Indiana Election Commission
Minutes
February 26, 2014

Members Present: Bryce H. Bennett, Jr., Chairman of the Indiana Election Commission ("Commission"); Jennifer Wagner, proxy for S. Anthony Long, Vice Chairman of the Commission; Adam Dickey, proxy for Suzannah Overholt, member; Zachary E. Klutz, member.

Members Absent: S. Anthony Long, Vice-Chairman of the Commission; Suzannah Wilson, member.

Staff Attending: Trent Deckard, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); J. Bradley King, Co-Director of the Election Division; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Rhonda J. Hobbs, RPR, Notary Public, Stenographic Reporter, Connor Reporting.

Others Attending: Dr. Jay Bagga; Mr. Tenley Drescher; Ms. Lisa Dunham; Mr. William Eggleston; Mr. Jarred Eib; Mr. Roger L. Eib; Ms. Sheila Eib; The Honorable Mark Florence, Grant County Circuit Court Clerk; Mr. Don Gallaway; Mr. Steve Hogan; Mr. Thomas John; Mr. Paul Ogden; Dr. Raymond Scheele; Ms. Sandra A. Stewart.

1. Call to Order

The Chair called the February 26, 2014 meeting of the Commission to order at 10:30 a.m. EST in Conference Room B, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana.

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

2. Transaction of Business

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

The following corrections of scrivener’s errors in this document are approved:

Page 9, line 5, replace “?” with “.”.

Page 19, line 19, delete “the”.


Page 31, line 23, replace “we error, we error” with “we err, we err”.
Page 31, line 24, replace “valid” with “ballot”.
Page 34, line 22, replace “believe” with “believed”.
Page 71, line 8, replace “Bowman” with “Bowen”.

3. Adjournment

There being no further items on the Commission’s agenda, Ms. Wagner moved, seconded by Mr. Dickey, that the Commission do now adjourn. The motion was adopted, with four members voting “aye” (Mr. Bennett, Mr. Dickey, Mr. Klutz, and Ms. Wagner), and no Commission member voting “no.”

The Commission meeting was then adjourned at 12:03 p.m.

Respectfully submitted,

Trent Deckard
Co-Director

J. Bradley King
Co-Director

APPROVED:

Bryce H. Bennett, Jr.
Chairman
In the Matter Of:

Indiana Election Commission Public Session Agenda

February 26, 2014
INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

Conducted On: Wednesday, February 26, 2014

Location: Indiana Government Center South
Conference Room B
402 West Washington Street
Indianapolis, Indiana 46204

A STENOGRAPHIC RECORD BY:
Rhonda J. Hobbs, RPR
Notary Public
Stenographic Reporter

Connor Reporting, Inc.
1650 One American Square
Indianapolis, IN 46282
(317) 236-6022
APPEARANCES

INDIANA ELECTION COMMISSION:

Mr. Bryce Bennett - Chairman

Ms. Jennifer Wagner - (Proxy for Vice Chairman Anthony Long)

Mr. Adam Dickey (Proxy for Commission Member Suzannah Overholt)

Mr. Zachary Klutz - Commission Member

INDIANA ELECTION DIVISION STAFF:

Mr. Dale Simmons - Co-Legal Counsel

Ms. Leslie Barnes - Co-Legal Counsel

Mr. Bradley King - Co-Director

Mr. Trent Deckard - Co-Director
CHAIRMAN B. BENNETT: Okay. The court reporter is ready, and we will now call this meeting to order of the Indiana Election Commission Public Session. Thank you all for being here and for your patience on a very brief delay in starting this morning.

I'd like to start by introducing the Members of the Commission. I am Bryce Bennett. I am the current Chair of the Commission and pleased to assume that role in my first meeting of the Chair.

We have with us today, Jennifer Wagner, the proxy for Vice Chairman Anthony Long, and Adam Dickey, the proxy for Member, Suzannah Wilson Overholt. And we also have the distinction of a new member of the Commission who is a commissioner, and this is Zachary Klutz, and it is my privilege and honor this morning to present to Mr. Klutz his commission from the Governor of the State of Indiana as a new commissioner.

COMMISSION MEMBER Z. KLUTZ: Thanks, Bryce.

CHAIRMAN B. BENNETT: Thank you, and welcome. We have the Indiana Election Division staff, which fortunately, is not turning over as fast as the Board, the Commission. And many of you know, but we want to introduce for the
February 26, 2014

record, Co-Directors Trent Deckard and Brad
King. Co-General Counsels are Leslie Barnes and
Dale Simmons. The court reporter is Rhonda
Hobbs from Connor & Associates.

I want to welcome our proxies who are
participating in today's meeting, and we have
welcomed our newest Commission Member, Zach Klutz,
but before we actually begin the proceedings today,
I want to remind everyone on behalf of the court
reporter to identify yourself when you're beginning
to speak, spell your name, when identifying
yourself, speak clearly, and do not speak at the
same time as others, particularly, the commission
members.

We would request at this time that Mr. Deckard
and Mr. King confirm that the commission meeting
has been properly noticed as required under
Indiana's Open Door Law.

MR. B. KING: Mr. Chairman and Members of
the Commission, this meeting was properly
noticed in compliance with the Indiana Open Door
Law.

CHAIRMAN B. BENNETT: Thank you, Mr. King.

I recognize Mr. Deckard and Mr. King to present
minutes of the December 17th, 2013 Indiana
Election Commission Meeting.

MR. B. KING: Mr. Chairman and Members of the Commission, Mr. Deckard and myself prepared the minutes for the December 17th, 2013 meeting and have submitted them for your review and would recommend their approval.

CHAIRMAN B. BENNETT: Is there a motion to approve these minutes?

PROXY J. WAGNER: So moved.

CHAIRMAN B. BENNETT: We have a motion. Is there a second?

COMMISSION MEMBER Z. KLUTZ: Second.

CHAIRMAN B. BENNETT: Motion is seconded.

Any discussion?

(No response.)

CHAIRMAN B. BENNETT: Hearing none, all in favor say aye?

THE COMMISSION: Aye.

CHAIRMAN B. BENNETT: Opposed, say nay?

(No response.)

CHAIRMAN B. BENNETT: The ayes have it and the motion is approved and the minutes are adopted. 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.

When each candidate challenge is called, the hearing will begin by recognizing Election Division staff to provide information about the documents provided to the Commission Members, including candidate challenge forms and the notice given to the candidate and the challenger.

Unless there is an 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 authorized representative, if written authorization has been filed with the Election Division, may present their case for no more than seven minutes unless the Commission votes to allow additional time for the presentation.

The Commission Members may ask questions during the presentation, but the time spent answering these questions, will not be counted against a 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, and that would be Dale, to preserve for the record.

The candidate or the candidate's authorized representative, if written authorization has been filed with the Election Division, will be recognized following the last presentation by a challenger. The candidate may present their case for no more than seven 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 limbed to questions regarding statements made by the presenter.

Following presentation by a candidate, the challenger may present a rebuttal of no more than two minutes. The Commission may dismiss the cause...
of any challenger who has failed to appear or
testify before the Commission. If there is a
second to my motion for the Commission to adopt
these procedures -- is there a second to my motion
to adopt these procedures for today's candidate
challenge hearings?

COMMISSION MEMBER Z. KLUTZ: So moved.

CHAIRMAN B. BENNETT: We have a motion. Do
we have a second?

PROXY J. WAGNER: Second.

CHAIRMAN B. BENNETT: Any discussion?

(No response.)

CHAIRMAN B. BENNETT: Hearing none, the
motion is so -- is there any objection from the
Commission Members or any individual present to
these procedures?

(No response.)

CHAIRMAN B. BENNETT: Seeing none and
hearing none, all in favor of adopting the
procedures as described, say aye?

THE COMMISSION: Aye.

CHAIRMAN B. BENNETT: All opposed, same
sign?

(No response.)

CHAIRMAN B. BENNETT: Motion carried.
Procedures are adopted. Everyone present here today who plans to testify before the Indiana Election Commission regarding any matters, including voting system matters, please stand for administration of the oath?

(Participants complied.)

MR. D. SIMMONS: Stand and raise your right hand. Say I do after the administration of the oath. Do you solemnly swear or affirm under the penalties of perjury that the testimony you are about to give the Indiana Election Commission is the truth, the whole truth, and nothing but the truth, say I do?

THE PARTICIPANTS: I do.

MR. D. SIMMONS: Thank you.

CHAIRMAN B. BENNETT: We'll now begin consideration of candidate challenges. I'll remind everyone to identify yourself, please, before you begin speaking. We will start with the Jarred Eib challenge. We'll begin hearing Cause No. 2014-01, In The Matter Of The Challenge to Jarred Eib, Candidate for the Republican Party Nomination for Judge of the Grant County Superior Court No. 3. The Election Division has provided a copy of
the Candidate Filing Challenge form with
attachments and a copy of notice given in this
matter. I would like to recognize Jerry Shull,
challenger for presentation.

MR. D. GALLAWAY: Mr. Chairman, my name is
appearance on behalf of the Grant County
Republican Party and Mr. Shull. The -- I guess
I want to confirm for the record that
Mr. Shull's affidavit is part of the record for
these proceedings. It was included with the
attachments.

CHAIRMAN B. BENNETT: We have the
affidavit. It is part of the record.

MR. D. GALLAWAY: Okay. Thank you very
much.

MR. J. EIB: Sorry to interrupt, Jarred
Eib, the candidate. I would move to dismiss on
the grounds that Mr. Shull is not here. I have
received no appearance of Mr. Gallaway and was
unaware of anything that had been filed with the
Commission.

CHAIRMAN B. BENNETT: Mr. Gallaway, have
you filed an appearance in this case?

MR. D. GALLAWAY: I believe we did, Mr.
Chairman. We faxed it. I don’t have a copy of
it with me, but my staff faxed it a couple of
weeks ago. Mr. Simmons requested that we send a
copy for contact purposes, and so we did that,
but I’m not sure. I don’t have any proof that
it was actually received by the Commission.

CHAIRMAN B. BENNETT: What evidence do you
have to demonstrate that you are in fact
authorized to represent the challenger?

MR. D. GALLAWAY: I have Mark Florence, who
is the Grant County Clerk, who was present when
Mr. Shull asked me to represent him in this
particular case. He is present and has taken
the oath. He could come and testify as to a
conversation that he heard in which Mr. Shull
made that request.

CHAIRMAN B. BENNETT: And who was present
during that meeting?

MR. D. GALLAWAY: Mark Florence.

CHAIRMAN B. BENNETT: Anyone else?

MR. D. GALLAWAY: Mr. Florence is the only
one that I brought today. He was actually going
to testify on other matters.

CHAIRMAN B. BENNETT: Mr. Florence, you’re
under oath; is that correct?
MR. M. FLORENCE: Yes, sir.

CHAIRMAN B. BENNETT: And what evidence or testimony do you have pertinent to these matters?

MR. M. FLORENCE: My name is Mark Florence. I'm the Clerk of the Circuit Court in Grant County, Indiana. The last name is spelled F-L-O-R-E-N-C-E. I was present when Jerry Shull, saw who is the Republican County Chairman, asked his vice chairman, who is also my chief deputy, Carolyn Mowery, M-O-W-E-R-Y, if Don Gallaway would represent him in this challenge, as he is out of state at this time during this -- during these proceedings, and Mr. Gallaway accepted the request representing him here in the action that was brought by Jerry Shull, the voter.

CHAIRMAN B. BENNETT: Do you know anything about Mr. Florence's -- I'm sorry, the appearance of Mr. Gallaway?

MR. M. FLORENCE: I do not. I do know that I've been in contact with the Indiana Election Division, and they said that they wanted an appearance entered by Mr. Gallaway. Mr. Gallaway's office is in completely a
different building than where we're at. I
wouldn't have any personal knowledge of that
being said. I don't have the personal knowledge
of Jerry Shull, the voter, asking him to
represent him during his absence.

CHAIRMAN B. BENNETT: Any other questions
of this witness?

COMMISSION MEMBER Z. KLUTZ: Mr. Chairman,
is an appearance required for testimony before
the Commission?

CHAIRMAN B. BENNETT: My understanding is
it is not, but I would ask legal counsel to
confirm that.

MR. D. SIMMONS: Mr. Chairman, it's my
understanding as well under the Administrative
Orders and Procedures Act, which the Commission
is operating under, parties may appear by
counsel or in person. We do request -- it is
not an requirement in the Administrative Orders
and Procedures Act, but we do request that
counsel do file an appearance.

CHAIRMAN B. BENNETT: Leslie, do you have
anything to add to that?

MS. L. BARNES: No, Mr. Chairman. My
understanding is the same. The body operates
under the Administrative Orders and Procedures Act and a written appearance is not necessary.
In the past we've had counsel appear in person and enter their appearance orally as well.

CHAIRMAN B. BENNETT: Okay.

PROXY J. WAGNER: Can I ask a quick question because I want to make sure I've got this right. Regarding Mr. Eib's request to dismiss, that is not an order, because we take the written filing if there's no one here to actually speak on behalf -- is that -- is that right? There's still a sworn affidavit, that's what's required under the law, that's what we will be considering today, absent any testimony on behalf of or from Mr. Shull?

CHAIRMAN B. BENNETT: Is that a motion to deny the motion to dismiss?

PROXY J. WAGNER: Yes, that is a motion to deny the motion to dismiss.

CHAIRMAN B. BENNETT: Is there a second speak for that?

MR. A. DICKEY: Second.

CHAIRMAN B. BENNETT: Okay, a motion and a second. All in favor of the motion to deny the motion to dismiss, say aye?
THE COMMISSION: Aye.

CHAIRMAN B. BENNETT: All opposed, same sign?

(No response.)

CHAIRMAN B. BENNETT: The motion to dismiss is denied. You may proceed based on the oral appearance on the record.

MR. D. GALLAWAY: Thank you, Mr. Chairman.

The affidavit that Mr. Shull submitted is pretty self-explanatory. Mr. Eib filed a declaration of candidacy on January the 14th, and in that declaration of candidacy, he claimed that the most recent primary election in Indiana, which he voted in the primary held by the Party, which he claims affiliation above, which is the Republican Party.

Attached to the challenge is a copy, and I believe it's certified, of the -- and it would be the fourth page of that, I believe, the Statewide Voter Registration System, and I would draw the Commission's attention to the 2008 primary election in which the ballot type was Democratic. That is the last primary in which -- it's the last page in that packet, and I apologize, it wasn't the fourth page, that is the last primary that Mr. Eib is
recording to have participated in.

So first of all, his declaration of candidacy
is inaccurate, and according to IC 3-8-2-7, Section
4 Subsection A and B, in order for him to be
affiliated under this set of circumstances, he
would have to have the chairman of the local county
affirm that he is in fact a valid candidate for the
Republican Party, since the last primary was a
Democratic primary that he voted in.

Part of the affidavit that Mr. Shull
submitted, Paragraph 12 says that he declined Mr.
Eib's request to run in the Republican primary. As
a result, it's Mr. Shull's position that Mr. Eib
has been disqualified from running as a Republican
candidate for judge in Superior Court 3 in the
upcoming Republican primary.

Should the Commission wish, and I'll leave it
totally with the Commission's discretion, it's our
belief that Mr. Eib may assert that there was some
sort of mistake made during the process of the 2008
primary that reflected him voting as a Democrat.

I can offer testimony from Mr. Florence as to
the procedures that are laid out, the safeguards
that are laid out in Grant County. Obviously, it's
a big deal to make sure that the vote is accurate.
and the integrity of the process is safeguarded. I will leave that to the Commission's discretion as to whether the Commission would like to hear that.

CHAIRMAN B. BENNETT: At this time you'll reserve that for rebuttal?

MR. D. GALLAWAY: Yes.

CHAIRMAN B. BENNETT: Any cross-examination of this witness?

MR. J. EIB: Jarred Eib.

CHAIRMAN B. BENNETT: Would you like to cross-examine?

MR. J. EIB: Yes, I want to cross-examine the witness.

CHAIRMAN B. BENNETT: You may.

CROSS-EXAMINATION

QUESTIONS BY MR. JARRED L. EIB:

Q Mr. Gallaway, just a point of clarification. When you initially came up, you indicated that you were representing Mr. Shull and the Republican Party of Grant County; is that correct?

A Well, I misspoke. Actually, it's Mr. Shull as a voter. That's how this was filed.

Q Thank you. Do you have any personal knowledge,
or to your knowledge, does your client, who's
not here, have any personal knowledge regarding
which ballot I requested in the 2008 election?
A Only what's reflected in the State Voter
Registration, which reflects a Democratic
ballot.
Q So for clarification, that's -- you do not have
personal knowledge?
A If you're asking if my client saw you personally
witnessed you at the ballot?
Q Yes.
A I don't believe he did.

MR. J. EIB: Thank you. No further
questions.
CHAIRMAN B. BENNETT: Any further witnesses
at this time?
MR. D. GALLAWAY: No. Just reserve the one
for rebuttal.
CHAIRMAN B. BENNETT: Good. Mr. Eib, am I
pronouncing your name right?
MR. J. EIB: Yes, that's correct. I have
some materials, if I may. What I've given you
are materials to which I will potentially be
referring to during my speaking today.
Foremost and briefly, I would like to
challenge the constitutionality of the statute. In 1973, in the case Kusper v. Pontikes, the Supreme Court heard a challenge of a very similar Illinois election law, which barred voters from participating in a primary held by one political party if they voted in a primary held by another party in 23 calendar months.

The Illinois statute was stricken down on the grounds that it unconstitutionally infringed on the First and Fourteenth Amendment rights of free political association. The court held that
"Freedom to associate with others for the common advancement of political beliefs and ideas is a form of "orderly group activity" protected by the First and Fourteenth Amendments, and the right to associate with a political party of one's choice is an integral part of this basic constitutional freedom.

In the dicta on that same case, the Supreme Court denounced the Illinois statute, stating as follows: "The effect of the Illinois statute is thus to 'lock' the voter into his pre-existing party affiliation for a substantial period of time following participation in any primary election, and each primary vote extends this period of
confinement.

Now, the statute in question today, IC 3-8-2-7 has the same effect of locking voters who wish to run for partisan elected office into his or her pre-existing party affiliation for a substantial period of time following participation in a primary election. And like the Illinois law, each primary vote extends that period of confinement.

Proponents of the Illinois statute claimed that the 23-month rule served a legitimate state interest preventing "raiding" or the practice of strategic voting in the primary of another party to disrupt that party's chances in the general election.

However, argument was rejected with the court stating that significant encroachment upon associated freedom cannot be justified upon a mere showing of a legitimate state interest, for even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty.

Similarly, the purpose of IC 3-8-2-7 as put forth by Chairman Wheeler on page 81 of the minutes of the March 5th, 2010 commission meeting is for the legitimate state interest of preventing
"stealth" candidates from filing in a majority district.

And for the same reasons that the legitimate state interest cited in the Illinois statute, is insufficient to justify the encroachment on the First and Fourteenth Amendment rights of the individual, the state interest advanced by the statute is insufficient to justify its encroachment onto the rights of citizens of Indiana.

Now, a similar argument against the constitutionality of this statute was brought before the commission on the 24th of February, 2012 in Cause No. 2012-74, challenging the candidacy of Leonard Compton. Chairman Dumezich stated as follows on pages 68 and 69 of the minutes of that meeting, at the end of the day there is a remedy, and the remedy is fairly simple, and for whatever reason, faulty memory, he did not take that remedy that he had, and that is why I think the statute is constitutional as well.

While this case and by the very affidavit presented by Mr. Shull, I attempted to avail myself of that remedy and was refused. After discovering that Mr. Shull had obtained information from my entry in the Statewide Voter Registration List and
that it contained information that I knew to be
inaccurate, I endeavored to rectify the matter the
matter without the necessity of this hearing.
I contacted Mr. Shull, County Chairman of the
Republican Party, and the challenger in this case,
and explained the situation to him, that the
information contained in the Statewide Voter
Registration List is inaccurate and requested that
he certify my affiliation with the Republican Party
as permitted in the statute, and he refused.
I then contacted Mr. Mark Florence, the Grant
County Clerk, on the advice of the Election
Division of the Secretary of State, again
explaining that the Statewide Voter Registration
List is inaccurate and asked if there was a way to
amend the information on the list, and he indicated
that there was not.
Without the ability to avail myself of the
remedy that Chairman Dumezich referred to, the
statute is clearly unconstitutional by the finding
of the Supreme Court in Kusper v. Pontikes.
Completely separate and insufficient, the
argument is the record is factually incorrect. For
every primary election I've participated in, it has
been held by the Republican Party. Grant County is
a predominantly Republican county, and as a result, most of the elections are practically decided in the Republican primary, and for that reason, the candidates I've been involved in and have supported have always been Republicans.

The primary election of 2008 was no different. I requested and I returned a Republican ballot. And to support those claims, I'd like to call my first witness, Sheila Eib.

CHAIRMAN B. BENNETT: You have about two and a half minutes left.

MR. J. EIB: Thank you.

DIRECT EXAMINATION

QUESTIONS BY MR. JARRED L. EIB:

Q Please state your name.

A Sheila Eib, E-I-B.

Q And what is your relationship to me?

A I'm your mother.

Q As my mother, are you particularly aware of my political affiliations?

A Yes.

Q What political party am I affiliated with?

A The Republican Party.

Q Have you been aware of my political affiliations
1 during the entirety of the time I've been
2 permitted to vote under the laws of Indiana?
3 A Yes.
4 Q Since I've been permitted to vote under the law,
5 have I routinely made statements regarding my
6 intention regarding what candidates I would vote
7 for?
8 A Yes.
9 Q Have you ever known me to express an intention
10 to vote for a Republican candidate during a
11 primary?
12 A Yes.
13 Q You ever you ever know me to express an
14 intention to vote for a Democratic candidate
15 during a primary?
16 A No.
17 MR. J. EIB: No further questions for this
18 witness. I now call Roger Eib.
19 CHAIRMAN B. BENNETT: Any cross-examination
20 of the witness?
21 (No response.)
22 MR. J. EIB: I call Roger Eib.
DIRECT EXAMINATION

QUESTIONS BY MR. JARRED L. EIB:

Q Please state your name.
A Roger L. Eib.

Q And what is your relationship to me?
A I'm your father.

Q Did you hear the questions I asked Mrs. Eib?
A Yes.

Q Would your answers to those questions be substantially the same?
A Yes.

Q During the election in question, the 2008 primary election, and elections prior to that, who lived in your home?
A You did.

Q Did you vote in the 2008 primary election and elections prior to that?
A Yes.

Q During that election and elections prior to that, did you attend the polls with me?
A Yes.

Q When you attended the polls with me during a primary, were in a position to hear which ballot I requested?
A Yes.
Q On the occasions, when you attended the polls
with me during a primary election, what ballot
did I request?
A Republican.

MR. J. EIB: Thank you. No further
questions.

CHAIRMAN B. BENNETT: Any
cross-examination?

(No response.)

MR. J. EIB: I now call Lisa Dunham.

CHAIRMAN B. BENNETT: Sixty seconds.

MS. L. DUNHAM: I'm Lisa Dunham,

D-U-N-H-A-M.

DIRECT EXAMINATION

QUESTIONS BY MR. JARRED L. EIB:

Q Please state your name for the record -- sorry.

What is your relationship to me?

A Friend.

Q Have you ever been a witness -- have you ever
been in a position to witness first hand
political activity by me?

A Yes, I have.

Q What was that political activity?

A Working the polls.
1  Q  Was I a poll inspector?
2  A  Yes, you were.
3  Q  What party was I affiliated with as a poll inspector?
4  A  The Republican Party.
5  Q  What year was that?
7
8           MR. J. EIB:  Thank you. No further questions.
9
10         CHAIRMAN B. BENNETT:  Cross-examination.
11
12         (No response.)
13
14         MR. J. EIB:  I would ask the commission for additional time. A few minutes would be sufficient.
15
16         CHAIRMAN B. BENNETT:  Two minutes.
17
18         MR. J. EIB:  Two minutes. The only evidence that Mr. Shull has offered --
19
20         CHAIRMAN B. BENNETT:  We have --
21
22         MR. J. EIB:  Sorry.
23
24         CHAIRMAN B. BENNETT:  The Commission consents to that request.
25
26         MR. J. EIB:  Excuse me?
27
28         CHAIRMAN B. BENNETT:  The Commission has consented to your request for --
29
30         MR. J. EIB:  All right. Thank you.
CHAIRMAN B. BENNETT: -- an additional two

minutes.

MR. J. EIB: The only evidence that Mr. Shull has offered is the deputy of the clerk, Sharyn Sherron who enters the data in the Statewide Voter Registration List, indicated in the poll book, indicated that I requested a Democratic ballot.

I discussed the process by which the information is recorded, with an employee of the Grant County Clerk, and was told that upon entering the polling location, a poll worker asks the voter if they are requesting a Republican or a Democrat ballot, and that request is marked in the poll book by checking a box labeled R or a box labeled D.

After the polls close, the book is then taken to the clerk's office where the voter's demographic information is scanned into the system, but the ballot requested is entered manually, an employee of the clerk reads the checkmarks and manually clicks a box in the Statewide Voter Registration List portal labeled R or a box labeled D.

According to the clerk's office and confirmed by the clerk section of the county website at grantcounty.net, 17,058 machine votes
were cast in the 2008 primary election. This represents the greatest number of machine votes in any primary election and the online records in the Grant County Clerk's Office. The next greatest being in 2004, with 4,598 fewer votes than registered in 2008.

Given the potential for human error and the sheer number of voters' information being entered, particularly in 2008, there is a near certainty that the list will contain some errors.

It is impossible to verify the content of the poll book for the election in question as it has been destroyed in accordance with applicable law.

I do not dispute that the content of the documents provided to you by Mr. Shull are accurate. They indicate that I voted as a Democrat in the last Indiana primary in which I participated in May of 2008, but the information contained in the Statewide Voter Registration List is inaccurate.

The committee has a history of removing the candidate from the ballot in cases with similar challenges. The difference being here the
record is accurate in their cases. The law states that the last Indiana primary that the candidate participated in must have been conducted by the party he or she is claiming affiliation with.

In those cases they did not meet that requirement, nor did they claim they did. Irrespective of an erroneous entry in the Statewide Voter Registration List, I meet the criteria set forth by the law because I did, in fact, vote in the 2008 Republican Primary Election.

In my review of the minutes of the meeting of this commission, I have not found a single precedent to support the idea that the content of the information in the Statewide Voter Registration List is to held as the final arbiter of the voting history of the candidate, over the sworn testimony of the candidate himself.

In Wyatt v. Wheeler, the court of appeals found that a candidate who had mistakenly stated that she had voted in the last Republican primary was not barred from taking office after winning the election, noting that "statute
governing declarations did not provide that
compliance with its provisions was essential to
a valid election."

The court cited the policy concern of not
disenfranchising the voters by disregarding the
results of the election based solely on an
actual -- albeit unintentional -- violation of
the statute.

The same disenfranchisement would occur in
the case at hand -- removing the voter's choice
before or after the election has the same effect
of removing the voter's choice.

CHAIRMAN B. BENNETT: Any -- any final
words -- you've used your final time, and I have
a couple of questions for cross exam.

MR. J. EIB: Yes, just very quickly. I
have showed that the potential for human error
exists within the system -- I do not think that
any reasonable person can disagree with that --
which creates, at a minimum, ambiguity.

Chairman Dumezich, in 2012, addressed the
manner in which the commission should deal with
ambiguity, stating, "When we error, we error to
give people valid access because the idea is that
we don't ever want to be the people that take away
or disenfranchise somebody."

To remove me from the ballot would have the effect of disenfranchising myself as well as any voter who would vote for me based solely on an alleged violation of the statute which has been determined by the Indiana Court of Appeals to not be essential to a valid election, evidenced only by a single entry in the record which clearly lacks the level of reliability that would warrant it being considered even nearly conclusive and which is contradicted by my sworn statement both on my Declaration of Candidacy reaffirmed here today and the sworn statements of my witnesses.

CHAIRMAN B. BENNETT: Cross-examination of the witness?

(No response.)

CHAIRMAN B. BENNETT: I have a question. When did you first discover what you alleged to be an error in the Statewide Voter Registration System?

MR. J. EIB: I do not know the exact date. It was a few days after my filing.

CHAIRMAN B. BENNETT: How did you discover that?
MR. J. EIB: I received a phone call from Mr. Jerry Shull.

CHAIRMAN B. BENNETT: Did you know Mr. Shull before that?

MR. J. EIB: I have had brief contact with him as the Republican Party Chair in the county. I had, as a courtesy, called to inform him that I intended to file for candidacy as the Republican nominee for the position. My conversation with him was very brief. He informed me that the incumbent was a loyal party supporter and instructed me not to file.

CHAIRMAN B. BENNETT: Who did you vote for at the top of the ticket in the Republican Primary in 2008?

MR. J. EIB: In the Republican Primary in 2008?

CHAIRMAN B. BENNETT: Yes.

MR. J. EIB: I'm sorry. I don't understand.

CHAIRMAN B. BENNETT: Who did you cast your ballot for?

MR. J. EIB: I casted my ballot -- I do not believe I voted in the Republican Primary for president. My interests were for local parties,
local candidates. The candidate that I was
interested in supporting was Mark Bardsley who
was running for county commissioner at that
time.

CHAIRMAN B. BENNETT: It's your testimony
that you voted for him in the 2008 Republican
Primary?

MR. J. EIB: 2008 Republican Primary,
that's correct.

CHAIRMAN B. BENNETT: Were you working for
him in any capacity in his campaign?

MR. J. EIB: I was not working in any
capacity in his campaign but I did publicly
support him.

CHAIRMAN B. BENNETT: When you approached
the county chairman and asked him to approve
your candidacy for judge, despite the fact that
the records show that you voted in the
Democratic Primary in 2008, what was his
response?

MR. J. EIB: His response was no, he would
not do that. He believe that had I voted in the
Democratic Primary. It was a very short
conversation. I didn't expect him to certify me
as a result of the conversation I previously
referenced when he instructed me not to run.

CHAIRMAN B. BENNETT: Any further cross-examination?

COMMISSION MEMBER Z. KLUTZ: Mr. Eib, were you in the State of Indiana during the 2012 election?

MR. J. EIB: I was in the State of Indiana during the 2012 election.

COMMISSION MEMBER Z. KLUTZ: Did you vote in the 2012 primary?

MR. J. EIB: I did not vote in the primary, the primary was held in May, and in May of 2012, I was graduating from law school so I was in the process of moving everything from Monroe County to Grant County, back where I live. I did vote in the 2012 general election.

CHAIRMAN B. BENNETT: Any further cross-examination of this witness?

(No response.)

CHAIRMAN B. BENNETT: Do you have any further evidence to present?

MR. J. EIB: No.

CHAIRMAN B. BENNETT: Very well. Rebuttal, Mr. Gallaway.

MR. D. GALLAWAY: Mr. Chairman, I would ask
Mr. Florence to re-approach the commission to
give testimony.

CHAIRMAN B. BENNETT: Very well.

DIRECT EXAMINATION

QUESTIONS BY MR. DON GALLAWAY:

Q You are Mark Florence; is that correct?
A That is correct.

Q You are the current clerk of the courts for
Grant County; is that correct?
A That is correct.

Q And a chief election officer in Grant County?
A That is correct.

Q And you've been involved in Grant County
elections for approximately 35 years in some
capacity other than clerk?
A That's correct.

Q You've been on the election board?
A For 13 years, prior to being the Clerk, I was
the chairman.

Q And you served as a mechanic on various machines
and you have a lot of experience with the way
that the voting process works in Grant County;
is that correct?
A Back to the old lever machines, yes.
Okay. In that 35 years of experience, how many times have you witnessed or been involved in a situation where there was human error involved in the declaration of a party affiliation in a primary?

One that I know of.

And was that resolved?

Yes.

Can you briefly explain how that was resolved?

Yeah. It's my understanding that the records were still intact at the time that the individual challenged the party affiliation and it was reviewed on the records from the precinct and it was incorrect.

Okay. So you were able to confirm what the voter had said through documentation?

Correct.

Okay. Now, can you briefly explain -- I'm going to walk you through -- when someone goes to vote, they go up to the table and they declare which party; is that correct?

They declare their name, show their ID, and ask for their potential ballot that they want in the primary election.

And they are -- they are required to sign; is
1. That correct?
2. A They're required to sign their name and also circle which party ballot they choose.
3. Q So the voter is the one who actually designates which ballot they're choosing?
4. A That's what we instruct our poll workers, to have the voter do that.
5. Q So the poll worker is not the one who checks party affiliation as a matter of course?
6. A We do not instruct them to do it that way.
7. Q Okay. Once that declaration is made, is it correct that there is a small paper tab that is given to the voter that either has an R or a D on it?
8. A That is correct.
9. Q And then they take that to the booth in which a panel at the voting booth is placed in front of them either with Republican candidates or Democrat candidates?
10. A The ballot is set to whatever their card shows that they choose to vote on in presence of the voter.
11. Q Now, there is a bar code that's also associated with the signature; is that correct?
12. A That has to do with the SVRS system.
Q Okay. And that's --

CHAIRMAN B. BENNETT: Your two minutes have expired. Do you have a request additional time?

MR. D. GALLAWAY: I would request just two more minutes, if I might, Mr. Chairman.

CHAIRMAN B. BENNETT: By consent of the commission, two more minutes.

Q Now, this is a post-election process that you go through that involves the bar code; is that correct?

A That's correct.

Q Can you briefly explain that to the commission?

A The poll book comes back to the voter registration office at the completion of the election. On the front page is the precinct on it and there's a bar code there that we take the bar code scanner and it kicks up in the state system for the precinct, that we're looking to match it up to what the state system shows and what we show on the page is exactly the same precinct.

Then they start down through the poll list on the voters that have signed, which also has a bar code on it, and it kicks up the individual's name in the system, and then we can look at how they
voted in the primary. And then on the sheet that has either a D or an R or another under a bar code, we scan that, and it pops it up, and then they place it, the D or the R on there, and check it for that. This is a process, and it's all done electronically. It is not a fast process, so it's not like boom boom boom down through this list.

In our office we're in a unique position to a lot of other counties because we have one person that's designated full time that works voter registration and I have one person that does nothing but elections.

They don't go around to the rest of the clerk's office and work the rest of the year. So this is solely their job that they do and our voter registration person has been doing this since 2004.

Q And accuracy of the election process is a paramount importance in your office; is that correct?

A Most sincerely.

MR. D. GALLAWAY: No further questions.

CHAIRMAN B. BENNETT: Cross-examination by the Commission?

PROXY J. WAGNER: Just real quick. What is the -- I'm sorry, I lost my voice, what is your
retention schedule on poll books?

MR. M. FLORENCE: The process is 22 months.

PROXY J. WAGNER: Okay.

CHAIRMAN B. BENNETT: When did your office first learn of the alleged error on the Statewide Voter Registration?

MR. M. FLORENCE: Shortly after the filing that was brought in.

CHAIRMAN B. BENNETT: And how is that brought to your attention?

MR. M. FLORENCE: We look at the party affiliations, when people file, to make sure that they have the correct information.

CHAIRMAN B. BENNETT: And when you looked, it said Democrat; correct?

MR. M. FLORENCE: In the state system, it shows -- Democrat was the most recent one, which was in 2008.

CHAIRMAN B. BENNETT: So when did you first learn that there was an allegation by the candidate that the records were incorrect?

MR. M. FLORENCE: Shortly after, he was notified, I believe by the chairman of the party.

CHAIRMAN B. BENNETT: And what did you do
1 at that point in time?
2 MR. M. FLORENCE: He came in and said that
3 he did not vote that way, and we looked back
4 through our records and we didn't have anything
5 to show how he voted, and we just went with what
6 the system shows itself that was entered.
7 CHAIRMAN B. BENNETT: And was -- was it a
8 function of the normal records retention process
9 that there were not any records to verify or
10 confirm?
11 MR. M. FLORENCE: No, there were not. They
12 were destroyed under the retention statutes.
13 CHAIRMAN B. BENNETT: Further
14 cross-examination by the Commission?
15 (No response.)
16 CHAIRMAN B. BENNETT: Any cross-examination
17 by the candidate?
18 PROXY A. DICKEY: Real quick, real quick.
19 Was there a commissioners' primary in 2008, the
20 Republican primary?
21 MR. M. FLORENCE: Yes, two of them.
22 PROXY A. DICKEY: Two individuals. And
23 those individuals were -- their names?
24 MR. M. FLORENCE: John Austin and Mark
25 Bardsley, and also David Glickfield, who was the
incumbent commissioner.

PROXY A. DICKEY: Thank you.

MR. J. EIB: I have some cross-examination.

CHAIRMAN B. BENNETT: Okay.

CROSS-EXAMINATION

QUESTIONS BY MR. JARRED L. EIB:

Q You testified, if I'm correct, that a similar situation where a voter has challenged the accuracy of the records kept by the clerk's office regarding voting history, that's happened on one occasion in the past?

A Correct.

Q And on that occasion it was found that the clerk's office did error?

A It was voter registration at that time. The clerk's office didn't take over voter registration until 2004, when the county abolished the Board of Commission for Voter Registration and stuck it under the auspice of the clerk's office.

Q I'm sorry. So voter's registration was incorrect?

A Board of Commission for Voter Registration, yes.

Q Okay. And you talked about bar codes being
entered, being scanned into the system. Is it
correct that the bar codes contain demographic
information but that the voter -- excuse me, the
political party that ballot is requested in the
primary is manually entered by an individual?

A Correct.

Q And you testified that there is one person who
does that?

A Correct.

Q So in 2008, that was also the case, that there
was one person doing that?

A No, there was not --

Q There were two people doing that?

A -- but it shows on the list which individual
made the entry.

Q Okay.

A We had a Sharyn Sherron and a Kim Holinger, were
our voter registration people at the time, and
this one had indicated that it was done by
Sharyn Sherron.

CHAIRMAN B. BENNETT: Was she ever
consulted with regard to this issue?

MR. M. FLORENCE: Yes. She -- I mean, she
doesn't remember anything. She has to refer
back to her records that she has, but she
indicated that it's a thing where she goes
through them and she'll go through them later on
after the election is over and just scan over a
percentage of them to check to make sure that
she does it right.

Sharyn is very astute to making sure that she
does things correctly in voters registration.
She's been dedicated since she's been put down
there.

CHAIRMAN B. BENNETT: How long has she been
in voters registration?

MR. M. FLORENCE: She went down there -- in
2005, was her first election that she worked in
there. She did work in the clerk's officer
prior to that. We just moved her -- the prior
clerk moved her down there.

CHAIRMAN B. BENNETT: And she has a record
of accuracy?

MR. M. FLORENCE: Yes.

CHAIRMAN B. BENNETT: Anything further on
cross-examination?

MR. J. EIB: No cross-examination, but I
will ask for a brief closing statement before
you consider.

MR. M. FLORENCE: Thank you.
CHAIRMAN B. BENNETT: Does the Challenger have any closing statement to make?

MR. D. GALLAWAY: Just briefly,

Mr. Chairman.

CHAIRMAN B. BENNETT: Sixty seconds, if you can.

MR. D. GALLAWAY: Yeah, it'll be just really quick. The issue before the Commission is, is the information valid? Is it accurate? Obviously, elections are extremely important.

Mr. Florence testified to the safeguards put in place. So we would ask that the records stand for themselves and for the Commission to uphold the challenge. Thank you.

CHAIRMAN B. BENNETT: Thank you. Sixty seconds, closing statement.

MR. J. EIB: I feel I've shown certainly an error is potentially in the system.

Mr. Florence testified that an error has occurred in the past, that the only time that this has occurred and been challenged, it was found that that was in fact an error.

Of the challenges that have been made to the voters registration system, a hundred percent of them have found to be in error. Now, while that is
only is one, that shows clearly an error can be made, and to disenfranchise a candidate with no other evidence than there was potentially an error, it goes against the purpose of election law.

Furthermore, I would like to make a point for the Commission, that under Indiana law, an administrative agency's decision cannot be based solely on hearsay and that the only evidence they've presented here today is the voters registration -- Statewide Voters Registration List which is a hundred percent hearsay.

CHAIRMAN B. BENNETT: All right. Thank you. The public hearing is Cause No. 2014-01 is now closed. Any discussion among the commission members?

COMMISSION MEMBER Z. KLUTZ: I appreciate your presentation. I thought it was well researched, but I guess in my opinion, the most persuasive evidence that I have before me is the voting record.

You alleged error, but all of the evidence presented, to me, was the most persuasive, is your vote record that you haven't disputed. In terms of this being your record, you've alleged an error. It shows that in 2008 you voted -- which is the
last primary election, you voted as a Democrat, and
in my mind, would be ineligible to run as a
Republican in this election.

CHAIRMAN B. BENNETT: This would be a
public record that would be an exception to the
hearsay rule as far as I know.

MR. D. SIMMONS: I would agree.

MR. J. EIB: Mr. Chairman, I have a
question that this is considered a public
record. The Indiana code is clear, that the
information contained in the Statewide Voter
Registration List and particularly --

CHAIRMAN B. BENNETT: The public hearing
has been closed at this time. This is a
discussion amongst the commissioners. Is there
a motion?

COMMISSION MEMBER Z. KLUTZ: I'd make a
motion that the challenge is sustained.

CHAIRMAN B. BENNETT: Is there a second?

PROXY J. WAGNER: Seconded.

CHAIRMAN B. BENNETT: We have a motion and
a second that the challenge is sustained, any
further discussion?

(No response.)

CHAIRMAN B. BENNETT: Hearing none, all in
favor of the motion, say aye?

THE COMMISSION: Aye.

CHAIRMAN B. BENNETT: All opposed, same

sign?

(No response.)

CHAIRMAN B. BENNETT: The challenge is

sustained. Thank you. Thank you for your

presentations.

We will now take up the consideration of Cause

No. 2014-02, In The Matter of Challenge to Teaparty

Trenton Feuerbach, candidate for the Republican

Party Nomination, for the United States

Representative, District 9.

The Election Division has provided a copy of

the candidate filing challenge form, a copy of

notice given in this matter, and an appearance

entered by Mr. Ogden, who's an attorney for the

candidate.

At this time I would like to recognize the

Challenger, William Eggleston for presentation.

MR. W. EGGLESTON: Is there any election

presentation?

MR. B. KING: Mr. Chairman, just to confirm

that the documents referred to by the Chair,

Mr. Ogden's appearance, the notes of the
hearing, and the original candidate filing
challenge have been included in the binders and
therefore will be part of the record.
CHAIRMAN B. BENNETT: Very good. Thank
you. Counsel.
MR. T. JOHN: First of all, a housekeeping
detail. I was -- just literally met my client
outside so I have not had a chance previous to
this to actually file an appearance. I'll get
something on file, but part of our presentation
we can confirm that I'm acting on his behalf as
counsel.
CHAIRMAN B. BENNETT: Have you stated your
name for the record?
MR. T. JOHN: Thomas John, Ice Miller,
representing William Eggleston. So this is a
pretty straight forward challenge. At the end
of the day, the requirements for filing, when
you fill out your candidate forms, among those
requirements are filling out your name, and
there are particular ways in which that is to be
done.
That includes that compliance with 3-5-7-5
which requires that names be used in a particular
way. You can only use commonly known nicknames,
you can only use legal names, and you cannot just essentially make up advertising for your candidacy.

Also, in looking at the candidacy declaration of Mr. Feuerbach, what we find is that he even uses inconsistent names in the candidacy. In some, we'll show you that in fact he should be struck as a candidate, or at the bare minimum, that the name used in the candidacy should remove the offending nickname that is not actually in general use.

So initially, what I will do is I have some testimony here from my client, Mr. Eggleston.

DIRECT EXAMINATION

QUESTIONS BY MR. THOMAS A. JOHN:

Q Would you identify yourself?

A Bill Eggleston Bloomington, Indiana.

Q And I will hand you a document here. Can you tell me what this is?

A This is a voter search of my status as an active voter of Monroe County.

Q Okay. In what Congressional District?

A In Congressional District No. 9.

Q Now, I'll hand you another document. Can you identify that, please.

A Yes. This is Mr. Feuerbach's status in Monroe
County as an active voter, and his address.

Q And what's the name on that?

A Trenton L. Feuerbach.

Q Okay. Any reference on there to Tea Party?

A No, none that I see.

Q So now, are you familiar with a Trenton L. Feuerbach?

A Only -- I met him only by seeing his name on various documents.

Q But you were aware of him in the community; correct?

A Yes.

Q And do you hear him referred to as Tea Party Trent?

A Never. I've never heard of that, no.

Q Okay. How often have you heard his name?

A Oh, occasionally. I'm a candidate myself for a position in the township, and in just glancing at the various things, I've seen his name, but never a Tea Party name.

Q And I do not have copies of this, but I assume that the Commission and counsel do. This is the Declaration of Candidacy I'm handing to Mr. Eggleston; correct?

A Right.
So a couple of different things. At the top of the candidacy where it says, name of candidate, what does it say there?

Trenton Lee Feuerbach.

And then you go down further where it says the candidate's name, what's it say?

It says I request that my name be put on the ballot as Teaparty Trent Feuerbach.

So everything --

CHAIRMAN B. BENNETT: If you're done with that, could you pass that to the Commission?

MR. T. JOHN: I literally just got that.

So based on that, based on the law, we have specific requirements that 3-5-7-5 sets forth that the only nickname that can be used is one that is used in common parlance, that people are identified as that, that people are recognized as that, i.e using the name Tom rather than Thomas, which is on my voter record.

In this case, we're dealing with somebody who is actually using essentially their own micro-party affiliation which distorts the rules of our elections and distorts what the intent of the law is, which is to allow people to be identified in a way that the community
recognizes them. And in this case, this is not
what this is, and so the candidacy should be
stricken.

MR. P. OGDEN: Your Honor, I'll have to
object to this. I don't think we're on closing
argument yet. I think counsel is engaging in
closing argument.

CHAIRMAN B. BENNETT: Any further questions
of this witness?

MR. T. JOHN: No.

CHAIRMAN B. BENNETT: Cross-examination.

MR. P. OGDEN: Sure, actually.

CROSS-EXAMINATION

QUESTIONS BY MR. PAUL K. OGDEN:

Q I appreciate everyone coming in today.

Mr. Eggleston, you signed the candidate filing
challenge, and I'll read from that, which is
before the Commission: To the best of my
knowledge, Mr. Feuerbach is not commonly known
as Tea Party Trent and therefore this is
invalid. You said that; correct?

A Yes.

Q And your testimony today was that you've never
met the man?
1    A    I've not met him personally.
2    Q    You've not met the man.
3    A    No.
4    Q    So have you socialized with him at all?
5    A    No.
6    Q    Been to his home?
7    A    No.
8    Q    Know any of his friends?
9    A    Probably, but I don't know them by name.
10   Q    Okay. You ever been to any Tea Party meetings?
11   A    No.
12   CHAIRMAN B. BENNETT: Mr. Ogden, did you
13 state your name for the record?
14   MR. P. OGDEN: I'm sorry. Paul Ogden. I
15 represent Mr. Feuerbach.
16   CHAIRMAN B. BENNETT: You may proceed.
17   MR. P. OGDEN: Thank you.
18   Q    And just to clarify, you said that you've not
19 met him, only seen his name. Only seen his name
20 where?
21   A    On various party documents of one kind or
22 another, that he was going to run, had the
23 intent to run.
24   Q    Various party documents, like what?
25   A    I don't know specifically what they were, but
I've seen his name printed, and it's common knowledge that he was running.

Q Okay. But you have never met the man?
A No.

Q Do you know what he even looks like?
A No.

Q Okay.
A Never seen a picture of him.

Q I'm sorry?
A I've not seen a picture of him.

Q You've not seen a picture. Okay. Do you know Mr. Steve Hogan?
A Yes.

Q Did he ask you to file this challenge?
A No.

Q He didn't ask you to file this challenge?
A No.

Q And I was going to ask you about the notarization, too. Where did you have this notarized and who is the notary?
A The notary is Donald -- Don's Insurance there on the highway.

Q Okay. And is the last name, Fuller, because it's very difficult to read?
A Yes, it's Fuller, I believe. Yes, sir.
Q Did he stamp this at all because I don't see any

stamp on this?

A Yes, he did. He had the seal out, and in my

presence, he sealed it. This copy doesn't show

the impression, but he did that.

MR. P. OGDEN: I have no further questions.

MR. T. JOHN: The Challenger would like to
call Steve Hogan.

CHAIRMAN B. BENNETT: Very well.

DIRECT EXAMINATION

QUESTIONS BY MR. THOMAS A. JOHN:

Q Could you state your name for the record?

A Steve Hogan.

Q And what is your involvement with politics?

A I'm the Monroe County Republican Chairman.

Q Are you familiar with the candidate in question,

Trenton Feuerbach?

A Yes. I've known him for some time.

Q Okay. Have you met him?

A Yes, I've met him. He's one of our -- part of

our precinct committeeman.

Q To your knowledge, does he go by the nickname

Tea Party -- like when you see him, do you say

Tea Party?
A: Not at all. Never.
Q: Have you heard him referred to in that way in public parlance?
A: No.
Q: Okay.

MR. P. OGDEN: Thank you. That'll be it.
CHAIRMAN B. BENNETT: Cross-examination by the Commission?
(No response.)
CHAIRMAN B. BENNETT: Cross-examination by the opposing party?
MR. P. OGDEN: Actually, I don't think I have any questions at this time.
MR. P. OGDEN: No, sir.
CHAIRMAN B. BENNETT: The Challenger rests.
MR. T. JOHN: Yes.
MR. P. OGDEN: And I didn't know if you were ready for argument or not.
CHAIRMAN B. BENNETT: Do you have any witnesses?
MR. P. OGDEN: No. Mr. Feuerbach is not here.
CHAIRMAN B. BENNETT: Mr. Feuerbach is not
here?

MR. P. OGDEN: Correct. We believe -- I
should point out the fact that the Challenger in
this case, who is the only Challenger, did
not -- doesn't even know Mr. Feuerbach --

CHAIRMAN B. BENNETT: Is this closing
argument?

MR. P. OGDEN: I'm ready for closing.

CHAIRMAN B. BENNETT: The Challenger may
proceed with any closing argument.

MR. T. JOHN: So we believe that we have
demonstrated that in fact there is no evidence
that Mr. Feuerbach goes by the name of Tea
Party. Under 3-5-7-5, there's a clear
requirement that you must actually be commonly
known as a nickname in order to use it on the
ballot, the candidate declaration form.

And so because of that, we have a candidate
declaration form that does not comply with the
actual requirements of 3-8-2-7, and thus, should be
stricken -- he should be removed from the ballot,
or at least at the bare minimum, the phrase Tea
Party should be removed from the listing of the
candidacy and it should be just Trent Feuerbach.

We would argue that there was any compliance
with 3-8-2-7 so he should be stricken from this ballot. The Challenger rests.

CHAIRMAN B. BENNETT: Thank you.

MR. P. OGDEN: A very brief argument.

Mr. Eggleston filed this. Mr. Hogan did not file this. Mr. Eggleston made the accusation that he -- that Mr. Feuerbach is not commonly known as Tea Party Trent, yet he doesn't even know the man. He's never been to his house. He doesn't socialize with him. He wouldn't know him if he walked in the door.

If Mr. Hogan wanted to challenge, he should have filed this challenge. He did not file this challenge. Mr. Eggleston filed it. He, obviously, doesn't know him -- he doesn't even know him so I don't know how he could say what Mr. Feuerbach is commonly known as. So we would say that -- we would ask that the challenge be denied. Thank you.

CHAIRMAN B. BENNETT: Thank you. We will now close the hearing in Cause No. 2014-02. It is appropriate now for discussion by the Commission. One question I have of legal counsel is whether the law would allow simply striking the name Tea Party from the ballot or whether the candidate must be removed?
MR. D. SIMMONS: Mr. Chairman, Members of
the Commission, there's a very specific statute
and subsection that applies here. It's 3-5-7-7,
Subsection C, and it's on Page 114 of the Code
book, but it indicates that if the commission
finds that the candidate used a designation not
permitted by the statute that's been argued here
today, that the candidate's considered to have
withdrawn the candidate's candidacy.

So the finding is essentially that the
candidate is off the ballot if the finding is that
the candidate used a designation not authorized by
state law.

CHAIRMAN B. BENNETT: Thank you. Ms.
Barnes, do you have any -- do you agree with
that?

MS. L. BARNES: I agree, yes. Thank you.

CHAIRMAN B. BENNETT: Thank you. So any
other comments, questions, thoughts by the
Commission?

(No response.)

CHAIRMAN B. BENNETT: Is there a motion?

PROXY J. WAGNER: A motion to sustain the
challenge?

PROXY A. DICKEY: Second.
CHAIRMAN B. BENNETT: Motion and seconded, any discussion?

(No response.)

CHAIRMAN B. BENNETT: Hearing none, all in favor of the motion to sustain the challenge, say aye?

THE COMMISSION: Aye.

CHAIRMAN B. BENNETT: All opposed, same sign?

(No response.)

CHAIRMAN B. BENNETT: Motion carried.

Challenge sustained.

MR. T. JOHN: Thank you.

MR. P. OGDEN: Thank you.

CHAIRMAN B. BENNETT: We will now hear the William Bryk, Cause No. 2014-03 In the Matter of the Challenge to William Bryk, Candidate for the Democratic Party Nomination of United States Representative, District 8. The Election Division has provided a copy of the candidate filing challenge form, a copy of notice given in this matter, and in answer to the challenge filed by this candidate earlier this morning.

MR. B. KING: Just to confirm,

Mr. Chairman, the binders provided to commission
members do contain the notice of the hearing,
the original candidate filing challenge, and the
answer to candidate challenge filed by Mr. Bryk
at 9:29 a.m.

CHAIRMAN B. BENNETT: Thank you, Mr. King.
Is the Challenger ready to proceed?

MS. S. STEWART: Yes. I am Sandra A.
Stewart at 11073 East Hamlin Chapel Road, Monroe
City, Indiana, Harrison Township, Knox County,
and I am challenging the candidacy of William
Bryk for the U.S. House of Representative
Congressional District, and I've acquired an
attorney to help in these proceedings.

MS. T. DRESCHER: Yes. My name is Tenley,
T-E-N-L-E-Y, Drescher, which D as in David,
R-E-S-C-H-E-R, and I'm with the firm of Faegre
Baker Daniels.

CHAIRMAN B. BENNETT: Is it Descher?

MS. T. DRESCHER: Drescher.
CHAIRMAN B. BENNETT: Drescher.

MS. T. DRESCHER: Yes.

CHAIRMAN B. BENNETT: Okay.

MS. T. DRESCHER: If it's okay, I'll go
ahead. As Ms. Stewart stated, she on
February 12th filed the C-A-N 1, CAN-1 form
challenging the candidacy of William Bryk.

Mr. Bryk on January 16th of 2014 filed a C-A-N 2, CAN-2 form declaring his candidacy for the U.S. House of Representatives, in Indiana's 8th District.

On the CAN-2 form which Mr. Bryk filed -- I assume you all have a copy in front of you -- he stated his address as 578 74th Street, Brooklyn, New York. He stated that he was a registered voter of Election District 85 and Assembly District 64 in Kings County, New York.

He then checked in Box 2 that he was requesting to be placed on the Democratic Party ballot as a candidate in Indiana's 8th District.

As you see on the form, which is the official state form that must be filed to declare candidacy in Indiana --

CHAIRMAN B. BENNETT: We don't have it.

MS. T. DRESCHER: Oh, you don't have it?

CHAIRMAN B. BENNETT: Do you have copies for the Commission?

MS. T. DRESCHER: Absolutely. Sorry. I've also -- a copy has his cover letter. So I apologize. I have six.

PROXY J. WAGNER: We can share.
MS. T. DRESCHER: Sorry. I apologize for that. So again, he in the box, in the middle of the form, stated his residency as 578, 74th Street, Brooklyn, New York. He, then going back up to the top, stated he is a registered voter of Election District 85 and Assembly District 64 in the County of Brooklyn, County of Kings, State of New York.

He checked Box 2 requesting that he be placed as a candidate on the Democratic ballot for Indiana's 8th District, but you'll see in Box 3, however, which is where the form asks the candidate to comply with the requirements of IC 3-8-2-7 regarding party affiliation.

That statute that I just mentioned requires a candidate to show party affiliation or prove party affiliation in one of two ways: One, as we've heard about earlier this morning, is to attest and certify that the last primary in Indiana in which you voted was a primary of the Party in which you're now seeking nomination, or there is another option, you can also receive a certification from the county chairman of the county in which you reside stating that you are affiliated with that Party, and the form provides for the candidate to
designate which of those options they are choosing.

Mr. Bryk did not check either box, and in
addition, as you'll see, I've provided his full
filing, including his cover letter, he did not
include a certification from a county chairman. So
I argue that on its face the form is incomplete and
therefore should be rejected, but even going beyond
that, I also argue that Mr. Bryk should not be
allowed to be a candidate and his candidacy should
be rejected because he has not shown any way in
which he meets the requirements of IC 3-8-2-7 to
be -- to appear on the Democratic ballot.

And I will point out, just to kind of head
this off, this is -- you know, we're talking now
about a party primary. We're not talking about
candidacy for a general election. So if Mr. Bryk's
candidacy is rejected today, to be in the
Democratic Party primary, that does not mean we are
stopping him from being a candidate in a general
election. There are other avenues. This is today
talking about -- and this is a challenge to a
candidacy for a Party primary.

CHAIRMAN B. BENNETT: As opposed to
qualifications for an office?

MS. T. DRESCHER: Correct.
COMMISSION MEMBER Z. KLUTZ: Is your position that he could have still completed this form by providing a statement from his county chairman in the county of Kings County and fulfilled this form completely?

MS. T. DRESCHER: I'll say that that is an interesting question, and one which hasn't been presented to us today, and one which I don't -- I don't know -- I will say I was elections director in Marion County and I've been an elections lawyer for a while and that is question that I've never considered. I don't know if anybody has. I don't know the answer to that today.

But I do know -- I would argue -- for a party primary, I would still argue no, that that would not be valid, but I will say that is not the question presented before us today, although it would be an interesting one to consider, but he did not attach a certification from a party chairman.?

CHAIRMAN B. BENNETT: Any other questions?

(No response.)

CHAIRMAN B. BENNETT: Do you have any other witnesses or presentation to make?

MS. T. DRESCHER: I do not. The only thing
is I did forget to have Ms. Stewart certify that
she is a registered voter in the 8th District.

MS. S. STEWART: I am a registered voter in
the 8th District in the precinct of Harrison in
Knox County.

CHAIRMAN B. BENNETT: Thank you. Anything
else?

(No response.)

CHAIRMAN B. BENNETT: The record is now
closed in this matter, and discussion of the
Commission -- I would ask legal counsel whether
you have an opinion with regard to the question
asked by our commissioner with regard to whether
the chairman of the county in New York could
have authorized, or certified that the
candidate's a member of the political party?

MR. D. SIMMONS: Certainly, on the face of
the statute, it would appear so. It just says
the county chairman of the political party which
the candidate claims affiliation in the county
in which the candidate resides.

This candidate does reside in the county of
Kings as indicated on his declaration. It's in
Brooklyn. I mean, they did -- they did amend the
statute last session to change the first part of
the test -- the most recent primary election in
Indiana, so they did amend that, but they did not
amend this particular section to say the county in
Indiana in which the individual resides.
CHAIRMAN B. BENNETT: Okay. Ms. Barnes, do
you have an opinion on that, any different
opinion or not?
MS. L. BARNES: Just a slightly -- just an
additional -- since you asked the question
about, you know, could the party chairman
have -- in Kings County have certified him as a
candidate? Yes, that does seem to be what the
General Assembly did last year when they amended
the Statute 3-8-2-7. They wanted to tighten up
the nomination process.
The U.S. Supreme Court has permitted states to
regulate the nomination process. They do not see
it as an additional qualification to office, in
violation of the qualifications clause, and I would
be happy to answer any questions any other
commission member has.
CHAIRMAN B. BENNETT: Thank you. Any other
question, discussion?
(No response.)
CHAIRMAN B. BENNETT: Is there any
representative of Mr. Bryk here today?
(No response.)
CHAIRMAN B. BENNETT: Seeing no response, we will conclude there is not a representative of Mr. Bryk here today. Any further discussion?
(No response.)
CHAIRMAN B. BENNETT: Is there a motion?
COMMISSION MEMBER Z. KLUTZ: I make a motion to sustain the challenge.
CHAIRMAN B. BENNETT: Is there a second?
PROXY J. WAGNER: Second.
CHAIRMAN B. BENNETT: We have a motion and second to sustain the challenge, all in favor say aye?
THE COMMISSION: Aye.
CHAIRMAN B. BENNETT: All opposed, same sign?
(No response.)
CHAIRMAN B. BENNETT: Motion carried and the challenge is sustained. Thank you for your presentation.
MS. T. DRESCHER: Thank you.
CHAIRMAN B. BENNETT: We will now move onto the VSTOP report, and I would recognize Dr. Raymond Scheele and Dr. Jay Bagga, and other
representatives from the VSTOP to provide us the report regarding voting system issues.

The first item on the agenda is recommendations from VSTOP concerning engineering change orders requested by Unisyn Voting Solutions.

DR. R. SCHEELE: Welcome again. My name is Ray Scheele. I co-direct the VSTOP Program under the Bowman Center at Ball State University. Of course, I think most of you know my colleague, Dr. Jay Bagga, who's also a professor of computer science at Ball State and co-director of VSTOP.

We have a very brief report today. The -- I'm not sure if you received this, but this is the -- you should have in front of you then the very short report with respect to ECOs, which are engineering change orders, on the voting systems that have currently been, or are currently certified in the state of Indiana.

The one voting system that you are looking at today was the Unisyn voting system that's certified and they have submitted some engineering change orders to the voting systems. As you know, technology moves rapidly, so there's always changes made for our voting equipment.
And today, we are recommending to the Commission that you approve two de minimis ECOs for the Unisyn Voting System 1.1. You'll see on the back on the second page, the -- we say it's a de minimis change rather than a major modification. A de minimus change does not go to the core functionality of the voting system. A de minimis change is a minor one. It could be something like a cable. It could be something like a USB port or what have you. There's all kinds of examples of de minimis ones.

We look at those, each one of them, and make a determination as to whether or not it is a major modification, and if so, it has to go to a lab and be tested to make sure that the functionality is going to remain or be improved by a more major modification, or in the case of de minimis, we determine that it is -- it does not go to that core functionality.

So the two, ECO 1014 and ECO 16911 are the two de minimis ones that we recommend that the Commission approve.

CHAIRMAN B. BENNETT: Okay. Any questions by the Commission?

(No response.)
CHAIRMAN B. BENNETT: Any further testimony, Dr. Bagga, or otherwise?

DR. R. SCHEELE: No, but we'll have a very quick summation as to what we've done this week with regard to the testing of the new system of Unisyn.

CHAIRMAN B. BENNETT: Okay. That's separate from the motion on the table now; right?

DR. R. SCHEELE: Right.

CHAIRMAN B. BENNETT: Is there a motion to accept the engineering change recommended by the VSTOP representatives?

PROXY J. WAGNER: So moved.

CHAIRMAN B. BENNETT: We have a motion, is there a second?

COMMISSION MEMBER Z. KLUTZ: Second.

CHAIRMAN B. BENNETT: Motion and seconded, is there any discussion?

(NO response.)

CHAIRMAN B. BENNETT: All in favor of the motion to accept the recommendations, say aye?

THE COMMISSION: Aye.

CHAIRMAN B. BENNETT: All opposed, nay?

(NO response.)
CHAIRMAN B. BENNETT: So the motion carries. Recommendation accepted.

DR. R. SCHEELE: Thank you. Earlier, this week on the campus of Ball State, we tested a Unisyn voting system, which is the new 1.2, and the ECOS that you just approved were for 1.1, so this is a newer system that is in addition at Unisyn, and I'll turn it over to Jay Bagga for a quick report.

DR. J. BAGGA: Thank you. Jay Bagga, B-A-G-G-A, last name Bagga. Unisyn has applied for certification of their new voting system called OpenElect 1.2, and we have been reviewing and evaluating that system, and we wanted Unisyn to be at the Ball State campus on Monday, February 24th, and we computer tested that system.

This system, OpenElect 1.2, is a modification of OpenElect 1.0 and 1.1, both of which are currently certified in Indiana. We are evaluating the results of the test, and once that is complete, we would send it forth to the Commission.

CHAIRMAN B. BENNETT: Okay.

DR. R. SCHEELE: That's our update.

CHAIRMAN B. BENNETT: Thank you. Anything
else?

DR. R. SCHEELE: No, that's our report.

CHAIRMAN B. BENNETT: We appreciate your report. Thank you.

DR. R. SCHEELE: Thank you.

CHAIRMAN B. BENNETT: The Indiana Election Commission has finished its business for today.

Is there a motion for the Commission to adjourn?

PROXY J. WAGNER: So moved.

PROXY A. DICKEY: So moved -- second.

CHAIRMAN B. BENNETT: Motion and seconded, any discussion?

(No response.)

CHAIRMAN B. BENNETT: Hearing none, the motion is carried, the ayes, have it, and all in favor of approving the motion, say aye?

THE COMMISSION: Aye.

CHAIRMAN B. BENNETT: All opposed, same sign?

(No response.)

CHAIRMAN B. BENNETT: The meeting is adjourned.

(Time noted: 12:03 p.m.)

(At this time the proceedings were adjourned.)
STATE OF INDIANA  )
   ) SS:
COUNTY OF MARION  )

I, Rhonda J. Hobbs, RPR, and a Notary Public
and Stenographic Reporter within and for the County
of Hendricks, State of Indiana at large, do hereby
certify that on the 26th day of February, 2014, I
took down in stenograph notes the foregoing
proceedings;

That the transcript is a full, true and
correct transcript made from my stenograph notes.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my notarial seal this 12th
day of March, 2014.

Rhonda J. Hobbs
NOTARY PUBLIC

My Commission Expires:
August 24, 2017
County of Residence:
Hendricks County