

Indiana Recount Commission
Minutes
December 20, 2022

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

Members Absent: None.

Staff Attending: Philip Sicuso, Recount Director; J. Bradley King, Majority Counsel; Matthew Kochevar, Minority Counsel

Others Attending: Ms. Penny Githens; Mr. David Henry, Petitioner; Ms. Kendra Leatherman, State Board of Accounts; Counsel Courtney Milbank; Ms. Dee Owens; First Sergeant Brad Stille, Indiana State Police; Samantha DeWester, Counsel for Respondent.

1. Call to Order:

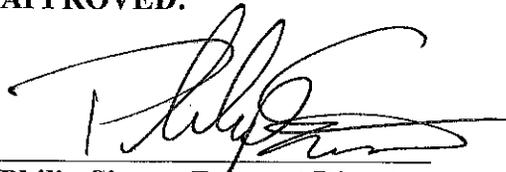
The Chair called the December 20, 2022 meeting of the Commission to order at 9:00 a.m. EST in Statehouse Room 404, 200 West Washington Street, Indianapolis.

2. Transaction of Commission Business:

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

The Commission adjourned its meeting at 10:15 a.m. EST.

APPROVED:



Philip Sicuso, Recount Director
Pursuant to Order 2018-1

In the Matter Of:
INDIANA RECOUNT COMMISSION PUBLIC SESSION

Transcript of Proceedings

December 20, 2022

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2 INDIANA RECOUNT COMMISSION
3 PUBLIC SESSION
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7 Conducted on: December 20, 2022
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11 Conducted at: Statehouse Room 404
12 200 West Washington Street
13 Indianapolis, Indiana
14

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16 A Stenographic Record by:
17 Maria W. Collier, RPR, CRR
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APPEARANCES

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INDIANA RECOUNT COMMISSION:

Holli Sullivan, Secretary of State - Chairman

Mark Wynn - Commissioner

Michael Claytor - Commissioner

INDIANA ELECTION DIVISION STAFF:

J. Bradley King - Majority Counsel

Matthew Kochevar - Minority Counsel

1 SECRETARY SULLIVAN: Okay. Good morning. We
2 can start now officially. I got excited to start
3 earlier. So I will call this meeting to order.
4 This is the meeting of the Indiana State Recount
5 Commission. We can call to order since all three
6 of our Commission are present, so there is a
7 quorum.

8 My name is Holli Sullivan. As your Secretary
9 of State, I serve as the chair and a member of the
10 Commission. I am joined by our commissioners,
11 Michael Claytor and Commissioner Mark Wynn.

12 Would either of you like to introduce
13 yourselves or make any opening remarks?

14 MR. WYNN: No. I'm fine.

15 MR. CLAYTOR: No.

16 SECRETARY SULLIVAN: Okay. The Election
17 Division of the Secretary of State's Office
18 provides our administrative support to the Recount
19 Commission and does a stellar job, so thank you.
20 Brad King serves as the majority counsel to the
21 Commission, and Matthew Kochevar serves as the
22 minority counsel.

23 Our court reporter today is Maria Collier --
24 thank you -- from Stewart Richardson Reporting. We
25 welcome you and we're thankful you're here.

1 Before we begin, I want to remind everybody,
2 on behalf of the court reporter, to please identify
3 yourself when you speak before you start, spell
4 your name, and identify yourself clearly and speak
5 very clearly. Please do not speak at the same time
6 as others are speaking.

7 We will go through, with Brad and Matthew, to
8 confirm the posting of our meeting with the Open
9 Door Law. So, Brad, would you please provide the
10 Commission with a report concerning the compliance
11 of the Commission with the Open Door Law
12 requirements for our meeting today.

13 MR. KING: Madam Chairman, members of the
14 Commission, on behalf of myself and Mr. Kochevar,
15 we certify that notice was properly posted in
16 accordance with the Indiana Open Door Law for this
17 meeting of the Indiana Recount Commission.

18 SECRETARY SULLIVAN: Thank you.

19 Matthew, do you have any other comments?

20 MR. KOCHEVAR: I do not.

21 SECRETARY SULLIVAN: We will proceed with the
22 introduction of our recount director and our deputy
23 director, Phil Sicuso.

24 Mr. Sicuso, would you please provide the
25 Commission with a report regarding the actions you

1 and others have taken with the petition for recount
2 filed on the November 8th election for Indiana
3 House District 62.

4 MR. SICUSO: Absolutely. Thank you, Madam
5 Chair and members of the Commission. My name is
6 Philip Sicuso, S-i-c-u-s-o.

7 On November 28, 2022, at 9:33 a.m., a verified
8 petition for recount of the election for State
9 Representative for District 62 was filed with the
10 Indiana Election Division by Petitioner David
11 Henry, the chairman of the Monroe County Democratic
12 Party, along with a required deposit of \$430 set
13 forth by statute. This petition is included behind
14 the first tab in your binders.

15 No other candidate in that election or party
16 chairman of a county within House District 62 filed
17 either a cross-petition for a recount in that race
18 or a petition for a contest proceeding in that
19 election before the noon deadline on the date set
20 by statute.

21 Upon review of Mr. Henry's petition, I
22 determined that the recount petition complied with
23 all required elements of state law for this matter
24 and, on November 29, 2022, issued Order 2022-11
25 granting the petition and directing the Indiana

1 State Police to impound the relevant material and
2 equipment, to serve notice of the filing of this
3 petition on the candidates, and to provide proof of
4 service. These documents are found behind the
5 second tab in your binders.

6 Also on November 29, 2022, Samantha DeWester
7 filed an appearance on behalf of respondent,
8 Mr. Hall. This document is found behind the third
9 tab in your binder. As of today, no attorney has
10 filed an appearance on behalf of Mr. Henry.

11 After consultation with the parties and
12 coordination with the Indiana State Police and the
13 State Board of Accounts, I issued order 2022-12 on
14 December 6th for a pre-recount inspection to be
15 conducted in accordance with the Commission's
16 guidelines beginning on December 7, 2022, in
17 Jackson, Brown, and Monroe Counties. This document
18 is found behind the fourth tab of your binders.
19 The inspections were completed in accordance with
20 Order 2022-12.

21 The State Board of Accounts proceeded to
22 conduct the recount in House District 62 in
23 accordance with state law, the guidelines adopted
24 by the Commission as amended on June 6th of this
25 year, and the manual developed by the State Board

1 of Accounts, which is incorporated by reference
2 into those guidelines. The guidelines in the
3 manual are found behind the fifth tab in your
4 binders.

5 On December 9th, counsel for respondent filed
6 a waiver of the requirement to the guidelines for
7 the recount to include a count of ballots for each
8 candidate by vote center as well as by precinct.
9 Mr. Henry joined in this waiver on December 10th.
10 These filings are found behind the sixth tab in
11 your binders.

12 The State Board of Accounts conducted the
13 recount in Jackson, Brown, and Monroe Counties
14 beginning on December 11th and concluding on
15 December 13th. The State Board of Accounts has
16 provided a report setting forth the results of this
17 recount, which is found behind the seventh tab in
18 your binders.

19 Following the conclusion of the work of the
20 State Board of Accounts, I requested that the
21 parties advise the Commission regarding their
22 intentions regarding the recount petition. On
23 December 16th, counsel for respondent withdrew all
24 respondent's objections and submitted a motion to
25 dismiss the recount petition. The petitioner

1 responded that he would not be filing a motion to
2 dismiss but wished to discuss two exhibits in this
3 matter at today's Commission hearing. A copy of
4 these communications is found behind the final tab
5 in your binders.

6 I have been advised by both counsels that,
7 under Indiana Code 3-12-11-12 -- and I'll summarize
8 partial quotes here from statute -- whenever a
9 motion to dismiss a petition for a recount is filed
10 with the State Recount Commission or is made by a
11 member of the Commission, the Commission shall rule
12 on the motion to dismiss before ordering or
13 continuing with the recount. The motion to dismiss
14 must state that the petitioner or cross-petitioner
15 has failed to comply with this chapter and
16 specifically identify the requirement that the
17 petitioner or cross-petitioner has failed to comply
18 with.

19 In this instance, the motion filed by the
20 respondent does not state that the petitioner
21 failed to comply with this chapter or specifically
22 identify the requirement that the petitioner has
23 failed to comply with. If the Commission denies
24 the pending motion to dismiss, then the Commission
25 must continue with the recount process as set forth

1 in state law and the guidelines until or unless a
2 further motion to dismiss is filed.

3 That concludes my report.

4 SECRETARY SULLIVAN: Thank you.

5 MR. WYNN: Based on your report and the
6 reading of the statute, I believe it would be
7 appropriate to move to deny the motion to dismiss.

8 MR. CLAYTOR: Second.

9 SECRETARY SULLIVAN: Okay. So we have a
10 motion on the table and a second, so we need to
11 take a vote of the three Commission members of
12 denying -- or accepting your motion. So all those
13 in favor?

14 MR. WYNN: Aye.

15 SECRETARY SULLIVAN: Aye.

16 MR. CLAYTOR: Aye.

17 SECRETARY SULLIVAN: So we have a passed
18 motion in favor of dismissal -- to deny dismissal.
19 I'm sorry. Okay. So upon the denial of the motion
20 to dismiss, I will -- back to Mr. Sicuso.

21 MR. SICUSO: I think I'd suggest that Brad
22 Stille from the State Police speak next with
23 respect to the State Police's actions for the
24 impoundment and protection of the materials while
25 under impoundment.

1 Would it be okay to use the podium?

2 SECRETARY SULLIVAN: Yes.

3 MR. STILLE: My name is Brad Stille. I'm the
4 district investigative commander at the Bloomington
5 post. My last name is pronounced Stille, and it's
6 spelled S-t-i-l-l-e. I hold the rank of first
7 sergeant there at the Bloomington District, which
8 is also known as District 33.

9 On November the 29th, our agency received the
10 impoundment order. We already had a heads-up that
11 that was coming, and at that point we sent officers
12 to the three counties involved in this recount,
13 being Monroe, Brown, and Jackson County, which
14 falls out of our district, but that county was
15 handled by First Sergeant Roger Drew out of Seymour
16 post.

17 To kind of give you an overview, when we
18 receive this impoundment order, we basically take
19 custody just as any other piece of evidence that we
20 would handle. Officers went to those locations
21 with crime scene techs. We photographed the
22 election material. We obtained keys for all the
23 doors where no one else had access. The doors were
24 taped and sealed shut; in addition, postings
25 authorizing no entry without State Police presence;

1 and also, twice a day, each one of those doors
2 containing election material was checked by our
3 uniformed officers.

4 Once the recount began, our officers were
5 present, at least one uniformed, if not uniformed,
6 and a detective or part of our criminal staff,
7 investigations staff, to oversee whatever material
8 was moved, for example, in Brown County from one
9 locked location to another. Those materials were
10 observed by our officers. And then anytime,
11 including today, where election material was
12 transported, it was handled just as we would
13 evidence. It was sealed in envelopes, initialed,
14 witnessed, and then signed over, as in today, over
15 to the State Board of Accounts, which they have
16 possession of here today.

17 MR. SICUSO: Madam Chair, I'd like to thank
18 the State Police. We had to work with them
19 closely, and one day I think we had three or four
20 involved at one time. So it was really a great job
21 and we appreciate it.

22 SECRETARY SULLIVAN: Thank you.

23 MR. SICUSO: With your permission, Madam
24 Chair, I think the State Board of Accounts would be
25 appropriate to speak next. I think my

1 understanding, Counsel -- correct me if I'm
2 wrong -- but with the next step procedurally we
3 should be looking at the findings of the State
4 Board of Accounts at least for purposes of all the
5 precincts that have no disputes remaining and
6 proceed from there.

7 MS. LEATHERMAN: Good morning, Madam Chair,
8 members of the Commission. My name is Kendra
9 Leatherman. It's K-e-n-d-r-a, Leatherman is
10 L-e-a-t-h-e-r-m-a-n. And I am the general counsel
11 and recount lead for the State Board of Accounts.
12 I'll give a brief overview for everyone of the
13 processes that we went through to complete the
14 recount for House District 62.

15 As the recount director said, after we had a
16 pre-count meeting, that's really our opportunity to
17 get an understanding of the types of voting
18 material and the ballots and what we're going to
19 need to do in terms of procedures to produce a
20 manual count. We started sorting on the 8th in
21 Jackson County, and then we -- we started sorting
22 on the 8th in Jackson County, and on the 9th, we
23 went to Monroe County. On the actual 12th, we
24 started the real recount in Jackson County. We
25 spent half a day there and moved to Brown County,

1 where we were able to count six precincts before we
2 concluded our day. And the next day, on the 13th,
3 we concluded Brown County in a half a day and then
4 were able to count six precincts in Monroe, which
5 means on the 14th we concluded all of the count,
6 which was 21 precincts at the time, and that
7 required us to manually tabulate around 15,000
8 ballots.

9 I just would like to say for the benefit of
10 the group that I'm really proud of our team. There
11 was a lot of work to be done. And we had a lot of
12 veterans on this recount, some that had done it
13 before, but also had a lot of individuals that
14 hadn't participated in a recount before, and they
15 really did a great job.

16 So after the actual manual count of the
17 recount was finished, our final numbers for who we
18 will call Candidate 1, Penny Githens, is 12,963,
19 and our final tally for Dave Hall, which we called
20 Candidate 2 during the proceedings, was 13,037
21 votes.

22 That's basically the conclusion of our work.
23 Is there anything else we need to talk about?

24 MR. SICUSO: No. With respect to the
25 proceedings and the guidelines, I think what we

1 might need to do now -- and, Counsel, please guide
2 us here -- is take a vote on the findings for each
3 precinct that have undisputed ballots, and then we
4 can proceed to the precincts that have some
5 disputed ballots still on the record.

6 MR. CLAYTOR: Madam Chairman, I would move
7 that we accept the State Board of Accounts' tally
8 in all precincts listed in their exhibit that do
9 not have disputed ballots.

10 MR. WYNN: And I would second.

11 SECRETARY SULLIVAN: Thank you. So we will
12 take a vote on the motion on the floor. All those
13 in favor say "Aye."

14 MR. WYNN: Aye.

15 SECRETARY SULLIVAN: Aye.

16 MR. CLAYTOR: Aye.

17 SECRETARY SULLIVAN: So we have a motion that
18 has passed. And thank you for your participation.

19 MS. LEATHERMAN: The tally for precincts for
20 undisputed -- the tally for the candidates for the
21 undisputed precincts would be for Candidate 1,
22 Penny Githens, 9,272 and for Candidate 2, Dave
23 Hall, 7,812.

24 MR. SICUSO: So now I think all we have left
25 is a handful of precincts with some disputed

1 ballots. We've removed all the ballots that have
2 been withdrawn by the respondent. At this time I
3 don't know if it's the Chair's preference to allow
4 the petitioner to call to attention any of the
5 ballots that they wish to discuss or, Counsel, if
6 you have other ideas with respect to proceeding.

7 MR. KOCHEVAR: Yes. Madam Chair and members
8 of the Commission, so according to Chapter 2,
9 Section 20 of our guidelines, what would be
10 appropriate is to pick a county and then start
11 going through, it would be suggested, in
12 alphanumeric order or as listed on the exhibit from
13 the State Board of Accounts each precinct in that
14 county that has disputed ballots.

15 Per the guidelines, what would be first done
16 would be to take a vote to accept the count of all
17 the undisputed ballots that are listed here in the
18 exhibit to lock those in, and then it would be
19 appropriate to call on, in this case, the
20 petitioner to make their case, their presentation
21 on why they made that dispute and essentially what
22 their ask of the Commission is. Respondent would
23 then be given an opportunity to be heard. And then
24 there would be a chance for a motion, discussion by
25 the Commission to vote on that dispute and

1 essentially what should be done about it, should
2 that ballot be counted, whatever the result of the
3 dispute in either way.

4 I'm going to then turn it over to Co-Director
5 King, the majority counsel, as he is the expert
6 counsel that has actually done a general recount --
7 I have not; this is my first time -- to add on to
8 and make any corrections to my understanding of the
9 guidelines.

10 MR. KING: Madam Chair, members of the
11 Commission, thank you, Matthew, for that very
12 helpful and kind introduction. Of course, the
13 Commission just completed its action with regard to
14 the undisputed ballots, and so the Commission now
15 moves into the phase of resolving disputes.

16 Under the guidelines, the Commission begins by
17 considering disputes raised by the petitioner,
18 Mr. Henry, and, I think, in the roughly
19 alphanumeric order that Matthew described. It
20 would be helpful for State Board of Accounts to
21 identify the specific precincts in that order so
22 that the parties can then come forward and present
23 their evidence and arguments to the Commission.

24 SECRETARY SULLIVAN: So at this point, State
25 Board of Accounts will present precincts with

1 ballots challenged by the petitioner, Mr. Henry,
2 and then go through those individually with
3 counsel. So we will turn it back over to Kendra.

4 MS. LEATHERMAN: As requested, we will start
5 in Brown County, and the first precinct with a
6 dispute by Candidate 1 is Hamblen 2, and it is
7 Exhibit No. 17.

8 MR. SICUSO: Would it be permissible to allow
9 the petitioner time today to decide whether they
10 wish to continue their dispute? Because I believe
11 State Board of Accounts and I personally would be
12 fine to move forward if there's no further dispute.

13 SECRETARY SULLIVAN: So call on Mr. Henry.
14 Would you like to --

15 MR. HENRY: Pardon me, Madam Secretary. One
16 moment.

17 Madam Secretary, as a point of order, in our
18 response today for the two questions we wish to put
19 before the Commission, this particular precinct
20 wasn't one of those. So as a point of order, are
21 we going to have to verify each of these as we go
22 through to say there's no challenge?

23 MR. KOCHEVAR: Yes.

24 MR. KING: Madam Chair, if I could, and
25 Matthew may wish to add, the guidelines permit the

1 consolidation of ballots that have essentially
2 identical issues. And I think in the communication
3 received that you referenced, there was no explicit
4 withdrawal by yourself regarding those disputes,
5 and so if you wish to withdraw any disputes at this
6 time for this and ballots that fall into that same
7 issue, then the Commission could certainly
8 entertain that motion and act accordingly.

9 MR. KOCHVAR: Yes. Essentially Counsel
10 King's and my advice to the recount director when
11 this was discussed about Mr. Henry's email was to
12 take a conservative view of it to essentially say
13 that he just identified those two particular issues
14 that he was going to bring up but didn't want to
15 foreclose on any of the other precincts where they
16 raised disputed ballots until such a time that he
17 informed now the Commission that they're willing to
18 waive those disputes and allow those ballots to be
19 added into the totals based on the findings.

20 So my assumption will be anything that was
21 counted as valid would be added into the recount
22 total; anything that would be invalid, they would
23 be an invalid ballot and not part of the count. So
24 we wanted to make sure that they definitively said
25 which ones they wanted to do, and I think the

1 opportunity is now for them to identify which
2 precincts they're willing to forego, which should
3 then cut down on the amount of issues that have to
4 be discussed.

5 MR. KING: I would agree entirely with
6 Mr. Kochevar's remarks and think it might be
7 helpful in this case for State Board of Accounts to
8 identify the ballots that fall into this
9 classification that may be subject to withdrawing
10 of the dispute.

11 MR. SICUSO: I think it would be easier if the
12 petitioner identified which ballots he wishes to,
13 and then we could eliminate through the process
14 there. We could refer to his email or give him an
15 opportunity now to clarify which ballots he wishes
16 to discuss.

17 MR. HENRY: So as a point of order, we're on
18 Hamblen 1, Form 1; is that right?

19 SECRETARY SULLIVAN: Mr. Henry had a question
20 on what precinct.

21 MR. SICUSO: We can go wherever you'd like to
22 go.

23 MR. HENRY: So which precinct was on the floor
24 when we started this?

25 MS. LEATHERMAN: We were actually at

1 Hamblen 2.

2 MR. HENRY: Hamblen 2.

3 MR. SICUSO: But if you'd like to go
4 Hamblen 1, that's fine.

5 MR. HENRY: Okay. So should I address the
6 podium?

7 SECRETARY SULLIVAN: That would be great.

8 MR. HENRY: Thank you. Madam Secretary,
9 members of the Commission, my name is David Henry,
10 H-e-n-r-y. I'm chairman of Monroe County
11 Democratic Party and petitioner in this recount.

12 I'd like to raise, based on the discussion we
13 just had, the precinct Hamblen 1 in Brown County,
14 Form 1. That was not included in the initial
15 response, but given the opportunity to discuss
16 Hamblen 1 today, I'm going to avail myself of that
17 opportunity.

18 In that particular Form 1, the challenge that
19 we have here is it appears there are 12 more
20 ballots found on page 3 than on page 1 of that
21 form. This was not something that we were planning
22 on testing today, but with the opportunity to
23 address it, we feel that, as we discussed in our
24 other petition pieces, that it's an example it is a
25 near impossibility of figuring out who voted for

1 whom in a particular precinct given the form.

2 So that would be the question I would put
3 before the body to consider rejecting Hamblen 1 due
4 to the report out as to whether the 12 ballots
5 reported are 12 more on page 3 than on page 1. I
6 do not have a copy of it, but it appears that
7 counsel does. Thank you.

8 MR. SICUSO: So the one point where I could
9 just raise, my understanding of what you're
10 indicating is you're not challenging particular
11 ballots, but the overall precinct as a whole.

12 MR. HENRY: Correct, due to the fact that we
13 have a form that suggests there are 12 more ballots
14 on page 3 than page 1 of that particular exhibit.

15 MR. KOICHEVAR: So there is a reference to
16 this, at least how I view it -- and I'll turn it
17 over to Co-Director King -- in statute in regards
18 to throwing out an entire precinct's count in a
19 recount. That can be found at Indiana Code
20 3-12-11-17.7(c), as in cat. It provides -- and I'm
21 just going to read it verbatim because it's only
22 two subdivisions. It provides that "If: A party
23 to the recount presents evidence of fraud,
24 tampering, or misconduct affecting the integrity of
25 the ballot within a precinct; and (2) the

1 commission determines that the fraud, tampering, or
2 misconduct within that precinct was so pervasive
3 that it is impossible for the commission to
4 determine the approximate number of votes that each
5 candidate received in that precinct; the commission
6 may order that none of the ballots from that
7 precinct be counted."

8 So the first step here would be for petitioner
9 who is raising that to present evidence of fraud,
10 tampering, or misconduct that affects the integrity
11 of the ballots within that precinct.

12 I'll turn it over to Mr. King to add on.

13 MR. KING: Thank you, Mr. Kochevar. I agree
14 entirely with your analysis of the pertinent
15 statute. And just for procedurally, since we're
16 starting this process, this is an opportunity for
17 Mr. Henry, the petitioner, to make his arguments on
18 this point and then attorney for respondent,
19 Ms. DeWester, would have an opportunity to address
20 the Commission on these issues as well.

21 MR. HENRY: To further our discussion, based
22 on the citation of the Indiana Code in Chapter
23 3-12-11-17.7, the matter of misconduct we find if
24 we're going to have the guidelines in a particular
25 precinct in Brown County, that it is one of many

1 exemplars that we will talk to in terms of
2 contested pieces of today's petition on trying to
3 figure out who voted for who in Brown County, which
4 is the question on the table. The form indicates,
5 in our view, a discrepancy.

6 It is not an indication of misconduct by the
7 Recount Commission or the director. In fact, if
8 not for their work in identifying some discrepancy
9 in that township, we would be unaware of the defect
10 that occurred in the election -- or potential
11 defect that occurred in the election.

12 So in terms of the remedy for that, I think
13 Mr. Kochevar has identified a different remedy for
14 that. However, given this was an opportunity to
15 present and discuss this particular precinct today
16 rather than be fully briefed on it just raises a
17 consideration point as to evidence of overall
18 potential misconduct in the Brown County Clerk's
19 Office in the execution of this election.

20 But that concludes my remarks on that
21 particular statement, and, of course, we'll give
22 counsel an opportunity to respond to that. Thank
23 you.

24 SECRETARY SULLIVAN: Ms. DeWester, would you
25 like to respond?

1 MS. DeWESTER: Sure. Good morning. My name
2 is Samantha DeWester. I am counsel for the
3 respondent. S-a-m-a-n-t-h-a, D-e-W-e-s-t-e-r.

4 In response to the claims of having a precinct
5 thrown out in its entirety, there was no contest
6 that was filed here challenging or requesting
7 precincts or a review of any type of election.
8 This was a manual recount, which was done.

9 Referring to missing ballots and things that
10 could allude to fraud, as you all know, Commission,
11 the level of fraud, misconduct is extremely high.
12 Missing ballots don't raise to that level, and to
13 disenfranchise an entire precinct of individuals
14 who voted because they can't find ballots makes
15 zero sense whatsoever.

16 So based on the statutes that you previously
17 cited, the fact that no contest was filed, the fact
18 that this doesn't raise to the level of fraud, and
19 even still -- I've alluded to in our
20 communications, even if we just give you those, you
21 still don't win this election. So I would ask that
22 the Commission deny any request to toss out an
23 entire precinct or, by and large, an entire swath
24 of voters due to a missing ballot issue.

25 SECRETARY SULLIVAN: Thank you.

1 Commission members, do you have any questions
2 of counsel?

3 MR. WYNN: I don't.

4 MR. CLAYTOR: If I could, I don't know if this
5 is a statement or a question, but I'll have our
6 counsel address it. Procedurally, there was no
7 dispute filed on Hamblen 1. We voted and accepted
8 the vote in Hamblen 1 in our prior motion.

9 MS. LEATHERMAN: I don't want to interrupt
10 you, Commissioner Claytor, but I'm feeling
11 compelled to.

12 MR. CLAYTOR: Okay.

13 MS. LEATHERMAN: To be clear, the petitioner
14 did not have any disputes in Hamblen 1. They did
15 not identify any exhibits in Hamblen 1. However,
16 there is a ballot that we determined invalid at the
17 request of the recount director, and so that has
18 been identified as Exhibit 20. And that is not
19 necessarily a dispute, but it is something for the
20 Commission to consider. And it does appear on our
21 exhibit list, Form 6. So I don't know if that
22 clarifies.

23 MR. SICUSO: And I can elaborate a little bit
24 on that. There's a handful of ballots that we
25 found that clearly under statute, and the citation

1 is 3-12-1-13, which are absentee ballots that state
2 statute clearly requires have two initials on the
3 ballot. If we found those ballots and a party did
4 not challenge those, I made an exhibit and
5 considered it an invalid ballot. It was not
6 counted. So that is the only ballot that was, in
7 this precinct, withheld and therefore not
8 officially voted on earlier when you accepted the
9 others.

10 MR. CLAYTOR: I understand that. However, the
11 motion on the floor in the past was to accept the
12 tally in all precincts where there was no disputed
13 ballot.

14 MR. SICUSO: Right.

15 MR. CLAYTOR: That was not a disputed ballot.
16 In order to open this precinct, I believe we'd have
17 to reconsider our prior motion to change something
18 in that precinct. But I have not heard anything
19 about finding ballots, which we find in a whole lot
20 of recounts. I've been in a lot of recounts, and
21 that's not an unusual occurrence. This seemed like
22 an unusual county in terms of ballots gone, finding
23 ballots, whatever else. That's not fraud directly
24 unless there's evidence presented of fraud. I did
25 not hear any evidence presented of fraud.

1 And therefore, I would like to make a motion
2 to deny the petitioner's request to take away this
3 precinct. I don't know if that's properly worded
4 as a motion.

5 MR. KING: Madam Chair, members of the
6 Commission, I think Commissioner Claytor has
7 expertly and accurately framed the motion.

8 MR. WYNN: Just as it relates to this
9 precinct?

10 MR. CLAYTOR: Correct.

11 MR. WYNN: I would second.

12 SECRETARY SULLIVAN: Okay. So we have a
13 motion on the floor to deny a motion to rescind
14 this precinct. So I would ask that our Commission
15 members vote, and for those that vote in favor,
16 please say "Aye."

17 MR. WYNN: Aye.

18 SECRETARY SULLIVAN: Aye.

19 MR. CLAYTOR: Aye.

20 SECRETARY SULLIVAN: So we have that 3 to 0 to
21 not move forward on Hamblen 1.

22 So at this time, I believe, Mr. Henry, do you
23 have -- or do you need -- because he was going to
24 share with us Hamblen 2.

25 MR. HENRY: So I guess, again, point of order

1 for the body so I'm understanding our process, the
2 petitioner only has the two exhibits we presented
3 otherwise today. And so, again, procedurally I'm
4 happy to address those as we get to them in this
5 recitation going through each precinct, but until
6 that point, we have no other exhibits to present on
7 precincts in Brown County other than the two that
8 were presented to the Commission.

9 MR. SICUSO: Would it be appropriate to see if
10 the petitioner would like to formally withdraw any
11 other ballots that were previously challenged and
12 then move on to the other two he'd like to address?

13 MR. KING: Yes.

14 MR. HENRY: The petitioner makes that motion
15 to withdraw on the other precincts in Brown County
16 except for the two I wish to address today.

17 MR. WYNN: I would move that we accept
18 petitioner's request.

19 MR. CLAYTOR: Do we need to accept the tally
20 in each of those?

21 MR. KING: Correct.

22 SECRETARY SULLIVAN: And then we would add
23 that to what we've already accepted. So would you
24 provide --

25 MR. SICUSO: I think it's hard to identify

1 exactly which ones until we know what he'd like to,
2 so if you could identify which precincts and
3 county.

4 MR. HENRY: As referenced in the communication
5 to the director on Friday, looking at the precinct
6 Jackson 4 in Brown County, Exhibit 6, and the
7 Van Buren precinct in Brown County, Form 1, not the
8 ballots specifically but Form 1.

9 MR. SICUSO: So then I think what that means
10 is all precincts other than Jackson 4 and -- what
11 was the other one?

12 MR. HENRY: Van Buren, Form 1 in its entirety.

13 MR. SICUSO: -- Van Buren 1 in Brown County
14 should be accepted as valid ballots accepted by the
15 State Board of Accounts.

16 MR. WYNN: I would amend my motion to grant
17 the request and to accept those ballots.

18 MR. CLAYTOR: I'll second.

19 SECRETARY SULLIVAN: So we have a motion on
20 the floor. All Commission members in favor please
21 vote "Aye."

22 MR. WYNN: Aye.

23 SECRETARY SULLIVAN: Aye.

24 MR. CLAYTOR: Aye.

25 SECRETARY SULLIVAN: Thank you. And proceed

1 to those two that are in conflict, then.

2 MR. HENRY: Thank you. And thank you again
3 for your time this morning. I hope we expedited
4 some of this today with that motion. But we do
5 have two other matters that I'd like to present.
6 For the record, my name is David Henry. I'm the
7 petitioner and chair of the Monroe County
8 Democratic Party.

9 I'm joined today by Democratic candidate for
10 House District 62 Penny Githens. Our manager for
11 the recount and my observer, Dee Owens, who is here
12 as well, attended all of the live proceedings as
13 relates to the recount efforts last week.

14 I want to thank you for consideration of the
15 exhibits and their implications and ensuring that
16 every lawful vote that was cast was counted in the
17 2022 election in Brown County.

18 Our first exhibit is from Jackson 4 in Brown
19 County, and that's Exhibit 6. The ballot was
20 declared invalid as a non-Election Day ballot due
21 to a lack of two sets of initials. And if you view
22 the ballot, you'll see a mark at the top of the
23 initial box like a mark you would make with a pen
24 that the ink stopped freely flowing but, in our
25 view, continued at the end of that mark and came

1 through at the end. We contend, in this particular
2 ballot, there is a mark there and, therefore, the
3 ballot should be counted in favor of Penny Githens
4 in that race.

5 However, we discussed a little bit of the
6 challenge that we faced in the overall activities
7 of Brown County, this lack of initials as an
8 exemplar of a larger problem we saw in Brown County
9 that started after the work of the SBOA where the
10 top line not initialed on those ballots cost
11 Ms. Githens numerous votes, Mr. Hall too, that top
12 line in that particular county because the clerk of
13 courts in that county is a Republican, there's a
14 Republican box on the initial box, and it's missing
15 on too many ballots, Democratic ballots mostly.

16 Now, the question is really maybe one or two
17 mistakes on Election Day, someone misses an
18 initial, that's a mistake, maybe that's a Mulligan.
19 But what we're looking at here in some cases in
20 Brown County is nine ballots that had a missed
21 initial in that particular -- in the particular
22 precinct of Van Buren. And this could be
23 considered a pattern. We think it is a pattern of
24 either gross negligence or willful ignorance, i.e.,
25 the training of the Election Day clerk, or an

1 activity that would suggest misconduct in the
2 particular precinct.

3 The second exhibit -- so if we set aside the
4 first exhibit, just looking at the ballot for its
5 initial marks and then considering that on its own
6 merit, it takes us really to the second exhibit,
7 which is the Van Buren precinct in Brown County,
8 Form 1. The challenge we have is whether or not
9 there was disenfranchisement of voters in Brown
10 County as indicated by this missing initial set.
11 But the other challenge we face is one that the
12 SBOA discovered in its work, which is the
13 misplacement and loss of 17 paper ballots that were
14 unable to be verified through the manual recounts
15 the petitioner asked for.

16 Now, on Tuesday, the commission -- or the
17 committee director -- I'm sorry -- the recount
18 director and the SBOA arrived in Brown County. The
19 initial find in the cage, the impounded ballots
20 that were caged and impounded by State Police, was
21 there were 261 ballots missing that morning that
22 could not be counted -- or found in the correct
23 envelopes there that morning. Ms. DeWester,
24 counsel for the respondent, and Ms. Owens, my
25 observer, called down to the Brown County jail cage

1 to discuss the essentially missing 261 ballots.

2 Later that morning, the SBOA staff went
3 through every box, every bin, every bag looking for
4 the ballots for Brown County. More were found in
5 wrong precinct bags, while one vote that was never
6 pulled from an absentee ballot envelope was found.
7 That vote was never counted on November 8th. More
8 ballots were found, bringing the loss down to 91
9 later that morning.

10 SBOA then had to go through all the ballot
11 bags and sort trying to find the additional missing
12 ballots. It took them nearly an hour to find 39
13 provisional ballots, which were still attached to
14 their envelopes, well, mostly attached to their
15 envelopes. Four had no envelopes at all, and our
16 understanding is the Brown County clerk had the
17 rest attached as a matter of protocol and they were
18 thrown out. So this relates again to the precinct
19 Form 1 in Van Buren.

20 So after all ballots that should be in the
21 cage were allegedly identified, Director Sicuso,
22 Ms. DeWester, Ms. Owens, Jennifer Gauger of SBOA,
23 and two State Police officers then drove around
24 Brown County to county government office buildings
25 searching the counsel chambers, searching the

1 commissioner's office to try to find the last of
2 the 17 votes in case the missing ballots might be
3 found there. The head of the county election board
4 in Brown County, Mark Williams, provided a rundown
5 of the procedures from election night, which
6 included the transporting of ballots in the trunks
7 of various cars to the jail for storage.

8 I want to be clear at this point that, without
9 the recount as petitioned and the work of the SBOA
10 and the recount director, we would not have known
11 about the defects that seem to be occurring in
12 Brown County where ballots are misplaced,
13 mislabeled, mis-stored, and, in the case of 17
14 paper ballots, lost. What that means for our
15 petition today is that, in asking for a manual
16 recount, we do not have a manual recount of 17
17 ballots. Those are 17 voters whose voices will not
18 be heard in this recalculation, tabulation of those
19 results.

20 Ms. Owens repeatedly raised objections to the
21 development of the last 17 ballots not being found,
22 asking to have the ballot copies printed from the
23 machines -- in this county they're optical scan --
24 only to be told by the recount director that those
25 really aren't legal ballots; those are a picture of

1 the ballot. They're not the actual tangible
2 ballots to be counted. And I agree with that
3 assessment, but then we can't count those ballots
4 in that precinct. We then asked about printing
5 from the poll books to see what was missing and
6 were denied.

7 So the bottom line here is that the votes were
8 counted or they wouldn't be counted in Election Day
9 tallies, so that's not sufficient to meet the
10 request of granting the petition, which, by the
11 way, was not cross-petitioned by respondent, to
12 have a variation on a manual recount of the paper
13 ballots. So we don't really know those intents of
14 those 17 ballots. Those are votes that are already
15 lost in the cycle.

16 We find that this is an ongoing problem with
17 the Brown County Clerk's Office, which many of the
18 issues in Brown County are known as far back as
19 June 2020. The primary in 2020 had 122 absentee
20 ballots that were without proper initials in that
21 election. The County Board of Elections voted to
22 accept those at the time. The clerk did retain an
23 attorney in that particular case, which I'm sure
24 you're aware of that instance. But it is yet
25 another example in another election cycle where

1 Brown County failed to produce an accurate number
2 of the count in that election. I just have a
3 feeling that my successors as Monroe County party
4 chair in the future for the next decade will be
5 appearing before this body asking a lot of
6 questions about what went on in Brown County that
7 day.

8 Everywhere recount personnel turned, voters
9 were disenfranchised in the state, either through
10 lost votes, uninitialed ballots, or wrongly sorted
11 provisional ballots. Candidates may have gained or
12 lost votes, but we really don't know at the end.
13 The larger issue is the misconduct that this
14 activity and the missing initials and missing
15 ballots suggest going on in Brown County, not
16 supervising, not training their personnel in the
17 loss of ballots, not properly storing ballots, and
18 the list goes on here.

19 We understand, as Ms. DeWester suggests, that
20 disenfranchising votes is a serious question, but
21 we would say that any voter's right to cast a
22 ballot and have it counted, whatever the party, is
23 not a partisan question. And so our petition still
24 reflects the spirit of why we filed it, which is to
25 ensure every lawful vote is counted in an election.

1 The gross negligence and willful ignorance that are
2 on display here in Brown County make that very hard
3 to address.

4 So therefore, as has been mentioned, there
5 are, of course, remedies under Indiana Code, severe
6 as it may seem, that the Commission is entitled to
7 take when it comes to misconduct in elections in a
8 county. Bottom line is the Van Buren precinct,
9 Form 1, we're never going to know what that
10 precinct really looks like for a true count. And I
11 would hope that we would set aside the interest of
12 expediency on this matter and take a look at that
13 county and that precinct with more scrutinizing
14 eyes today.

15 In any case, I thank you all for your time in
16 order to ensure that lawful votes are cast and
17 counted in our state. It's hard work. It's been
18 hard work for this Commission, for the folks that
19 work in elections county by county. But with those
20 two exhibits, that concludes my statements and
21 remarks. Thank you.

22 SECRETARY SULLIVAN: Thank you.

23 MR. HENRY: As a point of order, Madam
24 Secretary, is it possible to submit public comment
25 or letters in this hearing or is that typically not

1 the case?

2 SECRETARY SULLIVAN: Typically not.

3 MR. HENRY: Thank you.

4 SECRETARY SULLIVAN: At this time we will have
5 Ms. DeWester and then Commission directors.

6 MS. DeWESTER: Thank you. There's a lot to
7 unpack in that argument and lots of legal terms
8 thrown around with the assumption, I think, of
9 confusing some people on this Commission. I have
10 done, as a lot of you know, many, many, many
11 recounts statewide and locally. There are
12 discrepancies found, as there were in this
13 election, in every single county we counted. There
14 are always discrepancies that are found, whether
15 electronic or by human error.

16 I am kind of befuddled by the fact that we
17 call nine ballots missing initials a pattern out of
18 about 12,000. I think it is our duty to make sure
19 that people's votes are counted and the law is
20 upheld pursuant to Title 3, which we have done
21 here. I don't think it's a pattern.

22 Brown County is an easy target because there
23 were some odd issues. And let's be clear. We
24 didn't go in searching, guns ablazing, looking for
25 ballots. We were walked over to look at the office

1 where they were counted to make sure nothing was
2 there and driven right back to where the ballots
3 were impounded. This wasn't some hours-long,
4 day-long process. It was that simple. We were
5 looking for ballots, and all the meantime SBOA is
6 counting ballots and opening all of the sealed bags
7 that all election materials were put in.

8 And it started at 261. It was whittled down
9 to 17 because ballots were put, as you guys all
10 know, as an elected official, you know how -- if no
11 one's worked the polls here, you might want to
12 start there. Working the polls, people are
13 throwing ballots in what they think are the proper
14 bags. No one anticipates a recount. It's only
15 when you get into a recount you realize, wow, this
16 is a lot of work. It's a lot of work, a lot of
17 humans are involved, lots of hands touching, and
18 mistakes are made.

19 So we got down to 17 missing ballots. The
20 fact is, they were counted. They weren't not
21 counted. They were counted because they're in the
22 total. We just don't know if I could have
23 challenged any of those 17 because of the same
24 reasons that we've challenged the rest of them,
25 that they're missing initials.

1 And having people -- Brown County uses a
2 voting system. The clerk was challenged, and this
3 is her last term, is my understanding. They have
4 an electronic voting system they don't use. The
5 election board voted to use all manual, hence, why
6 there was so much paper, stacks of paper.

7 Every single precinct and every single county
8 looked at, there was some issue. Jackson County
9 had the smallest. It was an electronic issue.
10 There were two ballots that were counted. It was
11 two down, one from each of the candidates. Numbers
12 change in recounts. It happens. The machine
13 sucked one in twice. Did it not count? We don't
14 know. But that's why we do recounts.

15 And we have the numbers, we have the evidence,
16 we have the information. There is no gross
17 negligence. There is no misconduct fatal error on
18 behalf of the clerk of Brown County. We're talking
19 about nine misinitialed ballots and whether
20 they're -- to make it a partisan matter is giving a
21 lot of credit to people working on Election Day who
22 are extremely busy or sending out absentee ballots.
23 That would be a huge undertaking, and it's
24 reminiscent of a prior election nationwide here for
25 me.

1 At this point, I would ask you deny any of
2 their challenges throwing out any of those. And,
3 again, if I concede and say, fine, take all 17,
4 they still lose, so I'm unclear what we're doing
5 here. I'm not for disenfranchising voters. I'm
6 about following the law, which is what the SBOA
7 did, which is what we're doing here, and not
8 scaring everybody with some weird tactics of the
9 clerk and whomever in some gross negligence issue
10 in Brown County.

11 So I thank you for your time.

12 SECRETARY SULLIVAN: Thank you.

13 Mr. Sicuso, do you have any information on the
14 invalid?

15 MR. SICUSO: Yeah. So maybe we do start with
16 the first, Jackson 4, that first dispute, and go in
17 order from there, if that's all right. I have the
18 original ballot, if I can bring it up and approach,
19 and you guys can view the initial issue.

20 SECRETARY SULLIVAN: Sure.

21 MS. LEATHERMAN: So since it's been a while
22 since we talked about what the original
23 determination was, this was an absentee ballot, did
24 not have both signatures. We determined it was
25 invalid, and had it been valid, it would have been

1 for Candidate 1, Ms. Githens. So this is an
2 invalid ballot, so therefore, it is not in the
3 overall SBOA count, just to clarify.

4 MR. SICUSO: My understanding, if you were to
5 grant the petitioner's motion on this and to count
6 the ballot, it would have to be added in because we
7 counted it invalid and not in the tally.

8 MR. KOICHEVAR: Can I ask a question of the
9 recount director for clarity? Or actually also
10 Kendra. In the report, for Jackson 4, Van Buren 1
11 only, in your section of disputed invalid ballots
12 tallied by State Board of Accounts, you have
13 Jackson 4, four ballots for Githens, one ballot for
14 Hall in Jackson 4, and then two ballots for Githens
15 in Van Buren 1. Could you go through if -- they're
16 all a little bit different, but are they signature
17 issues or initialing issues?

18 MS. LEATHERMAN: I will look.

19 MR. KOICHEVAR: And the other question I have
20 is that the ballot that was passed around, how many
21 of those ballots are Election Day ballots, how many
22 of those are absentee ballots? And you can tell
23 because it will say "Absentee Ballot" on the ballot
24 itself. I believe that is an Election Day ballot
25 that you passed around, if I'm not mistaken.

1 MS. LEATHERMAN: It was not. They look all
2 the same. In Brown County, they all look the same.

3 MR. KOCHEVAR: They do?

4 MS. LEATHERMAN: They do.

5 MR. KOCHEVAR: There is no ballot that says
6 "Absentee Ballot" on it?

7 MS. LEATHERMAN: Not that I'm aware in Brown
8 County. They look all the same.

9 MR. KOCHEVAR: If I may, I only mention that
10 because the counting standards under 3-12-1 have
11 two different standards in regards to initials for
12 Election Day ballots and absentee ballots. Brad
13 can -- I don't remember the exact section of that
14 law, but when it comes to absentee ballots, if the
15 two sets of initials are not on there, under law,
16 they can never be counted, even by this Commission.
17 The state law just prohibits it.

18 When it comes to Election Day, while they may
19 be tossed out by the precinct election board when
20 they review the ballots and not count them, they
21 can be revived, and the Commission does have the
22 ability to count that ballot, even absent those two
23 initials.

24 But unless there was other documentation,
25 usually it's pretty clear on what's an absentee

1 ballot and what's a general election ballot
2 because, under law, it would say "Absentee Ballot"
3 on it at the top in its title, so we'd be able to
4 know. If that's not there, hopefully there was a
5 better organization by Brown County and we know
6 which ones are absentee ballots and which ones are
7 Election Day ballots because, if there are some
8 Election Day ballots there, then, yes, there can be
9 a vote, discussion if you want to take that from
10 being invalid to valid, but if not, then that may
11 be an issue.

12 MS. LEATHERMAN: Matt, can you hold up the
13 ballot itself. That one, I know there's been a lot
14 of discussion about how things were or were not
15 organized in Brown County. Our original documents
16 that I'm looking at here reference this particular
17 one as an absentee ballot, and I would say some
18 additional evidence to that, as you see, that one
19 has been folded like it's been folded in an
20 envelope. So, again, the Commission can decide
21 what they want, but for consistency's purposes, I
22 think that --

23 MR. SICUSO: This is about we identified, on
24 behalf of the recount director, as being invalid
25 because it was absentee and we had looked at that

1 mark not as initials. So I think we wanted to
2 bring it forth, and the petitioner obviously is
3 calling for a judgment call on that. If you
4 consider that an initial, I suppose it could be
5 counted as a ballot for Candidate Githens. My
6 determination is that it was not.

7 MR. KING: Madam Chair, members of the
8 Commission, I concur with Mr. Kochevar's analysis
9 and presentation. I'll just add for the record
10 that the statute that makes the absence of a
11 bipartisan set of initials a fatal error is
12 3-12-1-13. And so in the absence of initials of
13 both parties' representatives, then Mr. Kochevar's
14 statement is correct. The Commission could not,
15 under the law, count that ballot.

16 SECRETARY SULLIVAN: Thank you.

17 Any discussion from the Commission members?

18 MR. WYNN: No.

19 MR. SICUSO: So I think we would just need to
20 determine if we were to grant or deny the
21 petitioner's motion on this particular ballot to
22 count it.

23 SECRETARY SULLIVAN: So is there a motion from
24 the Commission to deny or grant the petition for
25 this ballot?

1 MR. WYNN: I would move to deny the petition
2 on this ballot.

3 MR. CLAYTOR: Second.

4 SECRETARY SULLIVAN: Thank you. We have a
5 motion on the floor open for vote to deny the
6 petition for this particular ballot. All those
7 Commission members in favor of the motion please
8 vote "Aye."

9 MR. WYNN: Aye.

10 SECRETARY SULLIVAN: Aye.

11 MR. CLAYTOR: Aye.

12 SECRETARY SULLIVAN: Thank you. It passes.

13 MR. SICUSO: I think the only remaining
14 matter, then, is with respect to the petitioner's
15 motion with respect to Form 1 for Van Buren 1 in
16 Brown County. My understanding is essentially it's
17 a similar argument to the first motion made by
18 Mr. Henry with respect to the entire precinct.

19 I can answer any questions that the Commission
20 may have with respect to what we and the State
21 Board of Accounts and the State Police did in Brown
22 County to locate missing ballots. Happy to go into
23 detail, but rather than repeat everything,
24 essentially the facts that were portrayed on the
25 record so far are accurate. We spent a substantial

1 amount of time.

2 And much credit to the State Board of Accounts
3 and the State Police for being available to have
4 people in multiple places at multiple times always
5 watching the impounded materials. It was really a
6 great effort to really search high and low for
7 every ballot. And ultimately, my sense was we left
8 there having done a very diligent search and count
9 of every single legal ballot we could possibly
10 find, and we had to call it at some point. So that
11 was my judgment. We moved on at that point and
12 closed those precincts.

13 And we do have one ballot. So there's one
14 ballot with respect to Van Buren 1 which was
15 challenged by the petitioner, and this is an
16 Election Day ballot which lacks two initials. But
17 I did not determine that to be invalid. We counted
18 it as a vote for Candidate Hall. So I can hand
19 this to you if you'd like, but our position was
20 that it should be a valid ballot. So my
21 understanding of what the petitioner is asking is
22 we might need to make a judgment on this particular
23 ballot as well. I can bring it up for your review.

24 SECRETARY SULLIVAN: Thank you. So, of
25 course, we have an Election Day ballot to consider

1 in Van Buren.

2 MR. KING: Madam Chair, members of the
3 Commission, following up on Mr. Kochevar's earlier
4 presentation with regard to this issue, Election
5 Day ballots are subject to different standards of
6 scrutiny than absentee ballots.

7 Under Indiana Code 3-12-11-12, with the
8 exception of the rule we just referenced, "...a
9 ballot that's been marked and cast by a voter in
10 compliance with this title but may otherwise not be
11 counted solely as the result of the act or failure
12 to act of an election officer may nevertheless be
13 counted in a proceeding under IC 3-12-11 unless
14 evidence of fraud, tampering, or misconduct
15 affecting the integrity of the ballot is presented
16 by a party to the proceeding. Subsection (c), "The
17 act or failure to act of an election officer is not
18 by itself evidence of fraud, tampering, or
19 misconduct affecting the integrity of the ballot."

20 SECRETARY SULLIVAN: Any discussion by
21 Commission members or Matthew?

22 MR. CLAYTOR: Madam Chair, first, just a
23 comment which will eventually address that ballot.
24 I've been doing recounts since '86, so I do have a
25 little bit of experience, and there's always found

1 ballots. There are almost never, or at least
2 rarely, missing ballots of more than one, if that.
3 I find 17 ballots just not existing, in the future,
4 you want to shake the clerk quite hard for
5 apparently their way of educating their people. I
6 find it outrageous that there are missing ballots
7 of any amount, but starting out with a large number
8 and carving it down to 17 is still outrageous. I
9 find that absolutely terrible.

10 I don't find it as evidence of Election Day
11 fraud. I would never in my life vote to throw out
12 a precinct unless, you know -- I better watch what
13 I say. I just wouldn't throw out a precinct unless
14 evidence of fraud is so pervasive that you can do
15 nothing else. And I think that's been this
16 Commission's view since I worked on this
17 Commission's recount in the 1986 elections.

18 And, therefore, I would move that we accept
19 the State Board of Accounts' count, their tally in
20 this particular precinct, and that motion would
21 assume then that that ballot counts. So my motion
22 is to accept the Board of Accounts' tally in this
23 precinct.

24 SECRETARY SULLIVAN: Thank you.

25 Anything to follow?

1 MR. WYNN: I would just agree. I don't
2 believe we have evidence on the record today of
3 fraud, tampering, or misconduct sufficient for us
4 to consider throwing out a precinct, and I think
5 the same standard applied to this ballot. I agree
6 with that analysis. I think that's where we are
7 today, so I would second the motion.

8 SECRETARY SULLIVAN: Thank you. We have a
9 motion on the floor for consideration of a vote to
10 accept SBOA's count for this precinct. All those
11 Commission members in favor of the motion please
12 vote by saying "Aye."

13 MR. WYNN: Aye.

14 SECRETARY SULLIVAN: Aye.

15 MR. CLAYTOR: Aye.

16 SECRETARY SULLIVAN: Thank you. So that has
17 passed, and I appreciate your comments. Thank you.

18 MR. CLAYTOR: Similarly, I'll make a motion
19 that we accept the State Board of Accounts' tally
20 in Jackson.

21 MR. WYNN: Second.

22 SECRETARY SULLIVAN: We have a motion to
23 accept the State Board of Accounts' tally for
24 Jackson 4. All Commission members in favor of the
25 motion please vote by saying "Aye."

1 MR. WYNN: Aye.

2 SECRETARY SULLIVAN: Aye.

3 MR. CLAYTOR: Aye.

4 SECRETARY SULLIVAN: Thank you.

5 MR. SICUSO: By my count, I think we've
6 covered all precincts at this point through various
7 motions, so, Counsel, next steps might include
8 certification of the election.

9 MR. KOICHEVAR: I'm going to recommend one more
10 motion. I'm going to, just so that it's clear for
11 the record, recommend that a motion be taken to
12 essentially add in the entire counts for all the
13 various Bloomington precincts that did have a
14 dispute by the petitioner that has since been
15 waived. I don't think you had a motion for that,
16 just so that we can get through Monroe. Then that
17 will make everything that has been considered valid
18 on the sheet to be part of the recount certificate.
19 So one more motion to cover all those remaining
20 precincts.

21 MR. KING: Madam Chairman, members of the
22 Commission, I would agree with Mr. Kochevar's
23 suggestion to make it utterly clear so there's no
24 ambiguity in the matter.

25 SECRETARY SULLIVAN: That's fair. So,

1 Commission members, do you have a motion?

2 MR. CLAYTOR: I'll move that we accept the
3 State Board of Accounts' tally in all precincts in
4 Monroe County.

5 MR. WYNN: Second.

6 SECRETARY SULLIVAN: Thank you. All
7 Commission members in favor of the motion on the
8 table please vote "Aye."

9 MR. WYNN: Aye.

10 SECRETARY SULLIVAN: Aye.

11 MR. CLAYTOR: Aye.

12 SECRETARY SULLIVAN: Thank you. Passed. And
13 I think we have then put forward all precincts in
14 the recount.

15 MR. CLAYTOR: Do we actually have a tally,
16 Kendra?

17 MS. LEATHERMAN: We do. Without too much
18 difficulty, I can go through it a few different
19 ways. Since we did the last one in total of all
20 nondisputes, how about I do a total tally of, I'm
21 going to call them, previously disputed precincts.
22 Does that make sense, by candidate?

23 For the previously disputed precincts, for
24 Candidate 1, Penny Githens, it was 3,691, and for
25 Candidate 2, Dave Hall, it was 5,225. And so,

1 therefore, it should match the original total we
2 discussed in our report, which was for Candidate 1,
3 Penny Githens, 12,963, for Candidate 2, Dave Hall,
4 13,037.

5 MR. KING: Madam Chair, members of the
6 Commission, the next item provided for by statute
7 is, in fact, certification of the recount of votes
8 cast. I have a document prepared that sets forth
9 the required elements for that certificate,
10 including the number of votes for each candidate
11 and the plurality for the candidate who received
12 the most votes.

13 So I will ask State Board of Accounts to once
14 more provide the numbers and then the plurality.

15 MS. LEATHERMAN: So you just want me to give
16 the total tally again, Brad?

17 MR. KING: Madam Chair, this would be for the
18 certificate that would be transmitted in accordance
19 with the statute to the House of Representatives
20 so, therefore, should be the final total in this
21 matter.

22 MS. LEATHERMAN: Okay. So final total for
23 Candidate 1, Penny Githens, is 12,963, and final
24 total for Candidate 2, Dave Hall, is 13,037.

25 MR. KING: Which would give a plurality of?

1 MS. LEATHERMAN: 74.

2 MR. CLAYTOR: Do we need a motion to adopt?

3 SECRETARY SULLIVAN: Okay. So thank you.

4 That is the conclusion of the recount, and we will
5 certify the election.

6 MR. CLAYTOR: Do we need to move to adopt?

7 MR. KING: Eventually.

8 SECRETARY SULLIVAN: Okay. So I'm advised by
9 counsels now that, upon the completion of our
10 recount for an election of office, Indiana
11 Code 3-12-11-18(a) requires that the Commission
12 "(1) make and sign a certificate showing the total
13 number of votes received in the precincts by each
14 candidate for election to office; and (2) state in
15 its certificate of the candidate who received the
16 highest number of votes in the precincts for
17 election to the office and by what plurality,"
18 which we just did; and "(3) file its certificate
19 with the Election Division."

20 Further, under Indiana Code 3-12-11-20, this
21 recount certificate supersedes all previous returns
22 made in any form of the recounted votes.

23 And finally, under Indiana Code 3-12-11-21, no
24 later than seven days after the State Recount
25 Commission completes a recount for state

1 legislative office, the Indiana Election Division
2 is required to prepare two certified statements
3 showing the number of votes that each candidate
4 received. The Election Division is then required
5 to transmit one statement to the candidate
6 receiving the highest number of votes for the
7 office. The Secretary of State is required to
8 deliver the other statement to the presiding
9 officer of the chamber in which the successful
10 candidate is to be seated, which in this case is
11 the Speaker of the House of Representatives. The
12 Speaker will then refer the statement for such
13 action as the House considers appropriate.

14 Okay. In light of the result of the recount
15 proceedings, there's a motion for the Commission to
16 find a refund of the --

17 MR. KING: Excuse me, Madam Chair. I think
18 for purposes of the record, I can briefly read in
19 the certificate, and then the Commission can move
20 on to the minor administrative matters to wrap up
21 its work.

22 This is the Certificate of Recount of the
23 Votes Cast for the Candidates for the Election of
24 Indiana State Representative, District 62, at the
25 November 8, 2022, General Election; In the Matter

1 of the Recount of the Election of Indiana State
2 Representative, District 62, David Henry, in his
3 capacity as Chairman of the Monroe County
4 Democratic Party, Petitioner, v. Dave Hall,
5 Respondent.

6 "Whereas, under Indiana Code 3-12-11-18(a),
7 the Indiana Recount Commission is required to make
8 and sign a certificate following the completion of
9 a recount;

10 "Whereas, this certificate: (1) is required
11 to show the total number of votes received in the
12 precincts by each candidate for election to the
13 office; (2) must state the candidate who received
14 the highest number of votes in the precincts for
15 election to the office, and by what plurality; and
16 (3) must be filed with the Election Division of the
17 Office of the Secretary of State of Indiana; and

18 "Whereas, the Commission has completed a
19 recount for the election of Indiana State
20 Representative, District 62;

21 "Now, therefore, the Indiana Recount
22 Commission certifies and orders the following:

23 "1. The Commission certifies that the
24 attached page (designated as 'State Board of
25 Accounts Tally of Ballots for Petitioned Precincts

1 Indiana House District 62 General Election
2 November 8, 2022'), which is incorporated by
3 reference in this Certificate, sets forth the total
4 number of votes received by each candidate for
5 election to the office of Indiana State
6 Representative, District 62, at the November 8,
7 2022, general election, being all of the precincts
8 included within District 62.

9 "2. The Commission certifies that Dave Hall
10 is the candidate who received the highest number of
11 votes in the precincts described in Paragraph 1 of
12 this Certificate, in that Candidate David Hall
13 received 13,037 votes, while Candidate Penny
14 Githens received 12,963 votes, being a plurality of
15 74 votes for Dave Hall.

16 "3. The Commission orders that the Recount
17 Director file this certificate with the Election
18 Division, as required by law.

19 "So certified and ordered, this 20th day of
20 December, 2010 [sic], the Indiana Recount
21 Commission."

22 MR. WYNN: I would move that we approve the
23 certificate as read.

24 MR. CLAYTOR: Second.

25 SECRETARY SULLIVAN: Thank you. We have a

1 motion on the floor to approve certificate. All
2 the Commission members in favor please signify by
3 saying "Aye."

4 MR. WYNN: Aye.

5 SECRETARY SULLIVAN: Aye.

6 MR. CLAYTOR: Aye.

7 SECRETARY SULLIVAN: Thank you. Okay. In
8 light of the certificate being approved, we will do
9 a little bit of housecleaning here about expenses.
10 In light of the result of the recount proceeding,
11 is there a motion for the Commission to find that a
12 refund of the cash deposit submitted by the
13 petitioner in this matter should not be granted?

14 MR. CLAYTOR: So moved.

15 MR. WYNN: Second.

16 SECRETARY SULLIVAN: Thank you. Is there any
17 discussion on that from the Commission?

18 MR. WYNN: No.

19 SECRETARY SULLIVAN: So no further discussion.
20 All in favor of approval of the motion signify by
21 saying "Aye."

22 MR. WYNN: Aye.

23 SECRETARY SULLIVAN: Aye.

24 MR. CLAYTOR: Aye.

25 SECRETARY SULLIVAN: The "eyes" have it. The

1 motion is approved.

2 Under Indiana Code 3-12-10-12, a person who
3 claims reimbursement of expenses related to the
4 performance of this Recount Commission must submit
5 a claim to the recount director not later than noon
6 60 days after today. So that is noon on
7 February 20th of 2023. This includes a claim
8 submitted by another state agency, a county or
9 individual, such as the deputy recount directors.
10 A claim submitted by the recount director must be
11 submitted to the Secretary of State.

12 In light of the conclusion of the recount
13 proceedings, is there a motion for the Commission
14 to adopt Order 2022-13, which rescinds
15 Order 2022-10, the previous impound order issued in
16 this matter?

17 MR. WYNN: So moved.

18 MR. CLAYTOR: Moved.

19 MR. WYNN: Second.

20 SECRETARY SULLIVAN: I think we're there. No
21 further discussion. All in favor of approval of
22 the motion please signify by saying "Aye."

23 MR. WYNN: Aye.

24 SECRETARY SULLIVAN: Aye.

25 MR. CLAYTOR: Aye.

1 SECRETARY SULLIVAN: The "ayes" have it, so
2 our motion is approved.

3 In conclusion here with our Recount
4 Commission, do any of the Commission members have
5 any concluding remarks or questions?

6 MR. WYNN: I would just thank the parties and
7 thank everyone who was involved in this for the
8 presentations today and the work done leading up to
9 today's hearing.

10 MR. CLAYTOR: I'd just like to thank the
11 recount director for doing another yeoman's job and
12 the State Board of Accounts. I've been in those
13 shoes, and you guys always do a great job.

14 SECRETARY SULLIVAN: I agree. Thank you so
15 much for all parties involved. Thank you for
16 quickly getting a lot of work done for the citizens
17 of Indiana. We all appreciate your work.

18 The Commission has concluded its business for
19 today's meeting. Is there a motion for the
20 Commission to now adjourn?

21 MR. WYNN: So moved.

22 MR. CLAYTOR: Second.

23 SECRETARY SULLIVAN: Those in favor say "Aye."

24 MR. WYNN: Aye.

25 SECRETARY SULLIVAN: Aye.

1 MR. CLAYTOR: Aye.

2 SECRETARY SULLIVAN: The "ayes" have it, and
3 our meeting is adjourned. Thank you.

4 (The Indiana Recount Commission Public Meeting
5 was adjourned at 10:15 a.m.)

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1 STATE OF INDIANA

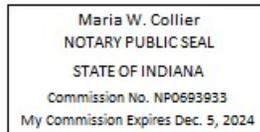
2 COUNTY OF HAMILTON

3 I, Maria W. Collier, a Notary Public in and
4 for said county and state, do hereby certify that the
5 foregoing public session was taken at the time and
6 place heretofore mentioned between 9:00 a.m. and
7 10:15 a.m.;

8 That said public meeting was taken down in
9 stenograph notes and afterwards reduced to typewriting
10 under my direction; and that the typewritten
11 transcript is a true record of the public meeting.

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my notarial seal this 5th day of
14 January, 2023.

15
16 *Maria W. Collier*



21 My Commission expires:
22 December 5, 2024

23 Job No. 177984

24

25

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