledge that anyone else has.

8 **COMMISSION MEMBER S. RIORDAN:** I guess I would
9 ask whether anyone from the Division is aware of
10 anyone from the McCain campaign coming and taking a
11 look at the original petitions?

12 **MS. L. BARNES:** Mr. Chairman, Mr. Simmons and
13 myself were present on February 21st, the morning
14 of February 21st, the morning after the challenge
15 were filed. There were two individuals here
16 reviewing the original petitions. I'm not sure if
17 those individuals are members of the McCain
18 campaign.

19 **COMMISSION MEMBER S. RIORDAN:** Do you know who
20 they were?

21 **MS. L. BARNES:** Yes. And I have prepared an
22 affidavit regarding the chain of custody and where
23 and who reviewed the petitions. My personal
24 knowledge that I have was that it was Beth Gallion
25 (Phonetic) and Jay Kenworthy -- I'm not sure if

1 they are members of the McCain campaign, but they
2 have reviewed the original petitions after the
3 first challenge was filed.

4 **COMMISSION MEMBER S. RIORDAN:** And I know that
5 we're still in the opening statement and we're not
6 submitting evidence, but if the Chair is inclined
7 to allow testimony, those are two persons who I
8 would like to hear from, but I guess we'll get to
9 that.

10 **CHAIRMAN T. WHEELER:** Let me ask a preliminary
11 question because I'm still trying to sort out the
12 number thing with the original petition. Now
13 Mr. Cook, did you review the original petitions?

14 **MR. T. COOK:** I have not had an opportunity to
15 do so, no.

16 **CHAIRMAN T. WHEELER:** So where did you come up
17 with your 498?

18 **MR. T. COOK:** I would assume that I've looked
19 at the same version of the scanned copies of the
20 petition that is were provided to the Senator
21 McCain counsel.

22 **CHAIRMAN T. WHEELER:** But when you -- were the
23 scanned copies available when you filed your
24 objection? What did you rely upon when you filed
25 your objection?

1 **MR. T. COOK:** I reply -- I relied upon a -- A)
2 the -- my initial, keeping with interest, was from
3 the aforementioned electronic tracking because I
4 had been tracking the gubernatorial signature
5 process. There was a hand count done by a
6 Democratic activist who assured me that there were
7 less than 500, and that was at that point the
8 information that led me to file my challenge.

9 **CHAIRMAN T. WHEELER:** Someone did a hand count
10 of the originals?

11 **MR. T. COOK:** Yes.

12 **CHAIRMAN T. WHEELER:** So this 498 number
13 was -- you -- you didn't count the originals? You
14 haven't looked at the originals?

15 **MR. T. COOK:** I've looked at scanned copies,
16 which to my knowledge and it appears to the
17 knowledge of Senator McCain's counsel are exact
18 facsimiles of.

19 **MR. T. McCLAMROCH:** Mr. Chairman, I have to
20 object to anyone providing evidence on based on an
21 unnamed Democrat.

22 **CHAIRMAN T. WHEELER:** I understand. We're
23 still -- we're still at the preliminary statement
24 phase. I'm just trying to see...

25 **MR. T. COOK:** I don't think that that is

1 evidence in any way. I think that you should look
2 at the actual ballots themselves and the scanned
3 copies that obviously -- apparently everyone here
4 has seen.

5 CHAIRMAN T. WHEELER: And I clearly asked you
6 that question. I said what was the basis of your
7 original objection, because as I understand it, the
8 McCain contention is there's an issue with the VR
9 system which is the Lawrence County numbers, one of
10 the VR systems.

11 MR. T. COOK: Yeah.

12 CHAIRMAN T. WHEELER: If you look at the VR
13 system, the numbers will add up.

14 MR. T. COOK: I don't know anything about the
15 VR system, and quite frankly, I don't see what it
16 has to do with this challenge.

17 CHAIRMAN T. WHEELER: I'm sure you -- what you
18 said just a moment ago is that you started with the
19 VR system?

20 MR. T. COOK: Yeah, I don't think how I
21 started really has any bearing on this entire
22 complaint.

23 CHAIRMAN T. WHEELER: And so I'm just -- when
24 you filed this petition, this 498 number, this
25 isn't based on your count?

1 MR. T. COOK: I -- I did count them, yes.

2 CHAIRMAN T. WHEELER: But at the time you
3 filed, it wasn't based on a count? You didn't have
4 a count? You were relying on somebody else?

5 MR. T. COOK: That's true.

6 CHAIRMAN T. WHEELER: All right. Similar to
7 what Mr. McClamroch said he was relying upon, upon
8 the campaign's count, but I guess he has now gone
9 back and counted them personally; correct, and you
10 have done the same thing; correct?

11 MR. T. COOK: That's true.

12 CHAIRMAN T. WHEELER: And you have two
13 different numbers?

14 MR. T. COOK: Apparently.

15 CHAIRMAN T. WHEELER: And that's -- that's the
16 problem I'm trying to figure out, okay.

17 COMMISSION MEMBER S. RIORDAN: But one thing I
18 want to make clear that you're in agreement,
19 neither one of you has seen the original petitions
20 with the ink signatures?

21 MR. T. McCLAMROCH: I have not.

22 COMMISSION MEMBER S. RIORDAN: Okay.

23 CHAIRMAN T. WHEELER: Let's stop there. We'll
24 take a brief five-minute recess, and then we'll get
25 on to allow...

1 (A recess was taken.)

2 **CHAIRMAN T. WHEELER:** All right. I'm going to
3 call the commission meeting back to order. I
4 appreciate you indulging my caffeine addiction.
5 And through bipartisanship, I would note that I did
6 buy Commissioner Long's drink as well.

7 **VICE CHAIR A. LONG:** I suggested that he might
8 have to form a PAC.

9 **CHAIRMAN T. WHEELER:** I'll formally report my
10 buck 25 contribution. Mr. Cook, since you have the
11 burden of proof in this particular case, it's my
12 understanding we've had opening statements and now
13 you're prepared to present evidence on the two
14 issues that you've raised. Let me ask one
15 preliminary question?

16 **MR. T. COOK:** Yes, sir.

17 **CHAIRMAN T. WHEELER:** With respect to -- do
18 you dispute the fact that they filed 13 additional
19 signatures afterwards?

20 **MR. T. COOK:** No.

21 **CHAIRMAN T. WHEELER:** Okay. Your only
22 concern -- so if I take that 498, you have -- add
23 the 13, they're over 500?

24 **MR. T. COOK:** Well, I would dispute adding
25 them together.

1 **CHAIRMAN T. WHEELER:** No, I know you disagree
2 with adding them together. But if -- if the
3 Commission were to find that that was one pleading,
4 they would be over 500?

5 **MR. T. COOK:** To my knowledge, as far as those
6 being validly certified at the county level,
7 there's nothing wrong with those 13 additional
8 signatures. It's not my view that they should be,
9 but obviously...

10 **CHAIRMAN T. WHEELER:** No, I understand. I
11 understand.

12 **VICE CHAIR A. LONG:** To understand, if you
13 ever get -- the goal in making these decisions, try
14 to limit the issues down to as many agreed upon
15 issues and limit the contested issues so we make
16 sure we can focus on that because I -- I want to
17 make sure that I'm clear on this, too. You think
18 the original filing at 498?

19 **MR. T. COOK:** Yes, sir.

20 **VICE CHAIR A. LONG:** And then you think of
21 that 47 should be disqualified for certification?

22 **MR. T. COOK:** Yes, sir.

23 **VICE CHAIR A. LONG:** And those all relate to
24 Tippecanoe County?

25 **MR. T. COOK:** Yes, sir.

1 **VICE CHAIR A. LONG:** No other than county in
2 the district -- well, it seems to be from the
3 arguments that the only counties that maybe we need
4 to look at before the evidentiary would be
5 Tippecanoe, Morgan, and maybe Lawrence -- is
6 Lawrence in the -- I should know this -- Lawrence
7 is in the 4th District -- yes?

8 **MR. T. COOK:** Part of it.

9 **CHAIRMAN T. WHEELER:** Part of it.

10 **VICE CHAIR A. LONG:** It used to be in the 8th,
11 that's why -- yeah. Okay. So I mean I think Mr.
12 McClamroch you agree that those three counties, the
13 signatures would be the ones that would be
14 necessary to look at -- well, maybe not Lawrence,
15 you're just saying Lawrence needed to be included
16 in the count, and I believe Mr. Cook says -- but
17 are you -- do you know anything about Lawrence?

18 **MR. T. COOK:** I -- I have no knowledge of
19 Lawrence. My -- my knowledge was scan copies of
20 what I was given as the entire 4th -- well,
21 actually, all of -- I believe they're on the
22 Secretary of State's website now, those are the
23 exact copies that I viewed that now the general
24 public...

25 **CHAIRMAN T. WHEELER:** Let me follow up. So

1 you're not challenging the 13 Lawrence county
2 signatures other than they shouldn't be aggregated
3 because they were filed the next day?

4 MR. T. McCLAMROCH: No.

5 MR. T. COOK: The second filing was from
6 Morgan County.

7 CHAIRMAN T. WHEELER: I'm sorry. You're
8 correct. I apologize.

9 VICE CHAIR A. LONG: That's what I understood.

10 CHAIRMAN T. WHEELER: You're not challenging
11 Lawrence; correct?

12 MR. T. COOK: No.

13 VICE CHAIR A. LONG: I thought Mr. McClamroch
14 was saying that Lawrence was not included in the --
15 in the 498 count.

16 CHAIRMAN T. WHEELER: No, it -- I believe it
17 was. He was saying it wasn't counted on the VR,
18 the voter registration figures.

19 MR. T. McCLAMROCH: No, it...

20 CHAIRMAN T. WHEELER: Okay. Maybe I
21 misunderstood.

22 MR. T. McCLAMROCH: Same difference. in my
23 mind, it's the same difference. It's exactly the
24 same thing.

25 CHAIRMAN T. WHEELER: Was Lawrence in your 498

1 count, or do you know?

2 MR. T. COOK: I -- I -- I -- honestly, I would
3 assume it was if it's within the 4th District. I
4 counted all of -- all of the petitions that
5 are -- on the back they have to stipulate what
6 district, congressional district they're for, and
7 all of the ones that were listed from being in the
8 4th District, I counted, and those added up to 498.
9 That's how I came to...

10 MR. T. McCLAMROCH: When did you do that?

11 MR. T. COOK: It's been over the last couple
12 of a weeks, a couple of times, to be completely
13 honest with you.

14 MR. T. McCLAMROCH: Okay.

15 VICE CHAIR A. LONG: I guess I'm not clear on
16 what Lawrence -- what's the significance of
17 Lawrence County?

18 MR. T. McCLAMROCH: Okay. Let me go back over
19 it again. First of all, let me just say this in
20 response to your first question. I don't agree
21 that we should look at or need to look at any of
22 the signatures or any of the certifications.

23 I mean I think that once we -- I think a
24 presidential, a candidate for President of the
25 United States has a right to rely on a

1 certification from a county clerk -- I'm sorry,
2 from a voter registration board, and as long as
3 they have a certified -- a certification from the
4 voter registration board, in my view, it is not our
5 responsibility to go back and verify beyond what's
6 been certified to us.

7 But the -- but the import of Lawrence County
8 is this, it is my strong view from having seen
9 the -- the various communications by Mr. Cook, by
10 the Democratic committee, that what they relied on
11 when they --

12 **MR. T. COOK:** Well, they is a pretty inclusive
13 term, I would argue.

14 **CHAIRMAN T. WHEELER:** You're going to get a
15 shot.

16 **MR. T. McCLAMROCH:** That's right. That's
17 right. But what they were -- relied upon are the
18 nonbinding voluntary -- well, let's say
19 experimental module produced by the statewide voter
20 registration system, and that -- that -- almost all
21 of the counties participated in that and did report
22 directly to the Election Division, because it's to
23 the Election Division, the number of voters that
24 were certified, and they all did that.

25 And the -- there are different counts, by the

1 way. It's not -- it's not 498 -- one was 491, then
2 the second one was 496. But in the complaint, if
3 you look at the counts at that time, there were
4 491, 496, those did not -- in that voluntary
5 system, did not include Lawrence County.

6 COMMISSION MEMBER D. DUMEZICH: May I -- may I
7 pose...

8 CHAIRMAN T. WHEELER: Which was 13 more votes;
9 correct?

10 MR. T. McCLAMROCH: Yes.

11 COMMISSION MEMBER D. DUMEZICH: May I pose a
12 question about this? Forty-seven votes which are
13 in question based on the certification status, does
14 anyone know if the toggle was turned on for those
15 47 people and what came up from the state?

16 MR. T. McCLAMROCH: What was it? I didn't
17 understand the question.

18 COMMISSION MEMBER D. DUMEZICH: You don't --

19 MR. T. McCLAMROCH: From Tippecanoe --

20 COMMISSION MEMBER D. DUMEZICH: Yes.

21 CHAIRMAN T. WHEELER: -- County, 47 votes...

22 COMMISSION MEMBER D. DUMEZICH: Those 47
23 votes, was the toggle turned on? Were they listed
24 as...

25 MR. T. McCLAMROCH: Yes. They were filed the

1 first time -- they were absolutely filed.

2 COMMISSION MEMBER D. DUMEZICH: And that
3 toggle was -- and that module was turned on for
4 those 47?

5 MR. T. McCLAMROCH: Yes.

6 COMMISSION MEMBER S. RIORDAN: I'm -- I'm
7 concerned that the SVRS petition update that
8 everybody could have access to every day is really
9 not -- doesn't have the significance in Mr. Cook's
10 filing.

11 You are -- you have told the commission, Mr.
12 Cook, that your filing is based on numbers -- as
13 you sit here today, you are telling us that you
14 have reviewed facsimiles of those documents?

15 MR. T. COOK: Yes.

16 COMMISSION MEMBER S. RIORDAN: And in your
17 first filing, you say there are 498 in the 4th
18 Congressional District?

19 MR. T. COOK: To my knowledge, yes.

20 COMMISSION MEMBER S. RIORDAN: And -- and have
21 you looked at petitions from Lawrence County?

22 MR. T. COOK: I -- I -- if they were within
23 the 4th District, I did.

24 COMMISSION MEMBER S. RIORDAN: Okay. So he's
25 not --

1 **MR. T. COOK:** I've honestly looked at these so
2 many times.

3 **COMMISSION MEMBER S. RIORDAN:** -- saying that,
4 he's just basing his argument on what we would find
5 on the Secretary of State's website, because I
6 think we all agree that that's not accurate. We
7 have many counties that don't print out and don't
8 submit their -- they don't subscribe to that
9 system.

10 I think what he's saying that if you count
11 those up, you will find less than 500 validly
12 certified. So I don't think the SVRS argument is
13 really even on the table.

14 **CHAIRMAN T. WHEELER:** So what you're saying in
15 response to what Commissioner Long was asking is
16 Lawrence is irrelevant right now?

17 **COMMISSION MEMBER S. RIORDAN:** I think
18 that -- I think that -- I mean that's my view.

19 **CHAIRMAN T. WHEELER:** Right.

20 **VICE CHAIR A. LONG:** I just was trying to
21 understand how Lawrence fit into it because Mr.
22 McClamroch alluded to and I knew it had to be
23 significant, or otherwise, he wouldn't have. And
24 it didn't register in my mind he's functioning at a
25 level higher than I do. I have to sometimes plow

1 that down twice.

2 MR. T. McCLAMROCH: Commissioner Long, do you
3 mind if I respond to that? I just want to --
4 because I -- actually, to Commissioner Riordan from
5 this standpoint, the reason this is important with
6 respect to the voter registration system is this, I
7 think we are the only ones providing testimony as
8 to what the count was on the first filing. I feel
9 very strongly about that.

10 CHAIRMAN T. WHEELER: Who's the -- who's
11 the --

12 MR. T. McCLAMROCH: Yes, he has done the count
13 in the last two weeks.

14 CHAIRMAN T. WHEELER: When you say we, who is
15 the we you're referring to?

16 MR. T. McCLAMROCH: I'm talking about -- I'm
17 talking about me.

18 CHAIRMAN T. WHEELER: Okay.

19 MR. T. McCLAMROCH: I'm talking about I have
20 counted them -- oh, you're talking about on the
21 first one?

22 CHAIRMAN T. WHEELER: You used the word "we",
23 I want to make sure...

24 MR. T. McCLAMROCH: Because based on my
25 testimony...