Motion carries for all of those motions other than the one recusal.

We just need a majority, I understand, for the motions. So let's vote on the cause number for which recusal has been stated.

All in favor of granting that motion for continuance say aye.

All opposed say nay.

The ayes have it. 3-0 vote with one abstention.

IEC MEMBER CLAYTOR: Thank you.

MS. TAYLOR: We also have a staff request.

CHAIRMAN BENNETT: I've got the administrative dissolution that we need to deal with. Does that anything to do with your request?

MS. TAYLOR: We also have the administratively dissolve.

CHAIRMAN BENNETT: Why don't we finish these items here and we'll handle yours, unless it's urgent at this point.

MS. TAYLOR: Doesn't matter to me.

CHAIRMAN BENNETT: Go ahead and do it now. What is your request?
MS. TAYLOR: We are asking to dismiss
Cause No. 2018-4943-128. It's Clark Dietz PAC.
Their 2018 pre-primary report was received in
our office but placed in the wrong mailbox so we
didn't get it and file-stamp it until a few days
after the deadline.

CHAIRMAN BENNETT: Is there a motion to
dismiss that matter?
IEC MEMBER CLAYTOR: So moved.
CHAIRMAN BENNETT: Is there a second?
IEC MEMBER KLUTZ: Second.
CHAIRMAN BENNETT: Any discussion?

Hearing none, all in favor say aye.

All opposed say nay.

The ayes have it. Motion carried. The
matter is dismissed.

At this time I would recognize our staff
to present information regarding administrative
dissolution of certain campaign financial
committees.

MS. TAYLOR: We have two committees to
administratively dissolve today. The first is
Hoosiers for West Bishop. It's the pink tab at
the back of your campaign finance section in
your binder. Hoosiers for West Bishop. Moving
forward, these committees have not filed reports
in over three years and they will both have
balances of less than $1,000. The chairman and
treasurer of each have been notified.

CHAIRMAN BENNETT: So none of these
committees have filed a report during the
previous three calendar years and the last
report shows cash on hand not exceeding $1,000?

MS. TAYLOR: Correct.

CHAIRMAN BENNETT: I move that the
Commission do the following:

1, make a finding there is no evidence
that any of these committees continue to receive
contributions, make expenditures or otherwise
function as a committee.

2, make a finding that according to the
best evidence available to the Commission the
dissolution of these committees will not impair
any contract or impede the collection of any
debt or judgment by a person.

3, make a finding that the prudent use of
public resources makes further efforts to
collect any outstanding civil penalty imposed
against these committees wasteful or unjust and,
therefore, any such penalties be waived.
4, administratively dissolve each of these committees.

Is there a second to this motion?

IEC MEMBER CLAYTOR: Second.

CHAIRMAN BENNETT: Any discussion?

All in favor of the motion say aye.

All opposed say nay.

The ayes have it. Motion carried.

Is anyone present to testify on any remaining campaign finance hearings scheduled for today? Hearing none, I declare the hearings on all remaining campaign finance matters scheduled for today are closed.

Is there a motion to impose the entire amount of the proposed penalty plus mailing costs in all remaining campaign finance enforcement actions?

IEC MEMBER CLAYTOR: So moved.

CHAIRMAN BENNETT: Is there a second?

IEC MEMBER KLUTZ: Second.

CHAIRMAN BENNETT: Any discussion? If not, all in favor of the motion say aye.

All opposed say nay.

Motion carried. Penalty is adopted.

At this time we'd like to take a short
break. We will hold this meeting in recess for
10 minutes. We will resume and move to the
issue of candidate challenge hearings.

(A short break was taken.)

CHAIRMAN BENNETT: I call the meeting of
the Indiana Election Commission back to order.

At this time I would like to ask for the
consent of the Commissioners to take a couple of
agenda items out of order. The first would be
the staff report and the second a motion to
withdraw candidate challenge.

Is there consent of the Commissioners to
taking that out of order?

IEC MEMBER CLAYTOR: Consent.

IEC MEMBER OVERHOLT: Consent.

IEC MEMBER KLUTZ: Consent.

CHAIRMAN BENNETT: Consent. Thank you.

At this time I'd ask for a staff report on the
status of candidate challenges.

MR. KING: Mr. Chairman, Members of the
Commission, noon August 4, 2018, is the deadline
fixed by statute for a CAN-1 challenge to be
heard by the Election Commission. I can report
that as of noon today no additional challenges
were filed.
CHAIRMAN BENNETT: Thank you. I understand there's a motion to withdraw a candidate challenge.

MR. KING: Yes, Mr. Chairman, I believe the Members have been furnished with a copy of a motion filed in the Jeffrey L. Chittister challenge to Cole Stutz by Mr. William Groth. The motion is to withdraw the challenge to the candidacy of Mr. Stutz as a candidate for Senate District 4.

CHAIRMAN BENNETT: Is there a motion to grant the motion to withdraw?

IEC MEMBER CLAYTOR: So moved.

CHAIRMAN BENNETT: Is there a second?

IEC MEMBER KLUTZ: Second.

CHAIRMAN BENNETT: Is there any discussion? Hearing none, all in favor of granting a motion to withdraw candidate challenge say aye.

All opposed say nay.

The ayes have it. Motion granted.

Candidate challenge under the Stutz matter is withdrawn.

Which brings us to the adoption of candidate challenge hearing procedures for
today. In the past the Commission has followed certain procedures for conducting candidate challenge hearings, and I move that the Commission use the following procedures today.

After the candidate challenge is called, the hearing will be begin by recognizing Election Division staff to provide information about the documents provided to Commission Members, including candidate challenge forms and the notice given to the candidate and challenger. Unless there is objection, the documents provided to the Commission by the Election Division will be entered into the record of this meeting.

After the Election Division staff completes its presentation, the challenger will be recognized first. The challenger or the challenger's representative may present their case for no more than ten minutes, unless the Commission votes to allow additional time for the presenter. Commission Members may ask questions during a presentation, but the time spent answering these will not be counted against the presenter's time. The Election Division may signal the Chair when a presenter's
time is up.

If the presenter offers additional documents or other physical evidence not previously received by the Commission, then the original must be provided to the Election Division staff, which is Mr. Simmons, to preserve for the record.

The candidate or the candidate's authorized representative will be recognized following the last presentation by a challenger. The candidate may present their case for no more than ten minutes, unless the Commission votes to allow additional time for the presenter.

Following presentation by a challenger the candidate may cross-examine the challenger. Following the presentation by a candidate, a challenger may cross-examine the candidate. The cross-examination in all cases is limited to two minutes, unless the Commission votes to allow additional time. The cross-examination must be limited to questions regarding statements made by the presenter.

Following the presentation by a candidate, the challenger may present a rebuttal of no more than two minutes. The Commission may
1 dismiss the cause of any challenger who has
2 failed to appear or testify before the
3 Commission.
4
5 Is there a second to my motion for the
6 Commission to adopt these procedures for today's
7 candidate challenge hearings?
8
9 IEC MEMBER CLAYTOR: Second.
10
11 CHAIRMAN BENNETT: Is there any objection
12 from Commission Members or any individual
13 present to these procedures?
14
15 Hearing none, is there further discussion
16 by the Members?
17
18 At this time all in favor of adoption say
19 aye.
20
21 All opposed say nay.
22
23 The ayes have it and the motion is
24 approved.
25
26 We'll begin with consideration of Cause
27 No. 2018-122: In the Matter of the Challenge to
28 Christina M. Espar, Candidate for Prosecuting
29 Attorney of LaPorte County, 32nd Judicial
30 Circuit.
31
32 The Election Division has provided a copy
33 of the Candidate Filing Challenge form. A copy
34 of the notice is given to the candidate and
1 challenger in this matter and documentation of
delivery. The challenge and related
documents are found behind the orange tab in
your binder.

An appearance has been entered in this
matter by the challenger, Mr. James E. Kimmel of
Lake Law Office, and an appearance on behalf of
the candidate has been entered by Mr. Tom John
and Mr. Derek Molter of Ice Miller. These
documents are included in your binder.

We will now open the public hearing on
Cause No. 2018-122. I would recognize Mr.
Kimmel for presentation of the challenge.

(All prospective people intending to
testify before the Indiana Election Commission
stood and were jointly sworn in.)

MS. LAKE: My name is Mary Lake. I
represent James Kimmel in the challenge against
Christina Espar, the Republican candidate for
LaPorte County Prosecuting Attorney.

You received packets that are tabbed with
the exhibits that were previously submitted,
with the exception of the first, which was the
Affidavit of Public Records by the custodian.

The law is clear and unambiguous on this
challenge. Indiana Code Section 3-13-1-6(b) gives us three ways to fill an early ballot vacancy. If you look at Exhibit 5, that document is indicative of the choice the Republican Party in LaPorte County made to give appointment authority to their executive committee caucus. That's option 3 under the statute. To appoint a candidate in this matter they must hold a caucus comprised of the chair, vice-chair, secretary and treasurer, according to statute.

If you flip forward to Exhibit 6, you will see the resolution of Republicans of LaPorte County did adopt at their executive committee caucus meeting on June 27, 2018. They did hold such a caucus and according to Indiana Code Section 3-13-1-8-2, the county chairman shall call a meeting for the purpose of slating a candidate. According to IC 3-13-1-9, the call for the meeting must be in writing issued ten days before the such meeting and be filed with the Election Division. That is, a CAN-30 must have been filed by the June 17th date, which was ten days before the caucus committee meeting was held on June 27th.
Exhibit 1 is the custodian of records for the Election Division affidavit and Paragraph 3 recites the list of documents filed with the Election Division in this matter. CAN-30 is noticeably absent from the list, I will point out. Paragraph 5 makes it clear that no other documents were filed as well. The Republicans never filed a CAN-30 as required in this matter to announce that caucus committee meeting.

Indiana Code Section 13-1-21 states clearly that the Election Division, i.e., the official responsible for receiving a Certificate of Candidate Selection, may not receive a filing if any of the prerequisites are not timely filed, any one of which would make the candidacy fail, and one of which is a Notice of Caucus which was not filed.

Exhibit 3 in the binders I presented to you indicates the CAN-31 that was filed on July 2, 2018. That was filed five days after the candidate selection occurred on June 27th, 2018. The stamp on that document says June 32nd. You will note that that was an internal clock error apparently because obviously there's no such date.
Indiana Code Section 3-13-1-10.5(a) requires that the CAN-31 be filed 72 hours before a caucus is held. The deadline for filing thus would have been June 24th. Indiana Code Section 3-13-1-10.5(c) requires that a Statement of Economic Interest also be filed with the CAN-31 and file marked by the Office of Judicial Administration.

If you look at Exhibit 4, the Statement of Economic Interest filed with the Office of Judicial Administration was done on June 27, 2018. That was three days after the deadline for such filing. The filing deadline with the Election Division was also June 24th, 72 hours prior to that committee caucus meeting, but that was not filed until July 2, 2018. So eight days late.

Once again, the provisions of 3-13-1-21 are clear. The Election Division cannot accept a filing from a candidate selection if the CAN-31 was not timely filed. Therefore, this has to invalidate the candidacy even if it was filed and received in error.

For the forgoing reasons, we respectfully request the Commission sustain the challenge.
filed by James Kimmel and direct the Election
Division to amend the certified list of general
election candidates so that the name of
Christina Espar not be printed on the ballot.

Thank you. If you have any questions,
I'd be happy to answer.

CHAIRMAN BENNETT: Any questions by the
Commission?

Mr. John, cross-examination?

MR. JOHN: None.

MS. LAKE: Before I conclude, I'd like to
move for the admission of the exhibits offered
in the packet.

CHAIRMAN BENNETT: Any objection to the
admission of the exhibits?

MR. JOHN: None.

CHAIRMAN BENNETT: The exhibits are
admitted.

I call for the presentation from the
candidate.

MR. JOHN: Tom John, Ice Miller, on
behalf of the candidate, Christina Espar.

In short, just a brief introduction.

This centers around the meaning of caucus. The
challenger would have us believe that it's
clear-cut absolute law what it is. What I'll
tell you and all of you know from working around
the election code, very seldom is it clear-cut.
In fact, we'll just start with the definition of
caucus in the code at 3-5-2-7.5. As used in
3-9, caucus refers to a caucus to fill a
candidate vacancy under 3-13-1 or 3-13-2. The
term does not include a caucus to fill a vacancy
under 3-13-5 or IC 3-13-11. It's not clear.
It's far from it. The code is replete with
references to caucuses and meetings.

Why does this matter? Well, because at
the end of the day they're saying that a county
committee of four people that all were given
notice because they were all at the meeting had
to have notice given to them ten days before.
This is not like an open door statute where you
have notice that is out there for the community.
Quite the contrary. This is simply to ensure
that the rights of participants in meetings is
protected. So in the case of a county
committee, which there again the use of the word
committee, which in here is through all the
statutes referenced by the challenger, and a
county caucus is referred.
Why are those two words used? A county committee is comprised of the entirety of the county precinct body. A caucus is comprised of the people in that district. Sometimes they're conterminous; sometimes they aren't. But in either case, those are places where you're having large groups that have to have their rights protected to ensure that they get to participate in the process to which they were elected -- for which they were elected by the voters.

In this case everybody participated in the process. I'm to argue it's not even clear that you have any need for this 10-day requirement. If you don't have a need for the 10-day requirement, we have testimony that we will submit on DVD to you that is Mr. Simmons telling my client that in fact she could not even file her CAN-31 because she didn't have the package from the chairman or the committee.

Furthermore, you look at the 2018 candidate guide and on page 21 it says, "However, if the county committee has adopted a resolution to delegate this candidate (ballot) vacancy filling authority to the county chairman
(or to the chairman, vice-chairman, secretary and treasurer of the county committee), then the candidate vacancy may be filled by direct appointment." There's no mention of a caucus there. This is the candidate guide.

All in all, we're dealing with a system where you had all of the people who are members of the group, the caucus, the committee, whatever we care to call it, who were in attendance and filed the papers.

Moreover, you could hear from my client, although given the shortness of time and I'd be happy to provide her testimony, but that in fact, she came down -- and you'll have this DVD or the tape which will show you the interaction. They were trying to file their candidate filing at the Election Division and were told, no, you can't do that. Moreover, there was a discussion about the 72-hour period of filing ahead because the county committee, which Mr. Renquist could also testify to, said that they were going to set the time for 72 hours after Miss Espar made her filing, but in fact, when they were told by Mr. Simmons that in fact they didn't have a 72-hour requirement, they went ahead and filed it
so they could submit it.

Moreover, I'll raise the very important concept of harmless error in the Election Code. IC 3-8-1.1 says if a candidate filing error is made by the Election Division or circuit court clerk, the error does not invalidate the filing.

My client relied on what they were told. In fact, the division wouldn't accept her filing until after the committee had acted.

We are dealing with a case where nobody was harmed. In fact, the only person that will be harmed if you rule with the candidate is her opponent who wants to run unopposed, and replete throughout the Election Code is the fact that we should always strive to ensure that we have fair elections and every vote is counted.

By ruling with the challenger in this case, you will have essentially denied all the voters of LaPorte County the right to vote in the prosecutor's election, a constitutional office. This is something that when you look at all of how this fits together, there is no reason why this challenge should be there. All due process was met. All of the people who are a member of that county committee who would have
been the only people to receive that notice were
there. They made sure all the filings were
there. Now, 121 was raise by the challenger as
saying that our filing was untimely. If you
look at that, that talks about filings at the
June 3rd date. It's not filings that have to do
with the actual coming in on the 72-hour. So
that doesn't even apply with respect to that.
What we have is a confusing statute that uses
caucus and meeting in a myriad ways that confuse
any given candidate that apparently, if the
challenger is right, confused the Commission.

One note is there's some discussion about
whether a candidate challenge refers to it takes
three votes or two votes for the Commission.
One brief note on that is that it takes -- if
you look at the underlying statutes -- I'm happy
to discuss this further. I would argue that she
is on the ballot until such time as declared off
the ballot by the Commission. I'd be happy to
explore that further and it may not be an issue
because I don't know how the Commissioners will
vote. I don't want to belabor an issue that may
not be at issue.

What we have is a case where if the
Commission strikes this, you'll have taken a process which basically down to a centimeter. The central committee if the process had given to the county chairman the direct appointment right, we wouldn't be here. There would be zero discussion, but because they gave it to the central committee, then we're here. Under no circumstance have I ever seen a central committee referred to as a caucus. In fact, a central committee is the governing body of a county party and it's the body that is given the authority to act on behalf of the county party, and they acted in a meeting. You do not have to notice every central committee meeting. There's nothing in there that says that. I would argue the reference to caucus is frankly a sloppy reference to something that has no import to this case. With the idea that there's no 10-day notice to a caucus, then in fact all three of their claims fall apart because they fall into two categories. One, being the fact that the notice was not filed 10 days. They claim that that invalidates it. Then the two filings by my client, the candidate, and both of those there's no dispute, and we have evidence from the
Election Division that clearly said that all comes in together.

So at worst, there is harmless error here and detrimental reliance, and we have a statute that even says that in such cases that the tie goes to the candidate. Moreover, we have myriad voters in LaPorte County that will be denied an opportunity to have a choice simply because of scrivener's errors at best. Because had the county committee simply delegated to the chairman and not the committee, we would never be here. This is yet another example of why this Commission is here. You're here to solve these problems that are difficult that come up and interpret the laws. This is a case where we have a vague statute that should be interpreted justly to find that we have an election this fall, not to ensure that a candidate gets to run unopposed.

I'll take any questions. Thank you.

CHAIRMAN BENNETT: Thank you. Any cross-examination?

MS. LAKE: Am I to receive any time for rebuttal after the question period? Just as a point of order.
CHAIRMAN BENNETT: Yes. Is there any other evidence or any further testimony at this point?

MR. JOHN: I would offer, if it would be helpful to the Commission, my client and Mr. Renquist, but I also want to be cognizant of the fact that it's 4:25 on a Friday. I articulated that evidence and I was sworn so for purposes of this committee, I think the gist of it is preserved.

CHAIRMAN BENNETT: What is this video or disc that you said we were going to --

MR. JOHN: I just gave it to you. What that is, it's a 12-minute video of the interaction when they were trying to file their documents with Mr. Simmons. Actually for purposes of --

MS. LAKE: I would object to that at this time. I have not had a chance to review that. I'm not even sure that it's authenticated or relevant to the proceedings.

MR. JOHN: This is actually the key.

CHAIRMAN BENNETT: Have you exchanged exhibits?

MR. JOHN: No.
Ms. Lake: I just handed it to them.

IEC Member Overholt: Is there a transcript of this?

Mr. John: This is a key part of it.

There's not a complete transcript. Frankly, we just filed our appearance yesterday and didn't have time to transcribe, although that's the most salient part of it.

Ms. Lake: I just received it now.

Chairman Bennett: Have you got a copy of the transcript?

Ms. Lake: Yes, I do.

Chairman Bennett: From your standpoint, Mr. John, what does this transcript show?

Mr. John: It shows that she was told there's no 72-hour rule with respect to the filing when the county committee's involved. So as to Claims 2 and 3, that obviates them when you look at the -- when you consider it in conjunction with 3-8-1-1.1. That's a backup argument frankly because I believe, as I started when I read from the candidate guide, that in fact there's no requirement for a caucus. In fact, this is just an example of the code is unclear in its treatment of the committee acting
versus the chairman acting versus a caucus acting. We all know a caucus and we all understand why that notice requirement is so important in the caucus setting because you have a lot of people who have worked hard as precinct committeemen. They've been elected precinct committeemen who have a right to be protected. In this case the four people we're talking about were there and voted, and it's really almost nonsensical to think in terms of calling a caucus of your central committee that in a functioning party should be operating and working together weekly, if not daily.

CHAIRMAN BENNETT: Mr. Simmons appears to agree that this is not a caucus?

MR. JOHN: Well, this is specifically -- he says if the chair has the authority of the central committee has the authority to fill the vacancies and -- so the start of the interaction. So 72 hours does not apply referring to her filings, both her CAN-31 and economic interest. Mr. Simmons: Doesn't apply here. Espar: Okay. Mr. Simmons: If the chair has authority or the central committee has the authority to fill vacancies. Taken in total,
that would indicate and give her reason to
believe that she had no 72-hour requirement with
regard to her filings.

IEC MEMBER OVERHOLT: I have to say I'm
concerned about -- because he's saying there's a
12-minute conversation and that this -- we have
a portion of the --

MR. JOHN: I'd be --

IEC MEMBER OVERHOLT: I'm talking.

Excuse me. We've got a brief part of that here,
and I'm reluctant without -- I'm reluctant to
consider this because, first of all, this is not
what I would consider a trans -- I mean this is
someone who has typed up what is purportedly on
this DVD. I don't know if there's any way for
us to actually -- you haven't provided --

MR. JOHN: We brought the ability to do
it for you.

IEC MEMBER OVERHOLT: Mr. John. I think
we either need to listen to the whole thing or
we don't consider it. I guess that's -- in
weighing it, but it seems to me that if this is
something they want us to consider, we ought to
be listening to it.

IEC MEMBER KLUTZ: I'm open to listening
MR. JOHN: Mr. Chairman, we brought the stuff to do it, if you wish. I'm just trying to be conscious because you said 10 minutes. We've got a laptop and a computer. Take five minutes.

CHAIRMAN BENNETT: Take 12 minutes plus five.

IEC MEMBER OVERHOLT: So are we giving them the additional time to do that?

CHAIRMAN BENNETT: Maybe there are some procedural things that we could discuss.

IEC MEMBER KLUTZ: I want to get this right. So if it's here, I don't want to say we only gave them five minutes and let's not listen to it. I say we amend our rules and have some discretion and listen to it.

IEC MEMBER CLAYTOR: Or we could just ask Mr. Simmons the gist of the conversation.

CHAIRMAN BENNETT: We can do that, but then why don't we see the tape to verify.

IEC MEMBER OVERHOLT: I think it would be better to listen to the actual conversation.

CHAIRMAN BENNETT: Are you --

MR. JOHN: It's warming up right now.

CHAIRMAN BENNETT: Are there any
questions from any of the Commissioners while
we're waiting on that? Mr. John mentioned that
the decision on this it's not clear what the
impact of a 2-2 vote would be. Is there any
thought from counsel on that issue how many
people we need to -- how many Commissioners need
to vote to either sustain the challenge or deny
it?

MR. SIMMONS: Mr. Chairman, it takes
three affirmative votes to do either, sustain it
or deny it.

CHAIRMAN BENNETT: Do you agree with
that, Mr. Kochevar?

MR. KOCHEVAR: I do, yes.

MR. JOHN: Mr. Chairman, this is ready.

CHAIRMAN BENNETT: Is everybody ready?

Can you turn it our way?

MR. JOHN: Of course. I can bring it up
there, if that's all right.

(DVD played at this time.)

CHAIRMAN BENNETT: I'd be interested to
hear from counsel what we just saw.

MR. JOHN: Which counsel? Me?

CHAIRMAN BENNETT: Both.

MS. LAKE: I think it's clear that the
word "if" was used several times. If the chair
appointed and made a selection of candidate on
his own, we wouldn't be here. However, there
was a caucus comprised of four members, the
chair, the vice-chair, secretary and treasurer.
I think it's clear that Mr. Simmons explained
the law accurately, but the facts were not
necessarily made clear, and there seemed to be a
large amount of confusion there on the part of
the prospective candidate as to what was
supposed to be filed and how the appointment
process was supposed to go. This portion seems
accurate, but also the clear word is "if," and
the chair didn't make the candidate selection on
his own.

As far as the tape goes. I have other
arguments to rebut, but I'll leave it at that as
far as the transcript.

CHAIRMAN BENNETT: Counsel for the
candidate.

MR. JOHN: As far as the tape, I'll make
a couple of comments.

If you look at CAN-29, Section 1(C),
which is the applicable section for our
purposes. This is on the Election Division
form. "If no meeting described in paragraph (B) was conducted, the County Committee has authorized the county chairman or the officers of the county committee to fill the ballot vacancy, and a copy of the authorization is attached." There's discussion of the authorization, but there's no discussion of, okay, they called a caucus of the county committee or anything like that.

Once again, I understand counsel's reading, but when we're talking about denying somebody their ability to be a candidate and tens of thousands of people ability to have a choice in the election, are these the technicalities we're going to get into here?

I think that there are distinct arguments, which I won't go back over, that the statutes are very unclear about committee, caucus, meeting. Once again, it's nonsensical that four members would need a caucus notice and, at worst, it's harmless error because they were all there and signed it.

IEC MEMBER KLUTZ: Mr. John, is the purpose of trying to figure out whether this is a meeting or a caucus simply for purposes of
whether there should have been notice? That's the sole purpose?

MR. JOHN: Claim 1 it's a 10-day notice that they've made, and then 2 and 3 are the 72-hour notice.

IEC MEMBER KLUTZ: But the reason we're talking about was this a caucus or a notice is if it was a caucus, there should have been a notice provided, but everybody that should have received a notice if it were a caucus was in attendance at the meeting that should have been noticed.

MR. JOHN: And signed the document.

IEC MEMBER KLUTZ: That's not accurate?

MS. LAKE: I would argue otherwise. The potential candidates that could have filed if a notice was filed according to state statute, they were denied their right to run as potential candidates.

Counsel has referenced other information from people that's not on the record so I'll do the same. We had discussions with other attorneys --

MR. JOHN: Except I was sworn; she was not.
MS. LAKE: I was earlier today. Other attorneys have expressed the opinion that they would have filed had they known that this was the only candidate selection made. They were never given that right or that opportunity. So there are more people involved than just the caucus comprised of these members of the executive committee. The statute is clear as to a caucus comprised of chairman, vice-chairman, secretary and treasurer. It is clear that a CAN-30 must be filed to give notice in the event that a caucus committee is used.

IEC MEMBER KLUTZ: Notice to who?

MS. LAKE: Notice to the members of the party that there will be a candidate selection in this matter.

IEC MEMBER KLUTZ: What about notice -- you said other candidates would have wanted to show up. How would they have gotten notice?

MS. LAKE: If it were filed with the Election Division in a timely manner, they could have found out and then filed their own candidacy. That was not done. So we really won't ever know if other people had the opportunity who were denied that opportunity.
IEC MEMBER KLUTZ: Assuming it was a caucus.

MS. LAKE: Yes, as defined by the statute. Further, counsel makes reference to the campaign finance manual and to alleged advice that Mr. Simmons is giving to the candidate in that tape. It's not the province or the job of the Election Division to give legal advice. It's clear in the manual that if there is any inconsistency between the candidate manual or the campaign finance guide or anything of that nature and the statutory language, then the statutory language prevails. So the argument that the campaign finance manual said something or Mr. Simmons said something that was possibly misinterpreted, that must fail. I think the statutory language is clear.

Counsel also referenced a 72-hour timeline that would have been different. There's no arbitrary way to set the 72-hour timeline. It's set by the caucus committee that met on June 27th, and that is the only logical time from which to set that 72-hour timeline for filing.

Further, the harmless error argument, as