

Indiana Election Commission Minutes February 23, 2018

Members Present: Bryce H. Bennett, Jr., Chairman of the Indiana Election Commission (“Commission”); Karen Celestino-Horseman, Proxy for S. Anthony Long, Vice Chairman of the Commission; Adam Dickey, Proxy for S. Anthony Long, Vice-Chairman of the Commission; Zachary E. Klutz, member; Suzannah Wilson Overholt.

Members Absent: S. Anthony Long, Vice-Chairman of the Commission.

Staff Attending: J. Bradley King, Co-Director of the Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Angela M. Nussmeyer, Co-Director of the Election Division; Matthew R. Kochevar, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Abbey Taylor, Campaign Finance Division staff; Michelle Thompson, Campaign Finance Division staff.

Others Attending: Ms. Cheryl Ashley-Robbins; Mr. Brett Ashton; Dr. Jay Bagga; Ms. Karen Biernacki; Mr. Kristopher Bilbrey; Mr. Bowman; Ms. Laura Brown; Mr. Jeremy Burton; Dr. Bryan Byers; Mr. Scott Chinn; Mr. Crawford; Mr. Shaw Friedman; The Hon. Earl Harris, Jr.; Mr. Jim Hiatt; Ms. Rosemary Khoury; Mar. Mani Kilaru; Mr. Joseph C. Lehman; Mr. Louis Mahern; Mr. Mark Manganaro; Ms. Jessica Martin; Mr. Bradford Moulton; Mr. Notoras; Ms. Rosa Maria Rodriguez; The Hon. Greg Taylor; Mr. Harlan Vondersaar; Mr. James Randolph Willis.

1. Call to Order:

The Chair called the February 23, 2018 meeting of the Commission to order at 1:30 p.m. EST in Indian Government Center South Conference Center Room B, 402 West Washington Street, Indianapolis, Indiana.

2. Transaction of Commission Business:

The Commission proceeded to transact the business set forth in the Transcripts of Proceedings for this meeting prepared by Craig Williams and Lisa C. Pierce of Connor Reporting.

The Commission corrects the following scrivener’s errors in these documents:

Williams transcript:

Page 10, line 1, replace “Chin” with “Chinn”.

Page 31, line 3, replace “weaponing” with “weaponizing”.

Page 33, line 17, replace “poll” with “pull”.

Page 60, line 19, replace “3-5-10-29” with “3-5-2-29”.

Page 63, line 12, replace “statue” with “statute”.

Page 65, line 14, replace “council” with “counsel”.

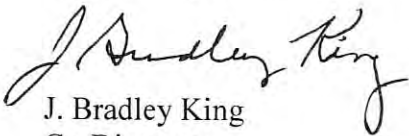
Page 73, line 24, replace "Commissioner" with "Division".
Page 102, line 10, replace "Craig" with "Greg".
Page 108, line 14, replace "AstraZeneca" with "AstraZeneca".
Page 115, line 9, replace "casa" with "CASA".
Page 147, line 12, replace "36-52-10" with "3-6-5.2-10".

Pierce transcript:

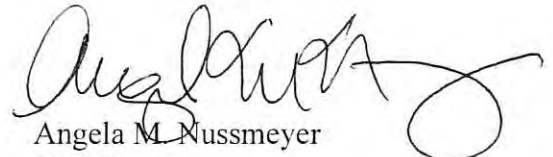
Page 27, line 21, replace "Hickey" with "Dickey".
Page 27, line 22, replace "Hickey" with "Dickey".
Page 35, line 6, replace "definitively" with "define".
Page 43, line 20, replace "365.210" with "3-6-5.2-10".
Page 43, line 25, replace "352" with "3-5-2".
Page 55, line 1, replace "are" with "were".

These documents are incorporated by reference into these minutes. The Commission adjourned this meeting on March 9, 2018 at 3:49 p.m.

Respectfully submitted,

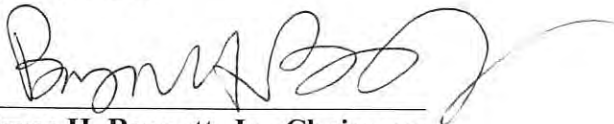


J. Bradley King
Co-Director



Angela M. Nussmeyer
Co-Director

APPROVED:



Bryce H. Bennett, Jr., Chairman

Transcript of Hearing
February 23, 2018

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TRANSCRIPT OF PROCEEDINGS
OF THE INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

Hearing heard on the 23rd day of February, 2018,
at the Indiana Government Center South, 402 W.
Washington Street, Conference Room B, before the
Indiana Election Committee.

A Stenographic Record By:
Craig Williams, CSR, RPR
Notary Public
Stenographic Reporter

In the Matter Of:

Indiana Election Commission Public Session Agenda

TRANSCRIPT OF HEARING

February 23, 2018



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APPEARANCES

INDIANA ELECTION COMMISSION:

BRYCE H. BENNETT
Chairperson

KAREN CELESTINO-HORSEMAN
Proxy for Vice Chairman Anthony Long

MEMBER SUZANNAH WILSON OVERHOLT

MEMBER ZACHARY F. KLUTZ

INDIANA ELECTION DIVISION STAFF:

BRAD KING
Co-Director

ANGIE NUSSMEYER
Co-Director

MATTHEW R. KOICHEVAR
Co-General Counsel

DALE SIMMONS
Co-General Counsel

1 (Time noted: 1:35 p.m.)

2 CHAIRPERSON BENNETT: I call this meeting
3 of the Indiana Election Committee into session
4 on Friday, February 23rd, 2018, to order. The
5 following members of the commission are present:
6 Myself, Bryce Bennett, Chair. We have Karen
7 Celestino-Horseman, Proxy for Vice Chairman
8 Anthony Long, who just joined us. Member
9 Suzannah Overholt is here, and Member Zachary
10 Klutz. The Indiana Election Division Staff, we
11 have Co-Directors Brad King and Angela
12 Nussmeyer, and we have Co-General Counsels Dale
13 Simmons and Matthew Kochevar.

14 Our court reporter today is Craig Williams
15 from Connor Reporting. Before we begin today's
16 proceedings, I want to remind everyone on behalf
17 of the court reporter to identify yourself when
18 you begin to speak, spell your name when
19 identifying yourself, speak clearly, and do not
20 speak at the same time as others.

21 DOCUMENTATION OF COMPLIANCE WITH OPEN DOOR LAW

22 CHAIRPERSON BENNETT: At this time I'd
23 request Mr. King and Ms. Nussmeyer to confirm
24 that the commission meeting has been properly
25 noticed as required under the open door laws.

1 CO-DIRECTOR KING: Mr. Chairman, members of
2 the Commission, the notice for this meeting was
3 posted in accordance with the Indiana Open Door
4 Law.

5 CHAIRPERSON BENNETT: Thank you.

6 I now recognize Mr. King and Ms. Nussmeyer
7 to present minutes of the January 5th, 2018
8 Indiana Commission meeting.

9 APPROVAL OF JANUARY 5, 2018 COMMISSION MINUTES

10 CO-DIRECTOR KING: Mr. Chairman, members of
11 the Commission. The January 5th, 2018 minutes
12 were reviewed by Co-Director Nussmeyer and
13 myself and are presented to you with our
14 recommendation for your approval.

15 CHAIRPERSON BENNETT: Is there a motion to
16 approve these minutes as presented?

17 MEMBER KLUTZ: So moved.

18 CHAIRPERSON BENNETT: We have a motion. Is
19 there a second?

20 VICE CHAIR CELESTINO-HORSEMAN: Second.

21 CHAIRPERSON BENNETT: We have a second. Is
22 there any discussion?

23 Hearing none, all in favor, say aye.

24 All opposed, say nay.

25 The ayes have it, and the motion to approve

1 the minutes is adopted. We will sign the
2 minutes.

3 CANDIDATE CHALLENGE PROCEEDINGS

4 CHAIRPERSON BENNETT: We'll now move
5 forward to the adoption of candidate challenge
6 hearing procedures. In the past, the Commission
7 has followed procedures for conducting candidate
8 challenge hearings, and I move that the
9 Commission use the following procedures today:

10 When each candidate challenge is called,
11 the hearing will begin by recognizing the
12 Election Division staff to provide information
13 about the documents provided to the Commission
14 members, including candidate challenge forms and
15 the notice given to the candidate and
16 challenger. Unless there is objection, the
17 documents provided to the Commission by the
18 Election Division will be entered into the
19 record of this meeting.

20 After the Election Division staff completes
21 its presentation, the challenger will be
22 recognized first. The challenger or the
23 challenger's authorized representative, if
24 written authorization has been filed with the
25 Election Division, may present their case for no

1 more than five minutes unless the Commission
2 votes to allow additional time to the presenter.

3 Commission members may ask questions during
4 a presentation, but the time spent answering
5 these questions will not be counted against the
6 presenter's time. The Election Division may
7 signal the chair when the presenter's time is
8 up.

9 If the presenter offers additional
10 documents or other physical evidence not
11 previously received by the Commission, then the
12 original must be provided to the Election
13 Division, that would be Dale Simmons, to
14 preserve for the record.

15 The candidate or the candidate's authorized
16 representative, if written authorization has
17 been filed with the Election Division, will be
18 recognized following the last presentation by a
19 challenger. The candidate may present their
20 case for no more than five minutes unless the
21 Commission votes to allow additional time for a
22 presenter.

23 Following the presenter by a challenger,
24 the candidate may cross-exam the challenger.
25 Following the presentation by a candidate, a

1 challenger may cross-exam the candidate. The
2 cross-examination in all cases is limited to two
3 minutes, unless the Commission votes to allow
4 additional time.

5 The cross-examination must be limited to
6 questions regarding statements made by the
7 presenter. Following presentation by the
8 candidate, the challenger may present a rebuttal
9 of no more than two minutes.

10 The Commission may dismiss the cause of any
11 challenger who has failed to appear to testify
12 before the Commission.

13 Is there a second to my motion for the
14 Commission to adopt these procedures for today's
15 candidate challenge hearings?

16 IEC MEMBER KLUTZ: Second.

17 CHAIRPERSON BENNETT: Is there any
18 objection by Commission members to these
19 procedures?

20 Hearing none, is there any further
21 discussion?

22 Hearing no discussion, all in favor, say
23 aye.

24 All opposed, say nay.

25 The ayes have it, and the motion is

1 approved.

2 Everyone present who plans to testify
3 before the Indiana Election Commission regarding
4 any matter today, including campaign finance and
5 voting system matters, please stand for the
6 administration of the oath.

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

10 CHAIRPERSON BENNETT: We will now begin
11 consideration of candidate challenges. I remind
12 everyone to please identify themselves before
13 you begin, please.

14 EARL HARRIS, JR.
15 Cause No. 2018-6

16 CHAIRPERSON BENNETT: The first challenge
17 we will address is the challenge to Earl Harris,
18 Jr. And that is Cause No. 2018-6 in the matter
19 of the challenge to candidate Earl Harris, Jr.,
20 candidate for the Democratic Party nomination
21 for state representative in District 2. The
22 Election Division has provided a copy of the
23 candidate filing challenge form with
24 attachments, a copy of the notice given in this
25 matter, and an appearance entered on behalf of

1 the candidate Mr. Chin, identified as Scott
2 Chinn on behalf of the candidate.

3 At this time I would recognize Rosa Maria
4 Rodriguez, challenger, for a presentation.

5 MS. RODRIGUEZ: Good afternoon. I'm not
6 familiar with the setting, so where do I stand,
7 I sit?

8 CHAIRPERSON BENNETT: You're perfect where
9 you are. You may sit if you'd like.

10 MS. RODRIGUEZ: I would prefer. Thank you
11 so much.

12 I'm Rosa Maria Rodriguez. Rosa, R-O-S-A,
13 M-A-R-I-A, Rodriguez, R-O-D-R-I-G-U-E-Z.

14 May I continue?

15 CHAIRPERSON BENNETT: Yes, you may.

16 MS. RODRIGUEZ: Hello, my name is Rosa
17 Maria Rodriguez. On May the 8th, 2016, I had
18 submitted a candidate's filing challenge on Earl
19 Harris, Jr. I stand before you today because
20 the same matter of challenge criteria in 2016
21 still is present today. I am requesting a full
22 and analytical detailed investigation on all
23 proof that I submitted in 2016. This same
24 documentation stands active today.

25 Candidate Earl Harris, Jr. for State

1 Representative, Second District, as I stated
2 before, has maintained his voter registration.

3 2. He's voted in the North Township
4 District Precinct 30 of which he is not a
5 resident.

6 3. On or about January 6th, 2016, and
7 January 11, 2018, Mr. Harris filed for candidacy
8 for State Representative, Second District.
9 Whereas, Mr. Harris did not and does not live in
10 the state of Indiana Second District. He did
11 not live in the Indiana Second District in the
12 2016 Indiana election. He does not presently
13 live there, which makes him ineligible to run in
14 this present election as representative for
15 Second District.

16 Furthermore, Mr. Harris continues to
17 permanently live here in Indianapolis.

18 I recognize that under the laws of Indiana,
19 Harris is entitled to a presumption that his
20 voter registration and his running for Indiana
21 State Representative was lawful. I know all
22 relevant evidence that has been submitted and
23 circumstances must be taken into account,
24 including the knowledge and intent of the voter
25 and candidate.

1 I ask the Indiana Election Commission if
2 there's even a smidgen of a doubt in your mind,
3 as it is in the minds of many of the residents
4 that live in the Second District, that Earl
5 Harris, Jr. is representing and have confirmed
6 that he does not live in the Second District. I
7 ask that you take very seriously the evidential
8 proof I have submitted and that you look out for
9 the best interests of the constituents of the
10 Second District.

11 Subject to prosecuting authorities proving
12 all of the required elements beyond reasonable
13 doubt, either or both of these actions
14 constitute violations to the Indiana Election
15 Code. It is important for you to know that the
16 voters, the constituents in the state of Indiana
17 and especially those in the Second District
18 deserve to know the truth.

19 I recognize Mr. Harris' rights to
20 procedure, due process, including a full
21 opportunity to rebut the proof before you today.
22 But again, there is room for possible violations
23 of the law. I implore you not to reject the
24 requests of an investigation and obtain the
25 truth so all are held accountable for their

1 actions and by the law.

2 I'm not asking this for myself but rather
3 for the voters, the constituents of the Second
4 District and to hold everyone accountable,
5 because we work for them regardless who wins.

6 In the interest of promoting the highest
7 possible level of confidence in the election
8 process and this Election Commission, your
9 endeavors to speak the truth to elevate credible
10 candidates to represent the voters in our state
11 and it is upon you. To allow circumventing the
12 law, they stated ignorance is not acceptable.
13 To permit a candidate, regardless of who they
14 are or who they are related to, to run for
15 office when the residency is questionable is not
16 acceptable. It cannot be allowed to continue.
17 The voters in Indiana Second District, and even
18 throughout the state of Indiana, know the truth
19 about politicians. Even those that walk in the
20 halls --

21 CHAIRPERSON BENNETT: One minute remaining.

22 MS. RODRIGUEZ: -- they know the truth.
23 The voters in Second District deserve to be
24 treated with dignity and with respect. And
25 giving candidates that forthright and just by

1 giving us the assurance that their
2 representatives are truthful of the residency
3 and actions because we vote for them, we owe
4 them to do the right thing.

5 I provided factual evidence taken from
6 inserts of Mr. Harris' very own Facebook page
7 accounts showing his continuous living in
8 Indianapolis. I have proven evidence of
9 Mr. Harris' homestead. I felt that on
10 June 15th, 2016, ignorance of the law was
11 superseded and laws of Indiana were
12 circumvented.

13 CHAIRPERSON BENNETT: Thank you,
14 Ms. Rodriguez, your time is up. You might want
15 to stay there during cross-examination.

16 Mr. Chinn, I recognize you.

17 MR. CHINN: No questions at this time,
18 Mr. Chairman.

19 Any questions from the Commission?

20 VICE CHAIR CELESTINO-HORSEMAN: Yes, sir.

21 QUESTIONS BY VICE CHAIR CELESTINO-HORSEMAN:

22 Q So when Mr. Harris moved to 4114 Butternut
23 Street in Chicago, Illinois, did he take the
24 homestead exemption for that home as well?

25 A No, he kept the homestead exemption here in

1 Indianapolis, though.

2 Q So if he kept the homestead exemption in
3 Indianapolis, because he considers -- oh, I see
4 what you are saying. So he kept it here and did
5 not --

6 A Yes, until June 14th.

7 Q June 14th of 20- --

8 A 2016.

9 Q And that would have been after he filed?

10 A Yes.

11 Q So now we just received these, so I haven't had
12 a chance to go through everything.

13 A That's okay.

14 Q So can you tell me what other documentation you
15 have in here that shows that he's living in
16 Indianapolis?

17 A If you look at his Facebook, you will see a
18 timeline that I -- on the inserts of the
19 Facebook that continues his living here and just
20 visiting East Chicago. During the time of the
21 election, what he did is he would appear for
22 activities and then return back. I believe in
23 March of 2016 he then changes the address of his
24 business, but the business is still here.

25 MEMBER WILSON OVERHOLT: If I might,

1 Ms. Horseman.

2 EXAMINATION,

3 QUESTIONS BY MEMBER WILSON OVERHOLT:

4 Q Ms. Rodriguez, under the law, though, the
5 residence requirement is that it's for one year
6 prior to the election residing in the House
7 District, one year prior to the election.
8 Everything you submitted is what you submitted
9 to your prior challenge.

10 A Right.

11 Q And your timeline stops in 2016, which is
12 obviously more than a year before this election.
13 Do you have any evidence that you're claiming
14 that supports your argument?

15 A I do. All you have to do is get on your phone,
16 go on Facebook --

17 Q No, that's not my job, that's your job.

18 A I understand that.

19 Q What evidence do you have for the election --
20 and sorry, Counselor, I assume we're talking
21 about the election in November, not the primary.
22 So the time period that is at issue is actually
23 November of 2017, whatever day in November is a
24 year before the election, through November of
25 2018. That's when he has to have residency. Do

1 you have anything --

2 A And I can get that. I don't have it here

3 because I didn't go --

4 Q This is your chance.

5 A Okay. But my argument still stands, that at the
6 conception, he was planted in East Chicago. And
7 if you look at the minutes of June 15th, you
8 will see that he says that his father passed
9 away on the 23rd. On the 26th, 27th, because he
10 filed his registration on the 27th, that him and
11 his mother came down here, grabbed some clothes
12 and then went back.

13 Q But again, that time period isn't relevant here.
14 So you've answered my question, you don't have
15 any evidence to present to us today?

16 A Not at this time, no.

17 EXAMINATION,

18 QUESTIONS BY VICE CHAIR CELESTINO-HORSEMAN:

19 Q Just to make sure that I'm clear, so Mr. Harris
20 filed for office when his father died, right,
21 2015?

22 A Yes, he ran for office.

23 Q And that was a special election that he was
24 elected?

25 A No, I'm sorry, I stand corrected. His mother

1 took over the end of the candidacy, then
2 Mr. Harris filed during the election for the
3 next election.

4 Q So his first filing then was in 2016?

5 A Yes.

6 Q Is that right, 2016 or 2017?

7 A No, 2016.

8 MEMBER WILSON OVERHOLT: The one at issue
9 is 2018.

10 Q Okay, so now I understand. That was before, the
11 2016, and the Commission said no.

12 A What occurred was that at the time I didn't know
13 that Mr. Harris did not live in East Chicago. I
14 found out after the election, actually a week
15 after. And so that's when my efforts were to
16 attempt to expose him.

17 But, even after -- and I believe that the
18 Commission circumvented the law because at the
19 time my argument was the homestead, that he
20 continued having the homestead. Their answer to
21 me was that they did not want to disenfranchise
22 the voter. So I'm thinking, okay, I can
23 understand that, for whatever reason, and I
24 really don't know the reason. And he admits
25 that he changed his homestead the day before we

1 came here before the Commission.

2 VICE CHAIR CELESTINO-HORSEMAN: So, in
3 other words, as Commissioner Overholt said, his
4 homestead exemption, everything had been
5 changed --

6 A The day before.

7 Q -- by 2017, the year before this November
8 election, going back to November of last year,
9 everything had been changed?

10 A Yes. And even put that aside, Mr. Harris does
11 not live in East Chicago.

12 CHAIRPERSON BENNETT: Can I just ask then.
13 You need to understand the relevant time period
14 is November 2017 to November 2018. Unless you
15 have some evidence of residency after November
16 2017, that's the only thing relevant in my mind
17 at this point.

18 MS. RODRIGUEZ: And I understand it, and
19 you have to understand I figured all this was
20 going to happen, and that's okay. But you have
21 to understand that I as a resident, I had to
22 bring it forward. Even if I walk away empty
23 handed, that's okay. The residents know and
24 that is enough. My duty was to report that
25 Mr. Harris does not live in my community. And

1 for him to continue representing it is illegal
2 and the voters will have that choice.

3 CHAIRPERSON BENNETT: Anything further, any
4 further evidence?

5 MS. RODRIGUEZ: No, not at this time.

6 CHAIRPERSON BENNETT: At this time, I would
7 recognize counsel for Mr. Harris. And you have
8 no cross-examination; is that correct?

9 MR. CHINN: I don't.

10 CHAIRPERSON BENNETT: So you may be
11 excused.

12 MS. RODRIGUEZ: Thank you.

13 MR. CHINN: Thank you, Mr. Chairman,
14 members of the Commission. For the record, my
15 name is Scott Chinn, I'm a lawyer at Faegre
16 Baker Daniels Law Firm and I'm here today
17 representing Representative Earl Harris, Jr.

18 If I might, members of the Commission, the
19 Commission decided this question, as I think you
20 now know, after listening to some testimony from
21 the challenger and reflecting on the answers to
22 your own questions. The Commission decided this
23 question on 2016. It's a challenge to the
24 candidacy now for the 2018 cycle based on
25 residency brought by the same challenger. It's

1 against the same candidate. The allegations are
2 the same. The evidence is the same. I think
3 you've now had testimony before you that there's
4 no new evidence of anything that was raised in
5 2016.

6 We filed earlier this week a motion for
7 summary ruling in this matter on the basis of
8 collateral estoppel, the idea that this
9 Commission has decided this exact question in
10 2016 based on the same evidence, the same
11 allegations.

12 I did not put a certified copy, but I took
13 the liberty of looking up the minutes from that
14 proceeding, June 15th of 2016, and with
15 reference to page 64 of those minutes.

16 Mr. Chairman, I'd be happy -- again not a
17 certified copy, but just for the record I'd be
18 happy to present this exhibit and hand it to
19 Mr. Simmons, if I may. They're the minutes of
20 your previous meeting on June 15th, 2016.

21 So on page 64 of those minutes, the
22 reflection of this Commission's vote to deny the
23 challenge under the identical circumstances that
24 are presented here. In our motion for summary
25 ruling filed earlier this week, we asked the

1 Commission to take administrative notice of its
2 prior decision in 2016 and would ask for a
3 denial of the challenge on that basis
4 without (inaudible).

5 Now, I certainly will reserve the right if
6 you decide that's not proper under the
7 circumstances to ask Mr. Harris a few questions.
8 But I think under the circumstances and given
9 especially the fact that the challenger had an
10 opportunity to be heard to determine whether
11 there was any new evidence or any new
12 allegations whatsoever, and it's clear that
13 there are not. I would put that motion squarely
14 in front of the Commission.

15 CHAIRPERSON BENNETT: Thank you. Now, when
16 you say that it's the same case, are you saying
17 that because there was no new evidence presented
18 here today?

19 MR. CHINN: Well, it means all the elements
20 of collateral estoppel. So you have the same
21 parties, right, the same circumstances, the same
22 allegations.

23 CHAIRPERSON BENNETT: The circumstances are
24 a little different because there's been more
25 time elapsed.

1 MR. CHINN: Well, okay, but it's a
2 different election cycle, and that's why I
3 didn't object to her putting on her evidence. I
4 didn't stand up and object her putting on the
5 evidence. She had the opportunity to present
6 any new evidence whatsoever. But the parties
7 are the same, the circumstances are the same,
8 except for the new election cycle. So under the
9 doctrine of collateral estoppel, the challenge
10 must be denied with no new evidence. In fact,
11 if you look at her filing --

12 CHAIRPERSON BENNETT: That's the key, no
13 new evidence.

14 MR. CHINN: No new evidence at all. If you
15 look at her filing and compare it to the filing
16 last time, it's virtually the same stack of
17 papers, and I think Ms. Overholt mentioned that
18 the timeline stops in 2016.

19 VICE CHAIR CELESTINO-HORSEMAN: Was she
20 correct when she said that at that meeting they
21 said the challenge was brought after the
22 election, but the concern of the Commission was
23 not to disenfranchise the voters because it was
24 brought after the election, so it seems to me
25 this is a different circumstance than bringing

1 it before the election.

2 MR. CHINN: I think the minutes speak for
3 themselves.

4 VICE CHAIR CELESTINO-HORSEMAN: I haven't
5 seen them.

6 MR. CHINN: I understand. But that's why
7 I'm asking the Commission to take notice of its
8 own prior ruling, because I think the minutes
9 speak for themselves that the Commission decided
10 fully on the merits to deny the merits of the
11 challenge after full testimony from both sides.
12 There was a very voluminous evidentiary record
13 dealing with all of the residence issue.

14 MEMBER WILSON OVERHOLT: I understand your
15 argument. I think because of the requirement
16 that it's a one-year residency, there's a
17 one-year residency requirement prior to each
18 election, so I think we understand that we ruled
19 on this issue with respect to the 2016 election.

20 I think with respect to the 2018 election,
21 because of the fact that the residency
22 requirement was kind of this roll-in -- I would
23 read it as a roll-in requirement, so I think in
24 terms of the notion that collateral estoppel
25 applies because of a ruling with respect to

1 2016, I don't see that that ruling can impact us
2 with respect to 2018, knowing that the
3 evidence -- but knowing also that it's a new
4 time frame that applies, 2016 evidence is not
5 relevant to this election.

6 CHAIRPERSON BENNETT: I agree with your
7 context, but again back to the point of no new
8 evidence.

9 MEMBER WILSON OVERHOLT: Right, right. I
10 mean, we can resolve the issue, I don't know we
11 can resolve it based on our 2016 ruling.

12 VICE CHAIR CELESTINO-HORSEMAN: Right now I
13 am inclined to deny the motion and then also
14 deny the challenge.

15 CHAIRPERSON BENNETT: Is that your motion?

16 VICE CHAIR CELESTINO-HORSEMAN: Yes, I'll
17 make it a motion, deny the motion and deny the
18 challenge.

19 CHAIRPERSON BENNETT: Is there a second?

20 MEMBER KLUTZ: I'll second that.

21 CHAIRPERSON BENNETT: There's been a motion
22 and a second.

23 All in favor, say aye.

24 All opposed, say nay.

25 The ayes have it, the motion passed to deny

1 and deny.

2 MR. CHINN: Thank you, Mr. Commissioner.

3 CHAIRPERSON BENNETT: Next we move to

4 consideration of --

5 I'll move for a vote on a straight denial
6 of the challenge, just so the record is clear.

7 So I move that the challenge be denied. Is
8 there a second to that?

9 VICE CHAIR CELESTINO-HORSEMAN: Second.

10 CHAIRPERSON BENNETT: Any discussion?

11 Hearing none, the motion of the challenge
12 to deny, say aye.

13 Opposed, say nay.

14 The ayes have it, the motion carried,
15 challenge denied.

16 CHERYL ASHLEY-ROBBINS CHALLENGE

17 Cause No. 2018-7

18 CHAIRPERSON BENNETT: We'll now move on to
19 the Cheryl Ashley-Robbins challenge, Cause
20 No. 2018-7, In the Matter of the Challenge to
21 Candidate: Cheryl Ashley-Robbins, Candidate for
22 the Democratic Party State Representative,
23 District 33.

24 The Election Division has been provided a
25 copy of the candidate challenge form, a copy of

1 the notice given in this matter, and I would
2 recognize challenger Fred Davis for a
3 presentation.

4 MR. VONDERSAAR: My name is Harlan,
5 H-A-R-L-A-N, Vondersaar, V-O-N-D-E-R-S-A-A-R,
6 II. I'm the counsel on behalf of Fred Davis.
7 You guys have the evidence currently?

8 We are presenting this petition under
9 3-8-2-7-4A. As you can see in the back of the
10 information we gave you, the last primary
11 election Ms. Robbins voted as a Republican. And
12 if you look at Section 3 of the CAN-2, she made
13 a note on that for her affiliation of "the most
14 recent primary election which I voted was the
15 primary held by the party which I claim
16 affiliation above." So you can see that that is
17 inconsistent with her CAN-2. So we are
18 petitioning for a challenge for her removal.

19 CHAIRPERSON BENNETT: Any questions by any
20 Commission members?

21 VICE CHAIR CELESTINO-HORSEMAN: The county
22 chair did not --

23 MR. VONDERSAAR: No, we spoke with them and
24 they did not sign any forms and there were no
25 forms submitted.

1 CHAIRPERSON BENNETT: Any other questions
2 by the Commission?

3 MEMBER WILSON OVERHOLT: I would like to
4 reserve further questions after we hear from the
5 candidate.

6 CHAIRPERSON BENNETT: Okay. I recognize
7 the candidate.

8 MR. BILBREY: I'm here on behalf of Cheryl
9 Ashley-Robbins. I'm her campaign committee
10 chairman. Kristopher Bilbrey, 318 South
11 Meridian Street, Winchester, Indiana.

12 CHAIRPERSON BENNETT: Can you spell your
13 last name?

14 MR. BILBREY: Yes, sir. B-I-L-B-R-E-Y.
15 And it's Kristopher with a K,
16 K-R-I-S-T-O-P-H-E-R.

17 Can I read a statement?

18 CHAIRPERSON BENNETT: If it fits within
19 your time slot.

20 MR. BILBREY: Sure. Ms. Ashley-Robbins has
21 been a citizen that has opposed action taken by
22 the mayor of Winchester, now a candidate for the
23 same seat in this last year. Ms. Ashley-Robbins
24 is retired from Anchor Glass, which is a
25 facility in Winchester in which she has been a

1 strong Democrat union supporter for the time
2 that she worked there.

3 Ms. Ashley-Robbins is 62 years old and has
4 grown up in a strong Democrat family and has
5 lived those values through her adult life. When
6 Ms. Ashley-Robbins began talking about running,
7 we spoke with many different citizens in and
8 around -- Democrat voters, Republican voters and
9 Independent voters -- in District 33. Because
10 it was very clear that the voters of
11 District 33, Jay County, Randolph County and a
12 small portion of eastern Delaware County, wanted
13 a choice besides Mr. Byrum.

14 Voters especially in Winchester and
15 Randolph County have been aware but it's
16 trickled over that there have been major issues
17 with Mr. Byrum as mayor, and they are worried
18 about that as the candidate for State
19 Representative.

20 Mr. Byrum in his leadership position has
21 been at odds with his citizens, his council, and
22 has had issues with communication and
23 transparency, having at least two if not more
24 public access complaints and at least two or
25 three open door violations.

1 On February 27th, 2017, elected prosecutor
2 of Randolph County stood up in a BZA hearing on
3 the record and stated that he was concerned that
4 the mayor of Winchester through submitting a
5 loan application to the IHCPA could possibly
6 result in any fraudulent transaction. Through
7 all of these issues over the last year, year and
8 a half, the citizens have become concerned and
9 Ms. Ashley-Robbins decided to run.

10 CHAIRPERSON BENNETT: You have 30 seconds
11 left.

12 MR. BILBREY: Okay. The problem is, she
13 denies that -- she did not vote in the 2016
14 primary. We have the signatures here. And also
15 the reason that she did not ask the chairman is
16 we had word that the chairman was going to deny
17 her the right to run because how she had treated
18 the candidate and not because she was not a
19 Democrat. I have a recorded phone conversation
20 from Mr. Davis where he states exactly that
21 after all this happened. On the 17th of this
22 month he stated in a conversation that he would
23 have denied her the right to run due to the fact
24 that she has been critical of the candidate. We
25 knew that beforehand going into this, and then

1 he admitted to that afterwards. That to me is a
2 perversion of the policies and the procedures
3 and not what that is. It's weaponizing this
4 procedure in order to pave a smooth way for his
5 handpicked candidate.

6 CHAIRPERSON BENNETT: Thank you. Your time
7 is up.

8 Any questions from the Commission?

9 MEMBER WILSON OVERHOLT: Yeah, I have a
10 couple. So you said that you have -- you made
11 it sound as if you have something in front of
12 you that would somehow demonstrate that she did
13 not vote in -- are you saying that
14 Ms. Ashley-Robbins didn't vote in 2016 primary?

15 MR. BILBREY: She's stating that she did
16 not. And we pulled the voter registration, the
17 signature cards from the Randolph County Clerk's
18 office, and there is a question of her
19 signature --

20 MEMBER WILSON OVERHOLT: It's not the
21 signature card, what we would actually need to
22 see would be the poll book. Proving a negative
23 is kind of a hard thing to do when we have
24 something that would prove in the affirmative.
25 You said you have something showing that she did

1 not somehow vote in that primary in 2016.

2 MR. BILBREY: I don't know how I would
3 prove that she didn't other than we're calling
4 into question --

5 MEMBER WILSON OVERHOLT: Do you have a
6 sworn statement from the candidate that she did
7 not vote in the 2016 primary?

8 VICE CHAIR CELESTINO-HORSEMAN: Let's take
9 it another way. Let's say she didn't vote in
10 the 2016 primary. The law says that she has to
11 -- "candidate is considered to be affiliated
12 with a political party only if any of the
13 following applies: The most recent primary
14 election in Indiana in which the candidate voted
15 was a primary election party held by the party
16 with which the candidate is claiming
17 affiliation."

18 So that means she had to vote at some time
19 in the most recent primary as a Democrat. And
20 according to this history that we have here, she
21 hadn't voted in a primary since -- they don't
22 have anything listed on here since 2002.

23 MR. BILBREY: Yes, ma'am.

24 VICE CHAIR CELESTINO-HORSEMAN: I mean, the
25 law is very, very clear. And I certainly

1 appreciate anybody who jumps in the process and
2 wants to get involved. But you either have to
3 vote in the primary or have the consent or
4 approval of the county chairman. So you don't
5 have either one of those.

6 MR. BILBREY: May I ask a question to kind
7 of -- so if someone does not have that and the
8 law states that they need to ask the party
9 chair, what's the policy in that situation? Is
10 there something that states what is the grounds
11 that they make the decision? Because people do
12 that all the time. There are people that poll,
13 vice versa, and run all the time, and party
14 chairs generally -- and my understanding is
15 they're trying to determine if they kind of hold
16 and espouse -- you know, if as a Republican, I
17 poll a Democratic ballot in the primary and then
18 I want to run, the Republican chairman is trying
19 to determine if yes, I actually hold Republican
20 values and I'm true to the Republican Party,
21 such, that's what they're trying to make it the
22 basis on.

23 VICE CHAIR CELESTINO-HORSEMAN: I'll cut to
24 the chase for you. Each one of the parties has
25 rules that are on the state party website,

1 Republican and Democrat. So if you want to go
2 and see how they're guided by that, I would
3 suggest that you go there and take a look at
4 that. But that's outside of this. I mean, the
5 bottom line is that legally I just don't see
6 anything here that supports her to be able to do
7 this.

8 CHAIRPERSON BENNETT: Any other questions
9 by the Commission?

10 MEMBER WILSON OVERHOLT: No.

11 CHAIRPERSON BENNETT: Is there a motion?

12 VICE CHAIR CELESTINO-HORSEMAN: I make a
13 motion to grant the challenge.

14 MEMBER WILSON OVERHOLT: I second.

15 VICE CHAIR CELESTINO-HORSEMAN: Is that
16 improper phrasing?

17 CHAIRPERSON BENNETT: Motion to grant the
18 challenge.

19 Is there anything that the challenger would
20 like to say?

21 MR. VONDERSAAR: No.

22 IEC MEMBER HORSEMAN: Should I make it more
23 clear? I'll make a motion that Ms. Cheryl
24 Ashley-Robbins, based upon the challenge, is not
25 allowed to be on the ballot. Is that more

1 clear?

2 CHAIRPERSON BENNETT: I will close the
3 public hearing at this point and call for a
4 vote. All those in favor of upholding the
5 challenge, say aye.

6 All opposed, say nay.

7 The ayes have it, the challenge is upheld.

8 Thank you kindly.

9 The Election Division is now directed to
10 amend the certified list of primary candidates
11 to indicate the name of this candidate is not to
12 be printed on the ballots.

13 JIM HIATT

14 Cause No. 2018-8

15 CHAIRPERSON BENNETT: The next hearing will
16 be in consideration of Cause No. 2018-8 In the
17 Matter of the Challenge of Jim Hiatt, Candidate
18 for the Democratic Party Nomination for State
19 Representative, District 34. The Election
20 Division has been provided a copy of the
21 candidate filing challenge form and a copy of
22 those in this matter.

23 At this time, I recognize the challenger
24 Alice Bennett for a presentation.

25 MR. VONDERSAAR: Thank you. Again, my name

1 is Harlan Vondersaar, representing Ms. Bennett.
2 We are filing our petition on the same cause as
3 our last petition, Section 3-8-2-7-4A, and our
4 evidence, we have submitted the Delaware County
5 Board of Registration voting record for
6 Mr. Hiatt. And as you can see, in 2016, it is
7 an R next to the primary vote.

8 And as again on the CAN-2 form under
9 Section 3, the box checked "the most recent
10 primary election in Indiana which I voted was a
11 primary held by the party in which I claim
12 affiliation above."

13 That is all.

14 CHAIRPERSON BENNETT: Thank you.

15 MEMBER WILSON OVERHOLT: Mr. Chairman, I
16 don't see a certification on this. There's a
17 stamp but I don't see anything indicating that
18 this is a true and accurate copy. It makes me a
19 little nervous because there's a lot of
20 handwritten information. I guess that's a point
21 that the Commission can consider, but I would
22 point out that it does not appear to be a
23 certified copy, and it is not clearly marked
24 as --

25 CHAIRPERSON BENNETT: What about the

1 receipt stamp in the corner?

2 MEMBER WILSON OVERHOLT: Well, that's
3 received from the Secretary of State. I don't
4 know what that -- it looks like a stamp from the
5 Board of Voter Registration, it looks like it
6 was received from the Election Division as part
7 of this challenge, I would presume. I guess
8 that's an evidentiary matter for the Commission
9 to consider.

10 CHAIRPERSON BENNETT: Are there any other
11 questions?

12 VICE CHAIR CELESTINO-HORSEMAN: Do you have
13 with you, sir, anything that's certified or
14 anything?

15 MR. VONDERSAAR: No. It was our impression
16 that it is certified. I don't know how Randolph
17 County handles their -- or, sorry, how Delaware
18 handles their forms.

19 CHAIRPERSON BENNETT: Any
20 cross-examination?

21 MR. HIATT: No, sir, I have no questions.

22 VICE CHAIR CELESTINO-HORSEMAN: I have a
23 question for you, sir. Did you vote Republican
24 in the 2016 primary?

25 MR. HIATT: I did.

1 VICE CHAIR CELESTINO-HORSEMAN: Thank you
2 for being honest, sir, I appreciate it.

3 MR. HIATT: I would like to address that
4 when I have the opportunity.

5 CHAIRPERSON BENNETT: Now is the time.

6 MR. HIATT: Is this my part of the
7 presentation?

8 CHAIRPERSON BENNETT: Yes.

9 MR. HIATT: Okay. Jim Hiatt, J-I-M
10 H-I-A-T-T.

11 Mr. Chairman, Commissioners, Election
12 Committee staff and Dr. Bennett. Thank you for
13 allowing me to make this presentation to you.
14 Please grant me a little bit of patience because
15 I don't have a suit on, I'm representing myself.
16 I have had some people help me do this, but I am
17 not really good at it.

18 I am Jim Hiatt, Registered Pharmacist,
19 Community Mental Health Care Pharmacy Director,
20 Certified Forensic Investigator and a long-time
21 Deputy Coroner from Muncie, Indiana.

22 I don't have a deep history of political
23 engagement, but I feel I've been called to run
24 for a seat in the Indiana House on account of
25 the tragic, almost unbelievable number of

1 deaths, ruined lives and devastated families due
2 to the opiate and methamphetamine drug problem.

3 It's rampant in my community, as in many others,
4 and these are issues that I have to deal with in
5 my practice on a daily basis.

6 In the past couple weeks I've had quite an
7 education in the abstract and metaphysical world
8 of the Indiana election law that the legislation
9 basically created and you oversee.

10 Now, I can totally empathize with
11 Lieutenant Governor Doctor Chancellor lifelong
12 Republican Sue Ellspermann upon her rude
13 awakening that, notwithstanding evidence to the
14 contrary, under Indiana Code 3-8-2-7,
15 Dr. Ellspermann was not a Republican like she
16 thought. No, she was a Democrat.

17 As you know, application of the Indiana
18 Code 3-8-2-7 is the subject to more than nine
19 out of ten candidate challenges, much like the
20 one you just heard, and hours and hours of
21 commission hearings. Former Commission Chairman
22 Tom Wheeler said on the record in 2010 that the
23 General Assembly pushed that statute through to
24 address the problem of stealth candidates in I
25 believe Lake County, and that the statute really

1 needed to be interpreted by the courts. And the
2 Indiana Court of Appeals did that after the
3 loser in the Ellspermann case appealed.

4 The Ellspermann case is on the books as
5 good common law. Except if you look at the
6 legislative history of that code, it has been
7 amended at least four times since Ellspermann
8 case.

9 To get to my point, under the law, which I
10 respect --

11 CHAIRPERSON BENNETT: I'll give you at
12 another minute. You're over now.

13 MR. HIATT: Okay. As a result of the
14 ballot I voted in 2016 in the primary, my
15 affiliation with the Democratic Party ended and
16 I officially became a Republican. By law, I've
17 been a Republican since the first Tuesday in May
18 of 2016.

19 Before I was given one to fill out and file
20 at the Secretary of State's office a few weeks
21 ago, I had never seen a CAN-2 form. So I want
22 to tell you sincerely that I made an unknowing
23 honest mistake on my CAN-2 form, and based on my
24 life experience that I marked that I was a
25 Democrat on the Candidate-2 form. I forgot I

1 voted on the Republican Party ballot in the 2016
2 primary, and as a result of that I was not a
3 Democrat, I was a Republican.

4 I have had supporters assisting to do
5 everything I can, short of hiring David Brooks
6 or Tom John, which I can't afford, to be on this
7 year's primary election ballot. To correct my
8 mistake, earlier today I filed amendments to my
9 campaign filing and the House Economic interest
10 disclosure. I prepared and respectfully offer
11 to you -- could I offer this into evidence, sir?

12 CHAIRPERSON BENNETT: You may.

13 MR. HIATT: The original is on the top,
14 copies are below. Do I give copies to
15 individuals now?

16 CO-DIRECTOR KING: I'll pass them on.

17 MR. HIATT: I would like to give one to his
18 counsel, please.

19 I submit to you my corrected CAN-2
20 accurately showing my Republican Party
21 affiliation. I humbly ask is this council, I
22 beg, I pray, or request that the Commission
23 entertain a motion that my corrected filing be
24 accepted, as has been in some cases in the past.
25 I believe this corrected CAN-2, if accepted,

1 addresses Dr. Bennett's complaint. And since no
2 candidate entered the Republican Party, the
3 CAN-2 correction does not abridge another
4 candidate's challenge rights, and since I voted
5 in their last primary, the Republican Party
6 can't really object.

7 Thank you for your consideration in this
8 matter, and I do have a bottle of champagne in
9 the car for Dr. Bennett so she and her candidate
10 could joyfully celebrate her primary election in
11 May.

12 CHAIRPERSON BENNETT: Thank you. Any
13 questions?

14 VICE CHAIR CELESTINO-HORSEMAN: So can you
15 come back and amend this?

16 CHAIRPERSON BENNETT: Let's ask legal
17 opinion on that.

18 CO-GENERAL COUNSEL SIMMONS: No, our view
19 is you can only -- we're bound by statute to not
20 accept any filing after the deadline. We do
21 accept amended declarations before the deadline,
22 because the deadline has not passed. So if you
23 will see amended declarations in our files, it's
24 because they're tendered before the deadline.
25 But after the deadline, the legislature has not

1 given us any discretion. As a matter of fact,
2 it's our administerial duty to deny these
3 filings.

4 VICE CHAIR CELESTINO-HORSEMAN: Is there a
5 Republican running for the seat?

6 MR. HIATT: No, ma'am.

7 VICE CHAIR CELESTINO-HORSEMAN: Can the
8 Republican county chairman then name him as a
9 candidate?

10 CO-GENERAL COUNSEL SIMMONS: Yes, after the
11 primary there is a period in which the parties
12 can fill their ballot vacancies if they had no
13 candidate run in the primary up until noon,
14 June 30th.

15 MR. HIATT: I understand it, but I believe
16 that is incorrect. There are cases on file.
17 For instance, there was a gentleman by the name
18 of Colonel in 2016 that this commission allowed
19 him to amend his application after the fact to
20 eliminate part of his name, so this commission
21 does have the power to allow that, sir. I can
22 get you that record and probably other ones
23 where that has happened.

24 VICE CHAIR CELESTINO-HORSEMAN: It was a
25 name change?

1 MEMBER WILSON OVERHOLT: That's a little
2 bit different than party affiliation.

3 MR. HIATT: The same thing exists, though,
4 ma'am.

5 CHAIRPERSON BENNETT: I think we've heard
6 all the evidence and testimony that we need. We
7 have a legal opinion from counsel.

8 Does the Democratic counterpart --

9 CO-GENERAL COUNSEL KOICHEVAR: I concur, and
10 I will add on one small item. I do know that in
11 Indiana Code 3-8-7 -- the section escapes me at
12 this time -- there is a provision that if you do
13 file a CAN-2, run in the primary, win the
14 primary, you can change your legal name if you
15 have a legal name change. That is specific in
16 state law that I would only note against
17 anything else. That's the only thing I know of
18 in the whole scheme of election law through one
19 cycle where something could be changed that was
20 stated on the CAN-2.

21 But I will concur in full with Mr. Simmons
22 his opinion for filing CAN-2s in the primary and
23 our deadlines that we have to --

24 CHAIRPERSON BENNETT: We have no discretion
25 to --

1 CO-GENERAL COUNSEL KOICHEVAR: I will say
2 that I know of nothing in the Indiana Election
3 Code allowing the commission to have such
4 discretion.

5 CHAIRPERSON BENNETT: I'll close the public
6 hearing and ask if there's a motion you'd like
7 to make.

8 VICE CHAIR CELESTINO-HORSEMAN: Is there
9 anything you want to give us that you've just
10 been handed?

11 MR. HIATT: No, there are several cases
12 that I had looked up that --

13 VICE CHAIR CELESTINO-HORSEMAN: So I'm
14 going to --

15 CHAIRPERSON BENNETT: Did you want to make
16 a motion?

17 MEMBER KLUTZ: I'll make a motion and grant
18 the challenge.

19 VICE CHAIR CELESTINO-HORSEMAN: I will
20 second the motion. And I would also like to
21 encourage you to go back to your party chairs
22 and then you can run.

23 CHAIRPERSON BENNETT: We have a motion and
24 second. All in favor, say aye.

25 Opposed, say nay.

1 The challenge is granted.

2 The Election Division is directed to amend
3 the certified list of primary candidates to
4 delete the name of this candidate and is not to
5 be printed on the ballot.

6 ROSEMARY KHOURY

7 Cause No. 2018-9

8 CHAIRPERSON BENNETT: We'll next move to
9 the consideration of Cause No. 2018-9, In the
10 Matter of Challenge to Rosemary Khoury,
11 Candidate for the Democratic Party Nomination
12 for Judge of the Madison Circuit Court No. 3.
13 The Election Division was provided a copy of the
14 candidate challenge form, and a copy of the
15 notice given in this matter.

16 At this time I will recognize the
17 challenger, James Randolph Willis, for a
18 presentation.

19 MR. WILLIS: May I pass these out to the
20 Commission, sir?

21 CHAIRPERSON BENNETT: Yes, sir.

22 MR. WILLIS: There's a copy for all the
23 Commission members and counsel.

24 My name is James Randall Willis, I live in
25 Anderson. J-A-M-E-S, R-A-N-D-A-L-L,

1 W-I-L-L-I-S.

2 I file this challenge today challenging
3 both Rosemary Khoury's residency, candidacy and
4 also her right to vote in Madison County.

5 I would ask if Rosemary's counsel is going
6 to call any witnesses, I'd ask for a separation
7 of witnesses at this time.

8 MS. CRAWFORD: May I respond?

9 CHAIRPERSON BENNETT: Do you have any
10 witnesses?

11 MS. CRAWFORD: I may call Rosemary Khoury
12 as a witness.

13 MR. WILLIS: I don't think we'd have to
14 separate her.

15 CHAIRPERSON BENNETT: Yes, she's your
16 client, correct?

17 MS. CRAWFORD: Yes.

18 CHAIRPERSON BENNETT: Nobody except her?

19 MS. CRAWFORD: No.

20 CHAIRPERSON BENNETT: Motion is granted.

21 MR. WILLIS: Thank you, I appreciate that.

22 Mr. Chairman, members of the council, I do
23 not offer this challenge with any animosity
24 towards Ms. Khoury or with any malice
25 aforethought.

1 My first issue is that Ms. Khoury doesn't
2 meet the candidate requirements under Indiana
3 law for a circuit court judge election in
4 Madison County under 3-8-1-16. I have offered
5 evidence to that fact, and my first exhibit says
6 that under 3-8-1-16 that a candidate, and that's
7 very specific, must reside in the circuit and
8 also be admitted to the practice of law in the
9 state. No doubt that Rosemary has been admitted
10 to the practice of law in the state, but she
11 does not reside in the circuit.

12 If we look at the dates when the -- and if
13 there's any ambiguity in this about when judges
14 can take office, look at the date when the
15 statute and constitutional provision were
16 written. The state constitution provision was
17 written in 1970, and it says that a judge shall
18 reside within the circuit and be admitted to the
19 practice of law. In 1986 the state statute was
20 clarified, was written after the last
21 constitutional upgrade, and the statute expands
22 the requirement for holding the office of
23 circuit court judge by adding a candidate for
24 the office.

25 Since the statute was written after the

1 constitution, it seemed that the legislature
2 needed to expand the language to include
3 candidates rather than those elected to office.

4 I'm sure you are all aware of the Charlie
5 White case and that the Democrat's challenge
6 denied due to untimeliness. I believe that we
7 have timeliness here with this challenge, and
8 that if we allow judges that were elected to
9 reside outside the county, we'd have no way to
10 unseat them, if we allowed candidates to do
11 that. Once the election is over, we would force
12 the will of the voters because they have cast
13 their ballots for that judge.

14 VICE CHAIR CELESTINO-HORSEMAN: Can I ask
15 you a question? By the way, I'm very familiar
16 with the Charlie White case.

17 MR. WILLIS: Good, I'm glad.

18 VICE CHAIR CELESTINO-HORSEMAN: I would
19 like to ask our counsel down there, the
20 provision of law upon which he is relying that
21 he handed out to us says that the candidate for
22 judge of a circuit court must reside in the
23 circuit upon taking office. Unlike the other
24 candidate offices, it's not where you have to
25 live in the district for a year, but upon the

1 date that you are sworn in you have to be a
2 resident. Is that correct?

3 CO-GENERAL COUNSEL KOCHEVAR: When I look
4 upon taking office and when I read the statute,
5 which I believe you're referring to Indiana Code
6 3-8-1-16, it makes a reference back to the state
7 constitution, Article VII, Section 7, which we
8 seem to have the same meaning upon taking
9 office, I've always viewed that as being
10 elected, being qualified, and then assuming
11 office at the statutorily appropriate time.

12 VICE CHAIR CELESTINO-HORSEMAN: So what our
13 counsel is saying is that unlike the other
14 candidates that you heard argue here today, in
15 the case of a judge they don't have to reside in
16 that district or that county until they take
17 office, which is when they're sworn in.

18 MR. WILLIS: I would contest that, I would
19 contest that because of the very specific
20 language a "candidate," not an "officeholder."
21 And I think that the legislature expanded that
22 language to allow a candidate to run for that
23 office that may not be admitted to the bar yet
24 but knowing they would be by the time they take
25 office. And this provision was directed at

1 those candidates that would allow them to run
2 even though they were not members of the bar but
3 would be admitted to the practice of law in
4 Indiana by the time they took office. That's
5 how I would interpret that code, because of the
6 semicolon in the language which creates two very
7 independent clauses.

8 MEMBER WILSON OVERHOLT: I think one of the
9 rules of statutory construction is that you
10 attempt to give whole meaning to the words in
11 the statute equal meaning, to the extent
12 possible. What you are asking us to do is kind
13 of a tortured reading of the statute. I know it
14 uses the term candidate, but it talks as a
15 candidate for office has to meet the
16 requirements upon taking office.

17 And I, in my view anyway, the pretty clear
18 intent, surprisingly clear intent to me of the
19 legislature would be that the candidate, that
20 it's once candidate is sworn in and becomes a
21 judge is when they are required -- they could
22 move into the county a minute before taking the
23 oath of office, but they just have to be a
24 resident of that district, that circuit upon
25 being sworn in.

1 VICE CHAIR CELESTINO-HORSEMAN: Let me ask
2 the question. Does the Republican counsel --

3 CHAIRPERSON BENNETT: I'd be interested,
4 Dale, of your view of the statute.

5 CO-GENERAL COUNSEL SIMMONS: Yes, I read it
6 the same way, upon taking office. There are
7 several different ways you have to pay attention
8 to the particular office and the way it's
9 described. Some folks who run for election
10 don't have to be a resident until election.
11 Some say upon taking office, others require a
12 year before the election. So each of those you
13 have to give meaning to, and I read it the same
14 way as Matthew, my co-counsel.

15 CHAIRPERSON BENNETT: We know your
16 contention and argument in that regard. Do you
17 have anything else you want to say?

18 MR. WILLIS: Secondly, I challenge her
19 voter registration in Madison County as not
20 being a resident of the county.

21 VICE CHAIR CELESTINO-HORSEMAN: Is she
22 registered to vote?

23 MR. WILLIS: To my knowledge, she is
24 registered to vote in Madison County.

25 VICE CHAIR CELESTINO-HORSEMAN: Do you have

1 proof of that?

2 MR. WILLIS: I have.

3 CHAIRPERSON BENNETT: Which document number
4 is that?

5 MS. CRAWFORD: I don't have a copy of the
6 exhibits, and I would request a copy.

7 CHAIRPERSON BENNETT: Do you have extras?

8 MR. WILLIS: There are copies in there for
9 counsel.

10 MS. CRAWFORD: Do you need it? If you need
11 it --

12 VICE CHAIR CELESTINO-HORSEMAN: I can share
13 with you.

14 MS. CRAWFORD: Thank you.

15 MR. WILLIS: Yes, Rosemary, Ms. Khoury
16 became a registered voter in Madison County on
17 or about June 8th of 2016, is when her -- and I
18 think that Ms. Khoury, her counsel will attest
19 to that fact under oath.

20 CHAIRPERSON BENNETT: We're shuffling
21 papers here. What fact are you talking about?

22 MR. WILLIS: The fact that I'm talking
23 about is that Ms. Khoury did register to vote in
24 Madison County in 2016.

25 VICE CHAIR CELESTINO-HORSEMAN: Her voter

1 registration, what address is claimed?

2 MR. WILLIS: Her address is claimed as
3 2105 Arrow Avenue.

4 VICE CHAIR CELESTINO-HORSEMAN: So do you
5 have anything to show that she's not living at
6 2105 Arrow Avenue?

7 MR. WILLIS: Absolutely. The documents
8 that I turned in to you there at this time make
9 that claim.

10 CHAIRPERSON BENNETT: What document are you
11 referring to? Can you identify the document
12 you're referring to?

13 MR. WILLIS: Let's go with Willis 6, which
14 is the settlement agreement, in the
15 pre-dissolution of marriage.

16 VICE CHAIR CELESTINO-HORSEMAN: Is that
17 2011?

18 MR. WILLIS: Yes.

19 CHAIRPERSON BENNETT: How does this relate
20 to 2016?

21 MR. WILLIS: Because she was awarded the
22 property at 7353 Layman Road in the divorce, and
23 she is sole owner of that property.

24 MEMBER WILSON OVERHOLT: That's
25 six-and-a-half years ago.

1 MR. WILLIS: And she still maintains that
2 residence.

3 MEMBER WILSON OVERHOLT: Where is your
4 proof of that?

5 Actually he has a tax bill in here from
6 Madison County where the tax bills are sent to
7 that Layman Street address.

8 MR. WILLIS: You asked for voter
9 registration, and I have that here.

10 Ms. Khoury maintains a homestead exemption
11 on the property at 7353 Layman Avenue in
12 Indianapolis.

13 CHAIRPERSON BENNETT: Is that document that
14 you just handed Ms. Horseman, is that in the
15 packet of information for us?

16 MR. WILLIS: That's the voter registration.

17 VICE CHAIR CELESTINO-HORSEMAN: That's
18 Madison County registration.

19 MR. WILLIS: I also submitted Willis
20 Exhibit 9. Willis Exhibit 9 lists from -- it's
21 from in.gov that Ms. Rosemary Farid Khoury from
22 the Madison County prosecutor's office, the
23 Indiana roll of attorneys, attorney of record
24 lists her address as 7353 North Layman Avenue,
25 but gives the city of Anderson and the zip code

1 of Indianapolis at 46250.

2 Now, by law she's required to update that
3 information, give truthful information so that
4 she can be emailed or what have you.

5 The tax records from the property at
6 2105 Arrow Avenue, upon which there is also a
7 homestead exemption, those tax records are
8 mailed to 7353 North Layman Avenue in
9 Indianapolis, Indiana. And the point that I'm
10 trying to make is, that she never abandoned this
11 residence, when she stated that she moved to the
12 Arrow Avenue residence, that that's still her
13 residence. And she has a significant financial
14 motivation to maintain the residence in
15 Indianapolis, because in the divorce decree,
16 part of the property settlement, her ex-husband,
17 Paul Khoury, is ordered in the divorce decree to
18 make the payments on that property for as long
19 as her and the children live in that house.

20 And we can see in Willis Exhibit 13 that
21 Rosemary Khoury and Mary Hamer, according to
22 this property tax document, they're both listed
23 at 7353 North Layman Avenue. Mary Hamer being
24 Rosemary's mother.

25 CHAIRPERSON BENNETT: Can you wrap it up?

1 I think you've gone well over your five minutes.

2 MR. WILLIS: I apologize, sir. Let me have
3 one minute to close here, if you would, grant me
4 one thing.

5 If I was here to challenge Rosemary Khoury
6 on her ability to run as a Marion court judge,
7 based upon the fact that I believe she lived at
8 2105 Arrow Avenue, which she says she does, the
9 evidence before you listing the property
10 addresses and legal documents and legal things
11 that she needs to take care of, would convince
12 all of you unanimously that she lived at
13 7353 Layman Road.

14 That's the case that we -- if we stand this
15 case on its head, we see that Rosemary Khoury
16 does indeed live at the Layman Street address,
17 and the address on Arrow Avenue was manufactured
18 in order for her to run for public office.

19 Thank you for your consideration.

20 CHAIRPERSON BENNETT: All right, thank you.

21 At this time I would recognize Rosemary
22 Khoury or her attorney for presentation.

23 MS. CRAWFORD: Thank you. First of all, I
24 would like to, if I need to, have additional
25 time, I would request to reserve some time to

1 call Rosemary if I need to as a witness.

2 At this time I would move to dismiss the
3 challenge. First of all, on the first statute
4 of 3-8-1-16, I believe it states, as the
5 commission members have pointed out, it only
6 concerns when she moves into office, so that one
7 is not ripe yet. It's not an issue and should
8 be dismissed.

9 On the issue of 3-8-1-1, which concerns her
10 candidacy, first of all, I'm not certain that
11 that even applies to circuit court judges. It
12 states in the statute that it concerns certain
13 local offices, state offices, and you have to
14 reside in the district where the people you want
15 to represent. Judges do not represent anyone.
16 They preside over cases. So I'm not certain
17 that 3-8-1-1 even applies. But if it does, on
18 the face of the code says that she needs to have
19 a voter registration. That's been placed in
20 front of you, she has a voter registration which
21 shows that she resides at the Arrow Avenue
22 address.

23 She ran for judge in 2016. No challenge
24 came forward. She's maintained her residence in
25 Madison County since that time, and --

1 VICE CHAIR CELESTINO-HORSEMAN: So she ran
2 in 2016 and was elected?

3 MS. CRAWFORD: No, she was not, she did not
4 win that election. But she ran and there was no
5 challenge. She was registered at that time.
6 She remains registered.

7 VICE CHAIR CELESTINO-HORSEMAN: So then my
8 question, Mr. Kochevar, is this. If a
9 candidate, let's say worst-case scenario, since
10 I don't know voter registration laws, does that
11 keep someone from being a candidate? Because if
12 they're not required to reside in the county
13 until the day they take office for purposes of
14 barring them from being on the ballot, can you
15 do that on the basis of an illegal voter
16 registration?

17 CO-GENERAL COUNSEL KOICHEVAR: That is an
18 interesting question. I would say that based on
19 how I understand Article VII, Section 7, and
20 again 3-8-1-16, and I would premise this as
21 may -- because while I am an attorney, I'm not a
22 judge, I don't have the power to officially say
23 what statute that is, that would be the
24 court's -- based on my understanding is that you
25 have to meet these qualifications to be circuit

1 judge when you assume office, which my
2 understanding that earliest point would be the
3 January after the election.

4 But I also do want to state clearly for the
5 record that having a illegal voter registration
6 would be something for a court of law to
7 determine, as that would seem to imply that
8 potential criminal wrongdoing was made.

9 CHAIRPERSON BENNETT: I've got a question
10 for our Republican counterpart in legal issues.
11 Does the statute in question apply to judges,
12 local offices?

13 CO-GENERAL COUNSEL SIMMONS: Mr. Chairman,
14 3-8-1-1 applies to judges. It's the use of the
15 term local office. And I know that that
16 particular term is some source of confusion for
17 particular candidates, but it is defined in
18 election code very clearly, and it's defined in
19 3-5-10-29, and it includes a circuit office, so
20 it would include a circuit judge.

21 The requirements read, one to be a
22 registered voter of the election district by the
23 deadline for filing the declaration, which would
24 have been noon, February 9th, applies on its
25 face.

1 CHAIRPERSON BENNETT: Thank you.

2 VICE CHAIR CELESTINO-HORSEMAN: Well,
3 excuse me, but 3-8-1-1, Section A, says this
4 section does not apply to a candidate for any of
5 the following offices -- oh, judge of the city
6 court, judge of county court. So by expressly
7 exempting -- okay.

8 MS. CRAWFORD: I don't know how the two can
9 exist together, if the circuit court judge
10 doesn't have to live in the district until
11 they've actually won the election, then I don't
12 know how you can simultaneously require that
13 they have a valid registration for that area.
14 So I think they conflict. And I think when they
15 conflict, certainly the more clear construct of
16 3-8-1-1 says exactly what the circuit court
17 judge needs to do.

18 CHAIRPERSON BENNETT: Anything else you
19 want to present?

20 MS. CRAWFORD: So I guess on my motion to
21 dismiss, I move to dismiss the challenge. But
22 in the event that is not granted, I would like
23 to call Rosemary as a witness.

24 CHAIRPERSON BENNETT: Is there a motion
25 with regard to the pending motion to dismiss,

1 whether to grant or deny that motion?

2 VICE CHAIR CELESTINO-HORSEMAN: I'd like
3 to --

4 CHAIRPERSON BENNETT: Do you want to hear
5 the testimony first?

6 MEMBER WILSON OVERHOLT: I guess we could
7 rule on the motion to dismiss.

8 VICE CHAIR CELESTINO-HORSEMAN: I move that
9 we deny the motion to dismiss at this time.

10 MEMBER KLUTZ: Second.

11 CHAIRPERSON BENNETT: We have a motion to
12 deny the motion to dismiss. All in favor of the
13 motion, say aye.

14 All opposed, say nay.

15 The ayes have it.

16 MS. CRAWFORD: The other issue, then,
17 counsel has stated that what he's essentially
18 doing is attacking the voter registration form
19 in front of you as being fraud, and I don't know
20 that that's a matter that this Commission can
21 hear.

22 VICE CHAIR CELESTINO-HORSEMAN: That's just
23 what we were discussing. We apparently have,
24 like you just noted, there's a little bit of a
25 conflict. We're going to have to resolve that.

1 MS. CRAWFORD: But the conflict directly
2 attacks her voter registration.

3 VICE CHAIR CELESTINO-HORSEMAN: Right, so
4 there's part of the law says she has to be
5 registered to vote.

6 MS. CRAWFORD: And she is registered to
7 vote, you have that. And in order to go around
8 that, attacking her on fraud issue, that is --

9 VICE CHAIR CELESTINO-HORSEMAN: I see what
10 you're saying.

11 MS. CRAWFORD: She's unafraid, she's
12 registered to vote -- the statute. And to the
13 extent you want to delve into that deeper,
14 that's accusing her of voter fraud that I don't
15 think is before this Commission.

16 VICE CHAIR CELESTINO-HORSEMAN: I think we
17 have to resolve.

18 CHAIRPERSON BENNETT: The issue today is
19 whether she's a registered voter.

20 MS. CRAWFORD: Correct, and you've been
21 provided today with an exhibit that she is a
22 registered voter. So is there something more
23 that the Commission wants to hear?

24 CHAIRPERSON BENNETT: Do you have anything
25 more to present?

1 MS. CRAWFORD: I'll call Rosemary, but I
2 guess on the issue of whether I can delve into
3 issues with her that aren't in front of the
4 Commission. If the voter registration isn't
5 enough, then I don't know if I can.

6 VICE CHAIR CELESTINO-HORSEMAN: I think
7 she's questioning whether the Commission has
8 jurisdiction to make a determination regarding
9 the voter registration.

10 MS. CRAWFORD: She is registered to vote in
11 Madison County and you have that exhibit. The
12 only other issue is whether her voter
13 registration is valid, and is that something
14 that this Commission can address.

15 VICE CHAIR CELESTINO-HORSEMAN: I think if
16 it's a prerequisite to be a candidate, you have
17 to be able to address it, don't you?

18 MS. CRAWFORD: The prerequisite is that she
19 be registered.

20 CO-GENERAL COUNSEL SIMMONS: We need to be
21 able to talk about that. You don't need to keep
22 arguing about that.

23 MS. CRAWFORD: Okay, sorry.

24 CHAIRPERSON BENNETT: So is there any
25 evidence that she's not registered to vote

1 that's been presented?

2 VICE CHAIR CELESTINO-HORSEMAN: I think he
3 has presented some stuff that probably needs to
4 be addressed.

5 CHAIRPERSON BENNETT: That has to do with
6 voter fraud, right.

7 VICE CHAIR CELESTINO-HORSEMAN: Voter
8 registration in the county. So the question is,
9 the voter registration in the county, if you
10 have to be a registered voter to be a candidate
11 in the county race.

12 MEMBER WILSON OVERHOLT: I thought she
13 indicated that she wanted to call her client as
14 a witness, so the council should allow that.

15 CHAIRPERSON BENNETT: We better do that and
16 get some more facts on the record.

17 MS. CRAWFORD: On the issue of whether
18 she's a registered voter?

19 CHAIRPERSON BENNETT: Let's go ahead and
20 present whatever evidence you want to present
21 with this witness.

22 MS. CRAWFORD: I just don't want to delve
23 into an area that I'm not --

24 How much time will we have?

25 CHAIRPERSON BENNETT: Five minutes.

1 EXAMINATION,

2 QUESTIONS BY STEPHANIE CRAWFORD:

3 Q Go ahead and state your name.

4 A Rosemary Khoury, R-O-S-E-M-A-R-Y K-H-O-U-R-Y.

5 Q Ms. Khoury, you've heard evidence today about
6 whether you live in Anderson, Indiana. Will you
7 please state your address and tell the
8 Commission where you live.

9 A My current address is 2105 Arrow Avenue in
10 Anderson, Indiana.

11 Q And there's been some confusion about the house
12 that you were granted in the divorce. Can you
13 just explain about the Layman Avenue home?

14 A I can. So I was granted the house in the
15 divorce. I have two children with my
16 ex-husband. My children attend school in the
17 Washington Township School District, and my
18 ex-husband continues to live at the house with
19 my children. He's unemployed. He's the primary
20 caregiver of my children.

21 And when I made the decision to move in
22 2016, we didn't want to uproot the children from
23 their schools, their sporting events. And
24 because I was the worker and my ex-husband is
25 unemployed, it made sense for him to stay with

1 the children.

2 Q Why did you need to move to Anderson?

3 A During the latter part of 2015, my mother, who
4 is 81 years old, started to experience health
5 problems. I started to spend more time with her
6 during the end of that year and during the early
7 months of 2016. She was diagnosed with cancer,
8 and it was determined that she was either going
9 to need to go into a nursing facility or have
10 someone be near her. So it made sense for me to
11 move in with her back home at the house I grew
12 up in.

13 Q That's the Arrow Avenue address?

14 A Yes.

15 Q Where do you work?

16 A I work in Anderson. I work at the Madison
17 County Prosecutor's office. I'm a deputy
18 prosecutor. I also work for the city council as
19 the attorney for the city council.

20 Q How long have you been working as a prosecutor
21 in Anderson?

22 A For about 10 years.

23 Q How long have you worked with the City of
24 Anderson?

25 A About six months.

1 Q So you've worked in Anderson and have you still
2 maintained ties with Anderson?

3 A Oh, that's my home.

4 Q So the house on Layman, although it's in your
5 name, do you reside there?

6 A I do not.

7 Q Does your ex-husband maintain that?

8 A Yes, he does.

9 Q Who pays mortgage on the house?

10 A Paul does.

11 Q Who lives in that home?

12 A Paul, Uria and Amy.

13 Q Do you have a current driver's license?

14 A Yes, I do.

15 Q I'll show you what I'll mark as an exhibit. Is
16 that a copy of your driver's license?

17 A Yes, it is.

18 Q What's the address on that driver's license?

19 A It's 2105 Arrow Avenue.

20 MS. CRAWFORD: May I approach and offer
21 this as an exhibit?

22 CHAIRPERSON BENNETT: Yes.

23 Q Are you registered to vote?

24 A I am.

25 Q And where are you registered to vote?

- 1 A In Madison County.
- 2 Q Do you have a motor vehicle registration?
- 3 A I do.
- 4 Q Where is that?
- 5 A Madison County.
- 6 Q Do you get mail at Arrow Avenue?
- 7 A I do.
- 8 Q What kind of mail do you get at Arrow Avenue?
- 9 A Almost all my mail.
- 10 Q In advance of this hearing, did I ask to bring
11 whatever you could at your house?
- 12 A Yes.
- 13 Q Just kind of go through some of the mail that
14 you get. What is that?
- 15 A This is my homeowners insurance for the house
16 that I live in.
- 17 Q What's the address on that?
- 18 A 2105 Arrow Avenue.
- 19 Q This is another piece of mail. What is that?
- 20 A This is my car payment.
- 21 Q That's GM Financial?
- 22 A Yes.
- 23 Q What's the address on that?
- 24 A 2105 Arrow Avenue.
- 25 Q And this is from -- did you go to the McKinney

1 School of Law?

2 A I did.

3 Q IU Indianapolis when you went there?

4 A Yes, ma'am.

5 Q Is that something that you get from the law
6 school?

7 A Yes, at Arrow Avenue.

8 Q So you updated your address with the law school.

9 And what about, more importantly, what are
10 these two items?

11 A These are my paychecks and my tax information
12 from my employer.

13 Q Those are the W-2s you receive?

14 A Yes.

15 Q And what address did you receive those at?

16 A Home, 2105 Arrow.

17 Q What's that?

18 A These are my health insurance claims, which came
19 to me at 2105 Arrow.

20 CHAIRPERSON BENNETT: 30 seconds.

21 Q And magazines?

22 A Magazines.

23 Q Just again for the Commission, have you been
24 taking care of your mother and living at Arrow
25 Avenue?

1 A Yes, ma'am.

2 Q Did you run for election in 2016?

3 A I did.

4 Q Were you challenged where you lived?

5 A No.

6 Q Was Mr. Willis aware that you were running in
7 2016?

8 A Yes.

9 Q And you haven't done anything differently, you
10 still maintain the same address you did in 2016?

11 A I do.

12 Q Do you still work at the same place?

13 A Yes.

14 Q You don't live at Layman Avenue?

15 A I do not.

16 CHAIRPERSON BENNETT: Thank you. That was
17 just demonstrative evidence.

18 MS. CRAWFORD: Oh, yes.

19 CHAIRPERSON BENNETT: You don't need to
20 introduce that in the record.

21 Any cross-examination?

22 MR. WILLIS: Yes.

23 CROSS-EXAMINATION,

24 QUESTIONS BY JAMES WILLIS:

25 Q Ms. Khoury, where is your Indiana roll address

1 listed, what's listed on your Indiana roll of
2 attorneys?

3 A I'm not sure. I'm not sure where it is. It
4 could be my old address. Not everything was
5 updated, so I'm not sure.

6 Q Ms. Khoury, where are the tax papers for
7 2105 Arrow Avenue sent to?

8 A Back in 2012, when I still lived at Layman, I
9 requested that they be sent there so that they
10 wouldn't get lost to make sure that the taxes
11 were paid. They still could be sent there. I
12 pay them online.

13 Q Ms. Khoury, where do your children live?

14 A My children live at Layman.

15 Q Are they your immediate family?

16 A I'm sorry?

17 Q Are your children your immediate family?

18 A Sure.

19 MR. WILLIS: Thank you.

20 CHAIRPERSON BENNETT: Thank you. Any
21 questions by the Commission?

22 VICE CHAIR CELESTINO-HORSEMAN: How old are
23 your children?

24 MS. KHOURY: Eleven, and one will be
25 thirteen in a month.

1 CHAIRPERSON BENNETT: Any further
2 questions? Hearing none, is there a motion?

3 MEMBER WILSON OVERHOLT: Move to deny the
4 challenge.

5 CHAIRPERSON BENNETT: Second?

6 MEMBER KLUTZ: I'll second.

7 CHAIRPERSON BENNETT: There's been a
8 second. Any further discussion?

9 MEMBER KLUTZ: I seconded it, Mr. Chairman,
10 because it appears the challenge before us is
11 not whether she is properly registered but
12 whether she meets the requisites to be a
13 candidate. And while there may be a challenge
14 to whether she can be registered, the fact is it
15 appears she is registered and the facts support
16 that she is registered, so I don't see any
17 evidence to support the challenge. That's the
18 basis of my second.

19 CHAIRPERSON BENNETT: Any further
20 discussion?

21 All in favor, say aye.

22 All opposed, say nay.

23 The ayes have it, the challenge is denied
24 and the Election Commissioner is directed to
25 include the name of this candidate in the

1 certified list of candidates on the ballot.

2 MR. WILLIS: I'd like to thank the
3 Commission for your time, please.

4 MS. KHOURY: Thank you all.

5 JOSEPH C. LEHMAN

6 Cause 2018-10

7 CHAIRPERSON BENNETT: The next hearing for
8 consideration of Cause 2018-10, In the Matter of
9 the Challenge to Joseph C. Lehman Running for
10 Democratic Party Nomination for State
11 Representative, District 49. The Election
12 Division has been provided copies of the
13 candidate filing the challenge and a copy of
14 notice given in this matter and an answer to the
15 challenge filed by this candidate earlier this
16 morning.

17 At this time I will recognize the
18 challenger Chad M. Crabtree for a presentation.

19 MR. LEHMAN: I don't know that he's here.
20 We had some issues up north, the rain,
21 et cetera. He wrote me an email this morning
22 saying he may not make it. I'm Mr. Lehman,
23 Joseph Lehman.

24 CHAIRPERSON BENNETT: So you are the one
25 who is being challenged?

1 MR. LEHMAN: Yes, that's correct, sir.
2 He's the chairman of the Democratic Party of
3 Elkhart County.

4 CHAIRPERSON BENNETT: Well, I guess it's
5 their burden to prove the challenge. If they're
6 not here --

7 CO-DIRECTOR NUSSMEYER: Mr. Chairman, if I
8 may, Co-Director King and I received an email
9 from Crabtree overnight who indicated due to
10 flooding in Elkhart County he would not be able
11 to attend today's meeting.

12 CHAIRPERSON BENNETT: Did he ask for a
13 continuance of the hearing?

14 CO-DIRECTOR NUSSMEYER: I don't believe so
15 but I'm going to pull up the email now if I may.

16 If I may, I'll read the email,
17 Mr. Chairman.

18 CHAIRPERSON BENNETT: Yes.

19 CO-DIRECTOR NUSSMEYER: "As you may have
20 heard, Elkhart County has been hit with a large
21 amount of rain in the last few days, and sadly
22 it seems my basement has the lion's share of the
23 water. Unfortunately I will not be able to
24 attend Friday's hearing of the Indiana Election
25 Commission as previously planned.

1 "In regards to the candidate challenge,
2 Mr. Joseph Lehman, Cause No. 2018-10, who was a
3 candidate for the Indiana House of
4 Representatives, District 49, claims to be a
5 member of the Democratic Party. I have attached
6 his voter registration records I obtained from
7 the Elkhart County Voter Registration office.
8 From these records, Mr. Lehman has voted in a
9 Republican primary in the last three primary
10 elections. And according to the Indiana Code,
11 Mr. Lehman is not affiliated with the Democratic
12 Party to which the candidate claims an
13 allegiance.

14 "With these records, I ask the Indiana
15 Election Commission to rule Mr. Lehman is
16 disqualified as a candidate for the Indiana
17 House of Representatives, District 49 on the
18 Democratic ballot. I look forward to your
19 favorable response.

20 "Thank you for your consideration and
21 service to our state. Chad Crabtree, Chairman."

22 But whether or not that's admissible I
23 think is a question for --

24 MR. LEHMAN: And I would object to being
25 able to admit any evidence he might present.

1 VICE CHAIR CELESTINO-HORSEMAN: I would
2 move that this matter be continued, you know,
3 Acts of God. They happen.

4 MR. LEHMAN: And I live five miles from
5 Mr. Crabtree and I was able to make it. He
6 talks about his basement being flooded. I would
7 object to any continuance.

8 VICE CHAIR CELESTINO-HORSEMAN: You were
9 lucky your basement didn't get flooded.

10 MEMBER KLUTZ: My only concern with the
11 motion is that we have a deadline to certify the
12 ballot.

13 VICE CHAIR CELESTINO-HORSEMAN: When is
14 that deadline?

15 MR. LEHMAN: I was told May 1, somebody
16 from the office -- I'm sorry, there was some
17 March 1 deadline, a March 1 deadline that I
18 think is a critical deadline.

19 CHAIRPERSON BENNETT: So you would prefer
20 to proceed?

21 MR. LEHMAN: Yes.

22 CHAIRPERSON BENNETT: I guess the question
23 is whether we're going to accept the evidence --
24 when was the evidence presented? Was there ever
25 anything presented with that?

1 CO-DIRECTOR NUSSMEYER: There is
2 documentation, Mr. Chairman, with the voter
3 registration record, and this was filed this
4 morning at -- not filed, but emailed this
5 morning at 1:55 a.m.

6 CHAIRPERSON BENNETT: If you have a moment
7 to review all that.

8 MR. LEHMAN: What I want to know, is that
9 my complete voting record? Because I've voted
10 since 1991 in Elkhart County.

11 CO-DIRECTOR NUSSMEYER: It appears there
12 are four pages of documents that go back to at
13 least 1992, sir.

14 CHAIRPERSON BENNETT: Do you want to have
15 an opportunity to review that?

16 MR. LEHMAN: Okay, that's probably what I
17 have, the printout I got.

18 That's what I have, yes.

19 VICE CHAIR CELESTINO-HORSEMAN:
20 Mr. Chairman, may I ask the gentleman a
21 question?

22 CHAIRPERSON BENNETT: Have you had a chance
23 to look at those?

24 MR. LEHMAN: Sure.

25 VICE CHAIR CELESTINO-HORSEMAN: Did you

1 vote Republican in the last primary election?

2 MR. LEHMAN: In the last primary election,

3 yes. Can I explain why I did?

4 VICE CHAIR CELESTINO-HORSEMAN: No, the

5 fact that you did --

6 MR. LEHMAN: Okay.

7 VICE CHAIR CELESTINO-HORSEMAN: Secondly,

8 then, do you have the consent of the county

9 Democratic Party chair?

10 MR. LEHMAN: No.

11 VICE CHAIR CELESTINO-HORSEMAN: Do you have

12 anything as a matter of law that would argue in

13 your favor as to why you should not be

14 prohibited from being on the ballot?

15 MR. LEHMAN: My argument would be why I

16 should be on the ballot, and that would be my

17 affiliation. I was looking for cases briefly,

18 punching in the word "affiliation" for our

19 state. And I think what I've gotten is exhibits

20 showing that I was the Democrat candidate for

21 judge four times, the Democrat candidate for

22 State Representative one time in the period

23 between 1992 to 2007. My most recent run for

24 judge was in Goshen City Court in 2007. I ran

25 all four times as judge as a Democrat, and I

1 have the proof here.

2 I also have letters to the editor that I
3 have written ever since we got back to Goshen in
4 2000 showing some views I have regarding certain
5 things, views that a Republican would probably
6 never take.

7 So in my voting history, I have voted in
8 Democrat primaries 13 times. And the only
9 reason I voted in Republican primaries was
10 because of the paucity of -- well, there were
11 just no candidates in the slots where I voted
12 for a Republican. And there were two, at least
13 two Republicans up for election in the primary.
14 So I had a preference, and I wanted to vote for
15 somebody that I thought could do a good job,
16 assuming that no Democrat showed up.

17 So I don't know if there is minutiae in the
18 definition of affiliation.

19 MEMBER KLUTZ: If I may, the definition of
20 affiliate is found in the statute. It's defined
21 by how did you vote in the last primary election
22 and/or -- or, did you bring us a letter from the
23 county chairman saying voter affiliated in good
24 standing with the party.

25 MR. LEHMAN: Right, I have not done that.

1 MEMBER KLUTZ: Your testimony is that in
2 the last primary that you voted, you voted
3 Republican, and that you don't have a letter
4 from the county chair, correct?

5 MR. LEHMAN: Correct. In the last primary
6 election I voted in the Republican primary. So
7 if that is decisive, I guess I have to abide by
8 that.

9 CHAIRPERSON BENNETT: Thank you. Is there
10 anything else you want to -- any questions?

11 VICE CHAIR CELESTINO-HORSEMAN: No. I wish
12 once you vote Democrat, it would be for a
13 lifetime.

14 MR. LEHMAN: Excuse me?

15 VICE CHAIR CELESTINO-HORSEMAN: I think
16 both major parties would wish that once you vote
17 for them, that's it for a lifetime, but it
18 doesn't work that way.

19 MR. LEHMAN: And let me tell you,
20 gentlemen, I was never informed by these
21 friendly people at the ballot that if you vote
22 Republican, you stand in jeopardy of not running
23 as a Democrat candidate. But, you know, I don't
24 really mind because with this I think we will
25 depart the state of Indiana. We want to go to a

1 more temperate climate, where not just the
2 weather is more temperate, but the politics,
3 it's very vicious in Elkhart County. I'll leave
4 it at that.

5 CHAIRPERSON BENNETT: So I'm going to close
6 the public hearing and ask if there's a motion.

7 VICE CHAIR CELESTINO-HORSEMAN: I will make
8 a motion that the challenge be granted.

9 MEMBER KLUTZ: Second.

10 CHAIRPERSON BENNETT: There's been a motion
11 and a second. Any further discussion?

12 Hearing none, all in favor of granting the
13 challenge, say aye.

14 All opposed, say nay.

15 The challenge is granted. Thank you for
16 your time.

17 MR. LEHMAN: Sure. Thanks for your time
18 too.

19 CHAIRPERSON BENNETT: The Election Division
20 is directed to amend the certified list of
21 primary candidates that the name of this
22 candidate not be printed on the ballot.

23 MAURICE OAKEL FULLER

24 Cause No. 2018011

25 CHAIRPERSON BENNETT: The next hearing is

1 consideration of Cause No. 2018-11, In the
2 Matter of Challenge to Maurice Oakel Fuller,
3 Candidate for Democratic Party Nomination for
4 State Representative, District 25. The Election
5 Division has been provided a copy of the
6 candidate filing challenge form and a copy of
7 notice given in this matter.

8 At this time, I would recognize the
9 challenger, Justin P. Notoras, for a
10 presentation.

11 MR. NOTORAS: Yes, Justin Notoras,
12 J-U-S-T-I-N, last name Notoras, N-O-T-O-R-A-S.
13 I'll be deferring to my party chairman in my
14 case.

15 MR. BOWMAN: Thank you, Mr. Chairman,
16 members of the Commission. My name is Joseph
17 Bowman. I am the campaign chairman for
18 Mr. Notoras. That's spelled J-O-S-E-P-H
19 B-O-W-M-A-N.

20 I won't take up much of your time since
21 Mr. Fuller failed to grace us with his presence
22 today.

23 Our basis is that under IC 3-8-1-2,
24 Mr. Fuller -- and I'd like to provide two
25 documents to you -- Mr. Fuller was foreclosed on

1 the home, the residence that he has filed under
2 on November 28th of 2017. So basically he filed
3 under a residence that he doesn't live in. I
4 have a summary judgment default and decree of
5 foreclosure. It was ordered to be sold at the
6 sheriff's auction in Cass County.

7 And I also have, I took the liberty of
8 printing this out yesterday, where the home is
9 listed on auction.com. The property is vacant.
10 This has been an action that Mr. Fuller has
11 known about since June of 2017.

12 Our position is that Mr. Fuller's fault is
13 basically under IC 3-14-3-1.1, "procure, submit
14 false, fictitious, fraudulent ballot voter
15 registration applications, prohibits an
16 individual from procuring or submitting material
17 false, fraudulent, fictitious information such
18 as name, date of birth, address," et cetera.

19 We believe Mr. Fuller knowingly gave an
20 improper address on his filing paperwork;
21 therefore, he should be removed from the ballot.

22 VICE CHAIR CELESTINO-HORSEMAN: May I ask a
23 question?

24 CHAIRPERSON BENNETT: Thank you for your
25 presentation. Questions from the Commission?

1 IEC MEMBER HORSEMAN: Do you have any
2 evidence he was actually evicted from the
3 property?

4 MR. BOWMAN: I have this summary judgment
5 that he basically was ordered November 28th of
6 2017 that it was to be sold at the first
7 available sheriff's sale, which it looks like
8 this occurred on -- event details, it says
9 sheriff's auction sale on February 14th, 2018.
10 I don't have any further information as to -- it
11 says the property is vacant on this foreclosure
12 website. I contacted the Cass County Sheriff's
13 Department and they were unable to give me any
14 sort of information pursuant to their sheriff's
15 sales. So at this point, without any further
16 evidence from Mr. Fuller, we have no position to
17 take other than we feel he's not a resident at
18 that address.

19 CHAIRPERSON BENNETT: Can you put that
20 document which you are referring to into
21 evidence here?

22 MR. BOWMAN: Yes, sir.

23 MEMBER WILSON OVERHOLT: Do you have any
24 information with regard to who purchased the
25 house at the auction, an eviction order,

1 anything like that?

2 MR. BOWMAN: There are -- it looks like
3 Mr. Fuller owes about \$45,000.

4 MEMBER WILSON OVERHOLT: That's not what I
5 asked. I asked if you have any information
6 regarding who purchased the house or whether he
7 was actually formally evicted from the house.

8 MR. BOWMAN: I don't. The Cass County
9 Sheriff's Department wouldn't provide me any
10 information on the sale.

11 VICE CHAIR CELESTINO-HORSEMAN: So here's
12 the dilemma. You carry the burden of proof, and
13 we don't have anything -- you could be
14 foreclosed upon, they may not decide to evict
15 you because the mortgage company doesn't want to
16 deal with it or whatever else. They can go
17 ahead and let you stay until the sheriff's sale,
18 then at the sheriff's sale, somebody says, well,
19 I'll rent it back to you, or a friend could buy
20 it and say continue living here. We don't
21 have -- and since he didn't show up, we can't
22 ask him where he's living.

23 MR. BOWMAN: There are six separate
24 entities with liens on the property. I believe
25 they would have vested interest in this matter,

1 in this residence also.

2 VICE CHAIR CELESTINO-HORSEMAN: So the
3 auction company prior to putting it up pending
4 sale result, it says the property is vacant.

5 MEMBER KLUTZ: So the sheriff's sale
6 occurred after he filed this? You said the
7 sheriff's sale was February 14th. So this was
8 filed prior to that date.

9 VICE CHAIR CELESTINO-HORSEMAN: Suzannah
10 was just showing me there's a provision in the
11 law that says that he is presumed -- a person
12 making a statement under penalties of perjury
13 for purposes of election related matters is
14 presumed to live in the residence as of the date
15 that they made the statement. In this case, he
16 affirmed on February 6th, and the auction didn't
17 occur until February 14th. We have nothing to
18 show that between the date of foreclosure and
19 the auction that he wasn't living there. I
20 mean, the auction company says that the property
21 is vacant, but I don't know. I suppose that's
22 maybe a public record. It's a tough --

23 CHAIRPERSON BENNETT: I didn't see a date
24 on there. Is there any date?

25 VICE CHAIR CELESTINO-HORSEMAN: No, there's

1 just the date of the event.

2 MEMBER WILSON OVERHOLT: The date of the
3 auction.

4 MR. BOWMAN: Wouldn't Mr. Fuller be
5 required to give an amended filing and update
6 residency? For all we know, he's not even a
7 resident in Cass County in this District 25 at
8 this point.

9 VICE CHAIR CELESTINO-HORSEMAN: Matthew, if
10 you move after this and people are foreclosed,
11 what's the law?

12 CO-GENERAL COUNSEL KOICHEVAR: I'll describe
13 the law by looking for the statutory citation.
14 But in 3-8-2, once you have filed to run in the
15 primary, if you move out of that election
16 district, law requires, it mandates that the
17 candidate withdraw from the primary ballot once
18 they lose residency. Bear with me, I'll
19 actually get you the statutory citation. And
20 that's going to be 3-8-2-20.

21 VICE CHAIR CELESTINO-HORSEMAN: So that
22 decision has to be made on or before March 1st?

23 CO-GENERAL COUNSEL KOICHEVAR: No, that
24 decision, if you move out, has to be made at any
25 time through the primary. Once it happens, the

1 candidate is legally required.

2 VICE CHAIR CELESTINO-HORSEMAN: What's the
3 process? Do you come back to the Commission
4 with it then?

5 CO-GENERAL COUNSEL KOICHEVAR: My
6 understanding is that were this to happen you
7 would file the form to withdraw from the primary
8 election, you would file it with the office
9 where you filed your CAN-2. In this case, a
10 candidate for state representative, you would
11 file it with the Election Commission.

12 VICE CHAIR CELESTINO-HORSEMAN: But suppose
13 he doesn't do it, he moves out of district,
14 there's no way to challenge it?

15 CO-GENERAL COUNSEL KOICHEVAR: If such a
16 situation were to happen, after the statutory
17 deadline is ended for a challenge hearing and
18 after the candidate has been certified to appear
19 on the ballot, the county chair in the election
20 district would have the option to go to county
21 court and ask for a judge to declare that the
22 individual has moved out of the district, is no
23 longer qualified to run for office, and have an
24 order issued for him to be -- to have that
25 candidate not appear on the ballot.

1 That is going to be found in 3-8-2-23, and
2 I will confirm the party that would be able to
3 do that would be the county chairman of any
4 political party on the ballot in the election
5 district, or a candidate for the office sought
6 by the person described in this section.

7 CHAIRPERSON BENNETT: Let me ask
8 Mr. Simmons, do you have any thoughts on the law
9 regarding these issues?

10 CO-GENERAL COUNSEL SIMMONS: Yeah, I
11 certainly agree with Matthew if a candidate
12 moves out of the election district they are
13 required to withdraw. If they don't, they are
14 subject to a civil lawsuit to remove them from
15 the ballot. I thought the question was more
16 once the deadline has passed -- on the
17 declaration, it's correct as of the date you
18 file it, then the deadline, the filing
19 declarations have passed, February 9th deadline
20 has passed, are you required to update your
21 residence address with the Election Division or
22 file an amendment. Well, no, there's no such
23 requirement.

24 It certainly is helpful if people let us
25 know where they are in case we have to get in

1 touch with them, and we've asked them to do that
2 if they've advised us they've moved. There's no
3 statutory requirement that they update it after
4 they've moved that they file the declaration.

5 CHAIRPERSON BENNETT: Thank you. Any other
6 questions? If not, do we have a motion?

7 MEMBER WILSON OVERHOLT: I would move that
8 we deny the challenge.

9 CHAIRPERSON BENNETT: Is there a second?

10 MEMBER KLUTZ: I'll second that.

11 CHAIRPERSON BENNETT: There's a motion and
12 a second. Any further discussion?

13 MEMBER KLUTZ: My second is based upon I
14 don't feel that there's sufficient evidence to
15 show that this individual is disqualified from
16 office from the filings that came in.

17 VICE CHAIR CELESTINO-HORSEMAN: I agree.
18 If you come up with something --

19 MR. NOTORAS: We have some more
20 documentation that we can present, a pending
21 motion from the Indiana Supreme Court.

22 CHAIRPERSON BENNETT: Today?

23 MR. NOTORAS: Yes.

24 MR. BOWMAN: Well, our position is that --

25 VICE CHAIR CELESTINO-HORSEMAN: Are you

1 asking for an extension? Motion was accepted,
2 end of discussion.

3 CHAIRPERSON BENNETT: This is further
4 evidence. I guess I didn't technically close
5 the -- what do you have?

6 MR. BOWMAN: Our position is that
7 Mr. Fuller --

8 VICE CHAIR CELESTINO-HORSEMAN: What
9 evidence do you have? You said you have
10 additional evidence. Do you have additional
11 evidence?

12 MR. BOWMAN: Oh, no, no.

13 CHAIRPERSON BENNETT: Okay. Well, I'm
14 going to close the public hearing and then I'll
15 ask for another motion.

16 MEMBER WILSON OVERHOLT: I'll move that we
17 deny the challenge.

18 MEMBER KLUTZ: Second.

19 CHAIRPERSON BENNETT: We have a motion and
20 second. Any further discussion on that motion?

21 Hearing none, all in favor, say aye.

22 All opposed, nay.

23 The challenge is denied.

24 The Election Division is directed to
25 include the name of this candidate on the

1 certified list of candidates to be included on
2 the ballot. Thank you.

3 MR. BOWMAN: You are saying we have to file
4 a civil lawsuit against Mr. Fuller to find out
5 where he is planning on residing from here on
6 out?

7 CHAIRPERSON BENNETT: Well, we don't give
8 legal advice.

9 CAMPAIGN FINANCE MATTERS

10 CHAIRPERSON BENNETT: We are now ready to
11 move into the ratification of campaign finance
12 settlement agreements, and I would ask for a
13 presentation by Ms. Taylor and Ms. Thompson.

14 MS. THOMPSON: Mr. Chairman, members of the
15 Commission, in your campaign finance tab there
16 are settlement agreements, and these committees
17 are to ratify that they've agreed to pay the
18 settlement agreement and waive their hearing.

19 CHAIRPERSON BENNETT: Is there a motion to
20 ratify the campaign finance settlement
21 agreements as presented?

22 MEMBER KLUTZ: So moved.

23 CHAIRPERSON BENNETT: Is there a second?

24 MEMBER WILSON OVERHOLT: Second.

25 CHAIRPERSON BENNETT: There's been second.

1 Is there any discussion?

2 Hearing none, all in favor, say aye.

3 All opposed, say nay.

4 The ayes have it, and the motion to ratify
5 the agreements is adopted.

6 Before proceeding with campaign finance
7 enforcement actions, we want to give any
8 committee present its final opportunity to pay a
9 reduced civil penalty by waiving their right to
10 present evidence and arguments to the
11 Commission. Any committee is welcome to present
12 evidence and arguments for the proposed penalty
13 to be waived, but this is an opportunity for
14 those who want to waive that presentation and
15 accept a reduced penalty without making any
16 argument or presentations.

17 I move the adoption of the following
18 arrangements. If this is the committee's first
19 violation, the arrangement is for the committee
20 to agree to pay 25 percent of the proposed fine,
21 plus mail-in costs. If this is the committee's
22 second violation, the arrangement is for the
23 committee to agree to pay 50 percent of the
24 proposed fine, plus mailing costs. If this is
25 the committee's third violation, the committee

1 would agree to pay 75 percent of the proposed
2 violation, plus mailing costs.

3 Is there a second to my motion?

4 VICE CHAIR CELESTINO-HORSEMAN: Second.

5 CHAIRPERSON BENNETT: There's a motion and
6 second. Any discussion?

7 Hearing none, all those in favor, say aye.

8 Opposed, say nay.

9 The ayes have it, the motion is adopted.

10 Are there any committees who want to accept
11 this arrangement? If so, come forward, state
12 your name, the committee's name and the cause
13 number, which is found on your hearing notice,
14 indicate that you are willing to accept the
15 applicable penalty without further discussions.

16 If you want to present evidence to the
17 Commission or ask for a waiver of the proposed
18 penalty, please do not come forward at this
19 time; instead, wait until the other committees
20 who are willing to enter into this arrangement
21 have been heard. Committees, please come
22 forward to accept the percentage arrangements.

23 No one has come forward, so the remaining
24 committees will be called to present evidence in
25 these matters. Before doing so, I want to note

1 that in the past, the Commission has followed
2 certain procedures for conducting campaign
3 finance hearings, and I move the Commission use
4 the following procedures today:

5 A. When each campaign finance matter is
6 called, hearing will begin with recognizing
7 campaign finance staff to provide information
8 about the documents in this matter provided to
9 Commission members, including letters from
10 committees and the notice given to the campaign
11 committee.

12 Unless there is objection, the documents
13 provided to the Commission by the Election
14 Division will be entered into the record of this
15 meeting.

16 After campaign finance staff completes
17 presentation, a representative of the committee
18 will be recognized first and may present their
19 case for no more than five minutes. Commission
20 members may ask questions during a presentation,
21 but the time spent answering these questions
22 will not be counted against the presenter's
23 time. The Election Division may signal the
24 chair when the presenter's time is up.
25 Commission members may ask questions during a

1 presentation, but the time spent answering these
2 questions will not be counted against
3 presenter's time.

4 The Election Division may signal the chair
5 when the presenter's time is up. If the
6 presenter offers additional documents or other
7 physical evidence not previously received by the
8 Commission, then the original must be provided
9 to the Election Division to preserve for the
10 record.

11 If the Commission finds that a committee
12 has violated the campaign finance statutes,
13 state law requires a unanimous vote of all four
14 commissioners to waive or reduce the amount of
15 the penalty set by state law. If the Commission
16 makes a decision at this meeting to either fine
17 a committee or dismiss the case against the
18 committee, then the Election Division will
19 prepare a final order for the Commission to
20 approve at a later meeting. If a committee is
21 found today, the committee will receive a notice
22 from the Election Commission to pay the fine
23 after the Commission adopts the final order. So
24 it may be sometime after today before a
25 committee will be required to pay the fine.

1 The Commission generally begins at the
2 front of the room and asks those persons present
3 to come forward to have their matter heard.
4 It's very helpful if you can speak up and say
5 the cause number on your hearing material so
6 that the Commission and staff can quickly look
7 it up on the spreadsheet. Remember to identify
8 yourself when you start speaking.

9 Is there a second to this motion?

10 MEMBER KLUTZ: Second.

11 CHAIRPERSON BENNETT: Are there any
12 questions or objections from Commission members
13 or any of the committees for these procedures?

14 If there's no further discussion, the
15 question is on the adoption of the motion. All
16 in favor, say aye.

17 Opposed, say nay.

18 The ayes have it and the motion is
19 approved.

20 The Commission will now proceed to open its
21 hearings on campaign finance enforcement
22 actions. Your binders include a campaign
23 finance spreadsheet which has been prepared by
24 Abbey and Michelle.

25 So, the first person sitting in the front

1 may come forward. Will you have a seat and
2 identify yourself, please.

3 MR. MAHERN: My name is Louis, L-O-U-I-S,
4 Mahern, M-A-H-E-R-N.

5 CHAIRPERSON BENNETT: At this time I would
6 recognize the campaign finance staff to identify
7 the page on the spreadsheet, Cause No.

8 MS. TAYLOR: It's on page 1. We're ahead
9 today. It's a short list.

10 CHAIRPERSON BENNETT: Very good.

11 You may make your presentation, Mr. Mahern.

12 MR. MAHERN: I was the chairman of the
13 Indiana Seventh District Democratic Committee.
14 I was appointed sometime, probably about 2007,
15 2008, something like that. About two years
16 later, maybe 2009, 2010, the Marion County
17 Democratic chairman asked me to write a check
18 for the total amount that was in the committee.
19 I did so at that time. And then from about 2010
20 until 2015, I regularly filed all the filings
21 that were required of me, and all the filings
22 included nothing but zeroes because there was no
23 money in the committee.

24 In 2015, I neglected -- just forgetfulness
25 on my part -- I neglected to file the proper

1 filing, which again would have been all zeroes.
2 I was informed by the Election Commission that I
3 had missed the filing date, whereupon I then
4 filed it late.

5 Then in 2016, the whole matter was heard.
6 I explained the whole thing to the Commission at
7 that time. The Commission -- some of the
8 commissioners asked me at that time, well, why
9 didn't you just dissolve the committee because
10 it didn't have any money in it, and I told them
11 I just didn't think it was my place but I would
12 be more than happy to dissolve the committee,
13 which I did shortly thereafter, in 2016.

14 It was going to come up again in 2017. I
15 asked for a continuance because family matters
16 required me to be out of state. And here I am
17 now in 2018 asking that this matter be
18 dismissed, among other reasons because the
19 Commission at the 2016 hearing led me to believe
20 that they would look favorably upon the
21 dismissal of this matter if I were to file to
22 dissolve the committee, which I did in short
23 order. And that's essentially where we stand.

24 CHAIRPERSON BENNETT: So the committee has
25 been dissolved?

1 MR. MAHERN: The committee was dissolved in
2 2016, shortly after the meeting, yes.

3 CHAIRPERSON BENNETT: Any questions? Any
4 further questions from any of the commissioners?

5 MEMBER KLUTZ: For the staff. So in 2016
6 or '15 I guess we probably said if you do this,
7 this, and this, come back and we'll dismiss this
8 and clear it up.

9 MS. THOMPSON: Yes.

10 MEMBER KLUTZ: And have all the conditions
11 that we had in that meeting, have they all been
12 met?

13 MS. THOMPSON: Yes. The committee did as
14 it was asked.

15 CHAIRPERSON BENNETT: Is there a motion?

16 MEMBER WILSON OVERHOLT: I would,
17 consistent with our past practice in situations
18 like this where we've made a request and they've
19 complied with our request, I would move that we
20 waive the fine and mail costs, or reduce it to
21 zero, whatever the magic language is.

22 CHAIRPERSON BENNETT: Or would there be an
23 option to dismiss the enforcement action?

24 MEMBER WILSON OVERHOLT: Sorry. I would
25 move to dismiss the enforcement action.

1 MEMBER KLUTZ: Second.

2 CHAIRPERSON BENNETT: There's been a motion
3 and a second. Any further discussion?

4 Hearing none, all in favor, say aye.

5 All opposed, say nay.

6 The ayes have it, the enforcement action is
7 dismissed.

8 MR. MAHERN: Thank you, Mr. Chairman.

9 The next one. Yes, sir.

10 Craig Taylor.

11 MS. THOMPSON: Mr. Chairman, this is on
12 page 10 and page 11. Greg Taylor, State Senate
13 Committee, Cause No. 2017-142 and 143.

14 CHAIRPERSON BENNETT: Okay. Your
15 presentation, sir.

16 MR. TAYLOR: Yes, thank you, Mr. Chairman,
17 Commissioners. This was a follow-up for a
18 hearing that I came to in 2016 where I failed to
19 file a supplemental report on two checks on the
20 same report. The fine was going to be I think a
21 thousand dollars for each one. And the
22 Commission asked that we file a supplemental
23 report prior to the next hearing date, which is
24 today. As far as I know, that's been done, the
25 supplemental reports have been filed.

1 So I guess I've asked you for consideration
2 of whatever the fine is. The issue was the two
3 checks on the same report, so it would have been
4 two \$1,000 fines on the same filing. So since
5 that time, the supplemental report has been
6 filed. And this is a -- I'm sorry, Mr.
7 Chairman.

8 CHAIRPERSON BENNETT: You may finish.

9 MR. TAYLOR: I believe this is like my
10 fifth violation. One was for untimely filing of
11 the report, and I think the other ones had to do
12 with the supplemental file, I want to say.

13 CHAIRPERSON BENNETT: Let me ask the staff
14 what you have in this matter.

15 MS. THOMPSON: Mr. Chairman, we had this to
16 continue. He had 30 days to file his
17 supplemental reports. He filed them on
18 10/24/2017.

19 MEMBER WILSON OVERHOLT: Was that within
20 the 30 days?

21 MS. THOMPSON: The hearing was August 18th,
22 2017.

23 CHAIRPERSON BENNETT: So it was not?

24 MS. THOMPSON: So it was not, it was
25 outside of the 30 days.

1 MEMBER KLUTZ: Is there any note as to why
2 we continued the matter?

3 MS. THOMPSON: You continued it to give him
4 a chance to file the reports because they had
5 not been filed at that time. So you just wanted
6 to ask the committee to file the reports within
7 30 days and then revisit.

8 CHAIRPERSON BENNETT: So they have been
9 filed, but not --

10 MS. THOMPSON: They have been filed but not
11 within 30 days.

12 MR. KLUTZ: Is the committee still open?

13 MS. THOMPSON: Yes.

14 MR. TAYLOR: Was there a 30 day notice?
15 Would that have been at the hearing that it was
16 30 days?

17 MS. THOMPSON: Yes, it was a verbal notice
18 at the hearing.

19 MR. TAYLOR: I can't argue that she didn't
20 say that, I just didn't know it was 30 days.

21 CHAIRPERSON BENNETT: I will declare the
22 matter closed and ask if there's any further
23 discussion, comments?

24 VICE CHAIR CELESTINO-HORSEMAN: So if it's
25 found that he did not comply by filing within

1 the 30 days, the proposed fine is a thousand
2 dollars for each one of them?

3 MS. THOMPSON: Correct.

4 CHAIRPERSON BENNETT: Correct.

5 VICE CHAIR CELESTINO-HORSEMAN: And if
6 because he's had three -- well, he's had two
7 priors?

8 MS. THOMPSON: Yes.

9 VICE CHAIR CELESTINO-HORSEMAN: So it would
10 be 50 percent?

11 CHAIRPERSON BENNETT: No, he didn't take
12 the deal.

13 MR. TAYLOR: At the last meeting I didn't
14 take the deal because it was two on the same
15 report, and I thought it was a thousand dollars,
16 but because it was two actual checks, it becomes
17 two thousand dollars. I'm willing to accept --
18 I didn't know about the 30 days either.

19 VICE CHAIR CELESTINO-HORSEMAN: Can we say,
20 because it was the same report and everything,
21 could we limit it -- do we have the authority to
22 be able to limit it to say a thousand dollars
23 for both of them?

24 CHAIRPERSON BENNETT: If that motion is
25 made and passed. I'm curious why you didn't

1 take the deal today.

2 MR. TAYLOR: Because I couldn't. I thought
3 I was here just for a follow-up hearing. At the
4 last hearing I came up here to take the deal,
5 and I didn't take the deal because it was two
6 fines for the same report. And I didn't think
7 today I could take the deal because I had
8 already given up that right in the initial
9 hearing. I thought this was kind of a
10 compliance thing to see if we filed the reports.
11 I thought this was a follow-up for compliance, a
12 compliance hearing, an opportunity to come --
13 listen, my wife is my treasurer, and I'm not
14 going to throw her under the bus. I am not
15 going to do that.

16 Respectfully, I'll accept any fine that you
17 bring forward. I probably need to hire an
18 official accountant to be my treasurer going
19 forward. She's a great mother and we have three
20 children and she has a job, so I'm not going
21 to -- I should have taken care of this myself.

22 MEMBER WILSON OVERHOLT: I'm sorry, in
23 terms of our -- I should know our rules, I
24 didn't jot them down. So what deal could he
25 have taken?

1 CHAIRPERSON BENNETT: He could have
2 taken -- well, I would say at least 75 percent
3 of the deal.

4 Is there a motion?

5 MEMBER WILSON OVERHOLT: I would move that
6 the proposed fine be reduced to a total of a
7 thousand dollars, or \$500 each, plus mailing
8 costs for each violation. I think based on
9 the -- well, I can explain later. That's my
10 motion.

11 CHAIRPERSON BENNETT: So motion for a total
12 fine of one thousand, which is 50 percent of the
13 total.

14 MEMBER WILSON OVERHOLT: Right.

15 CHAIRPERSON BENNETT: Is there a second?

16 VICE CHAIR CELESTINO-HORSEMAN: I'll
17 second.

18 CHAIRPERSON BENNETT: There's been a motion
19 and second. Is there discussion?

20 Hearing none, all in favor, say aye.

21 Opposed, say nay.

22 The ayes have it, the fine is reduced to
23 50 percent or a thousand dollars.

24 MR. TAYLOR: Thank you. Thank you.

25 Just as a point of clarification, any

1 proposals you sent to me to clarify some of this
2 stuff I heard earlier, I would be willing to
3 take to somebody if you get a change in the law.
4 You have a difficult job.

5 CHAIRPERSON BENNETT: Would you state your
6 name for the record, please.

7 MR. ASHTON: Good afternoon, Mr. Chairman,
8 members of the Commission, Brett Ashton and
9 Laura Brown, we're attorneys at the law firm
10 Krieg DeVault. Thank you for having us this
11 afternoon.

12 We're here in Administrative Cause
13 No. 2018-5. We're appearing on behalf of our
14 client, AstraZeneca.

15 MS. THOMPSON: Mr. Chairman, that is the
16 yellow tab in your packet. This is AstraZeneca,
17 Cause No. 2018-5, contributed to Indiana Senate
18 candidates in the excess amount of 1,500. This
19 corporation has never been before the
20 Commission, and we do want to let you know that
21 AstraZeneca self-reported this of their excess
22 contributions and that the corporation has
23 received a refund from those Senate candidates.

24 CHAIRPERSON BENNETT: Anything else? Very
25 well, your presentation.

1 MR. ASHTON: Thank you very much.

2 The violations at hand were the result of
3 administrative oversight on the clients and
4 (inaudible) inadvertently. The timeline on this
5 is, is that we had received checks from the
6 client that were called contributions and were
7 also anticipating contributions from the
8 client's PAC.

9 The checks we received were thought to have
10 been PAC contributions were distributed on
11 November the 29th. At an event on December 13th
12 it was realized that these checks in fact were
13 not PAC checks, they were corporate checks. At
14 that time we immediately notified the Commission
15 and the members associated with that.

16 If I could, I'd like to submit into
17 evidence the communications associated with that
18 notification to the Commission and -- I'll
19 submit all three of these at once. Also
20 communications, Exhibit B, communications to the
21 members. And, finally, refunds received from
22 the two campaigns. So we've got A, B and C.

23 So as soon as we realized this error, this
24 administrative error, we immediately contacted
25 the Commission, contacted the members involved.

1 And while these checks were in fact cashed, the
2 members involved immediately returned refunds to
3 the client, to the committee. And the client
4 has since implemented a process whereby they
5 ensure that contributions made in the future are
6 double-checked by a government affairs
7 professional at corporate headquarters. This
8 error occurred because the check was
9 inadvertently cut directly from accounting as
10 opposed to going through that screen.

11 The client, AstraZeneca, respectfully
12 requests this Commission to consider waiving a
13 fine in this matter.

14 CHAIRPERSON BENNETT: Anything more from
15 the Division?

16 VICE CHAIR CELESTINO-HORSEMAN: Did this
17 qualify for the deal?

18 CHAIRPERSON BENNETT: I would think so.
19 Why didn't you take the deal today?

20 MR. ASHTON: Given, frankly, the
21 unintentional nature of the violation, given the
22 fact that this was AstraZeneca's first violation
23 in this case and the efforts we made to
24 self-report this matter and to remediate it
25 immediately, we hoped this could be a matter

1 that would be considered for waiving the fine.

2 MEMBER KLUTZ: One reason probably not
3 taking the deal is if they had attended prior
4 hearings, they would have I think probably
5 noticed that this violation and how they handled
6 it falls squarely within how we've handled prior
7 waivers, in that first-time violation,
8 self-reported actually within 15 days, and
9 there's testimony that they've put new processes
10 in place to eliminate this administrative error
11 in the future. I know in past practice we've
12 waived the fine and dismissed the action. So
13 perhaps being before the Commission and knowing
14 precedent, that may be why. For that reason,
15 I'd make a motion that we dismiss the action
16 without a fine.

17 CHAIRPERSON BENNETT: Is there a second to
18 the motion?

19 MEMBER WILSON OVERHOLT: Second.

20 CHAIRPERSON BENNETT: We have a motion and
21 a second. Any further discussion?

22 All in favor, say aye.

23 All opposed, say nay.

24 The motion carried. Fine waived.

25 MR. ASHTON: Thank you very much, we

1 appreciate your time.

2 IEC CHAIRPERSON BENNETT: Who is next?

3 State your name, please.

4 KAREN BIERNACKI

5 Cause Nos. 2017-6709-133, 136 and 141

6 MR. FRIEDMAN: Yes, good afternoon. Shaw
7 Friedman of Friedman & Associates, LaPorte,
8 Indiana. I entered an appearance in this cause
9 before the Commission back in July of 2017.

10 With me is 2016 House Speaker 20 candidate
11 for nominee Karen Biernacki.

12 We believe the evidence will demonstrate --

13 CHAIRPERSON BENNETT: Let me start with the
14 Commission's --

15 MS. THOMPSON: Mr. Chairman, there are
16 three of these, one is on page 8, one on 9, and
17 one on 10.

18 This is the Karen Biernacki 2016 Committee,
19 Cause No. 2017-6709-133, 136 and 141. These
20 were for large contributions. And this
21 committee is now closed, by the way. Two of the
22 supplementals we have not received and one we
23 did receive.

24 CHAIRPERSON BENNETT: I'm sorry, what did
25 you receive?

1 MS. THOMPSON: The one we did receive was
2 Cause No. 2017-6709-136.

3 VICE CHAIR CELESTINO-HORSEMAN: Was the
4 deal that was filed, that the Commission would
5 waive any fines?

6 MS. TAYLOR: The Commission has not heard
7 this cause, they were continued at the last
8 hearing. They asked for a continuance and it
9 was granted.

10 CHAIRPERSON BENNETT: Anything else from
11 the Division staff?

12 VICE CHAIR CELESTINO-HORSEMAN: This was
13 not filed until January 29th, the one that was
14 filed?

15 MS. TAYLOR: The one that was filed was
16 filed July 25th, 2017. The notice date was
17 January 29th.

18 MEMBER KLUTZ: And we have two
19 supplementals that have not --

20 MS. TAYLOR: Correct.

21 MEMBER KLUTZ: Is the committee closed?

22 MS. TAYLOR: Yes.

23 MEMBER KLUTZ: Do we allow the committee to
24 be closed without --

25 MS. TAYLOR: If they filed a zero balance,

1 District 20?

2 A Yes.

3 Q Have you ever run for elected office before?

4 A No.

5 Q What is your occupation?

6 A I am the CEO of Family Advocates in LaPorte
7 County.

8 Q And what is Family Advocates?

9 A We provide advocacy services, a casa program, a
10 mentoring program and supervised visitation.

11 Q And how long have you done that?

12 A 27 years now.

13 Q In that capacity, you have reporting
14 responsibilities to various federal and state
15 agencies for federal and state grants in your
16 agency; is that correct?

17 A Correct.

18 Q Have you ever been the subject of a citation or
19 violation of any kind in the 27 years you've
20 served in that capacity?

21 A No.

22 Q Were you still working full time as CEO of
23 Family Advocates during the legislative
24 campaign?

25 A Yes.

1 yes.

2 CHAIRPERSON BENNETT: Your presentation.

3 MR. FRIEDMAN: Yes, thank you. General
4 members of the Commission, we believe the
5 evidence will demonstrate that Ms. Biernacki's
6 treasurer properly and timely reported most of
7 the large contributions on the CFA-11 forms, but
8 unintentionally and inadvertently did not
9 promptly file the CFA-11 forms on three
10 donations, which are the subject of the three
11 pending causes.

12 All three checks were reported, however, on
13 the CFA-4s on January of 2018, we believe that
14 it will demonstrate no intent to conceal or
15 deceit. First violation by the committee. It
16 has since been disbanded, but I would like to
17 call my client to get some evidence in the
18 record if I could.

19 CHAIRPERSON BENNETT: Very well. Proceed.

20 EXAMINATION,

21 QUESTIONS BY SHAW FRIEDMAN:

22 Q Would you state your name and address, please.

23 A Karen Biernacki, 208 F Street, LaPorte, Indiana.

24 Q Were you a candidate for the Indiana legislature
25 in 2016 elections, specifically for House

1 Q I take it you had to count on a number of
2 volunteers and others to assist your campaign?

3 A Yes.

4 Q Who served as your campaign treasurer?

5 A Laura Konieczny, she's a Realtor.

6 Q And had she ever served in a political campaign
7 before?

8 A No.

9 Q Did she fill out and complete your campaign
10 finance forms?

11 A Yes, she did.

12 Q To your knowledge, did she attempt to do them as
13 completely and accurately as possible?

14 A Yes.

15 Q What's the total amount you show as receipts for
16 your entire campaign? Was it a sum in excess of
17 \$100,000?

18 A Yes.

19 Q So there was a fair amount of money raised in
20 this candidate campaign; is that correct?

21 A Yes.

22 Q Were you aware of the requirement that thousand
23 dollar donations were to be promptly reported on
24 separate forms?

25 A Yes.

1 Q And did you do that for most of the over
2 thousand dollar donations that came in?

3 A Yes, we did.

4 Q And is there a reason that these three donations
5 that are the subject of the proceedings were not
6 promptly reported on the appropriate form?

7 A I believe that the treasurer just was -- checks
8 were coming in those last weeks, I think she
9 just overlooked it unfortunately.

10 Q I take it there were several other thousand
11 dollar donations plus that were promptly
12 reported during the same period?

13 A Yes, there were.

14 Q Was there any attempt on your part or your
15 treasurer's part to intentionally delay or
16 conceal receipt of these three donations?

17 A No, there was not.

18 Q In fact, were all of those reported on your end
19 of campaign reports that were filed in January
20 of 2018?

21 A Yes.

22 Q Are you asking for some relief from the proposed
23 fines of \$3,000 because these were unintentional
24 and inadvertent errors?

25 A Yes, I am.

1 Q This was, as you said, 27 years of reporting to
2 federal and state agencies grants and a huge
3 amount of money, have you ever had a citation by
4 any agency in any form or fashion?

5 A No, I have not.

6 MR. FRIEDMAN: Nothing further.

7 CHAIRPERSON BENNETT: Any questions from
8 the commissioners?

9 VICE CHAIR CELESTINO-HORSEMAN: So we're
10 looking at \$4,000 in fines?

11 MS. TAYLOR: 3,000.

12 VICE CHAIR CELESTINO-HORSEMAN: We're not
13 taking all four of these?

14 MS. TAYLOR: That second one in the middle
15 of those is not this committee.

16 VICE CHAIR CELESTINO-HORSEMAN: All right.

17 CHAIRPERSON BENNETT: Was there
18 self-reporting on this one? Did you self-report
19 I guess?

20 MS. BIERNACKI: Well, I signed the reports,
21 yes.

22 CHAIRPERSON BENNETT: Were you the one who
23 discovered the --

24 MS. BIERNACKI: No, we did not know it
25 until we were contacted.

1 MEMBER KLUTZ: What about the two that
2 remain outstanding, were those --

3 MS. BIERNACKI: I don't remember receiving
4 I thought there were three checks that were over
5 a thousand dollars that were not reported on a
6 CFA-11 that we reported on the CFA-4 in January.
7 That's the only knowledge that I have.

8 MR. FRIEDMAN: All of them now have been
9 reported on a form filed with this Commission.

10 MEMBER KLUTZ: I know they've been reported
11 on CFA-4. But are they self-reported? It
12 doesn't matter.

13 MR. FRIEDMAN: I understand it was not
14 timely, the other ones were not timely, so she
15 simply decided, okay, report them on the full
16 end of the campaign report. But as you know,
17 they're to be timely filed in receipt of the
18 over thousand, and that did not happen.

19 MS. BIERNACKI: So when we were contacted
20 in August about the error and we continued the
21 hearing, there was never a request for us to
22 file the CFA-11 either. So if they would have
23 requested us to do that, I certainly would have
24 done that.

25 CHAIRPERSON BENNETT: Did you talk to your

1 treasurer about it and ask her to do that?

2 MS. BIERNACKI: And her response is, you
3 know, I missed it. I felt we had to report it
4 because it was money that we had received, and
5 so obviously it was important to her to make
6 sure that it was on the report. It was too late
7 at that point to put it on a CFA-11 form, so she
8 put it on the CFA-4.

9 CHAIRPERSON BENNETT: And you're not
10 interested in the first time offender deals?

11 MR. FRIEDMAN: I mean, we were hoping with
12 three -- we're still talking 250 per, we were
13 hoping for some indulgence from the committee.
14 It's the first violation from the Commission.
15 Something less, even \$50 per violation. You've
16 sent a message. We know how important it is to
17 promptly report, but there was no intent to
18 deceive, to conceal. First campaign. There's a
19 lot of money flying in toward the end. You've
20 got a non-campaign finance person unfortunately
21 serving as treasurer. So that's why we're
22 asking for some relief from the 250 per and why
23 we didn't necessarily take the deal.

24 VICE CHAIR CELESTINO-HORSEMAN: So you
25 didn't want to pay 750 for \$3,000 worth of

1 fines?

2 MR. FRIEDMAN: Right. First violation.

3 Again, we're talking 27 years history in
4 connection with the agencies that she's
5 reporting to, hundreds of thousands of dollars
6 to federal and state agencies without a
7 citation. This is a woman who takes very
8 seriously her obligations to comply. So no,
9 there wouldn't be a desire necessarily to take a
10 plea. We wanted to come in, make our arguments
11 and hope that there might be some consideration
12 for the Commission for something less than the
13 250 per.

14 CHAIRPERSON BENNETT: Do you have any law
15 or regulation that indicates that intent is a
16 requirement here? You said this was
17 unintentional and inadvertent.

18 MR. FRIEDMAN: Well, it's an argument. I
19 presume the Commission takes into
20 consideration -- if there's any effort to
21 conceal or anything else. I assume that's the
22 whole point behind that thousand dollar prompt
23 reporting is so campaign contributors, the
24 public, the media is well informed, so we
25 believe that's why that's there. And if there's

1 an intent to conceal, which I know this
2 Commission has dealt with before, certainly we
3 understand significant penalties being there.

4 VICE CHAIR CELESTINO-HORSEMAN: At the last
5 meeting, was Ms. Biernacki informed about the
6 need to self-report?

7 MS. TAYLOR: She didn't attend the last
8 meeting, she asked for a continuance of it and
9 it was granted.

10 MR. FRIEDMAN: She certainly would have
11 done it if that demand had been made. But
12 you're right, there was no request made to file
13 a supplemental.

14 CHAIRPERSON BENNETT: That's not something
15 we normally request, it's just a matter of state
16 law.

17 MEMBER KLUTZ: You mean since she didn't
18 file this, then we don't say please file -- you
19 didn't file.

20 MS. THOMPSON: Right.

21 CHAIRPERSON BENNETT: Anything else before
22 I close the hearing?

23 The hearing is closed. Do we have a
24 motion?

25 MEMBER WILSON OVERHOLT: I would move to

1 reduce the proposed fine to \$250 for each of the
2 three violations for a total of \$750, plus
3 mailing costs.

4 CHAIRPERSON BENNETT: Is there a second for
5 that motion?

6 MEMBER KLUTZ: I'll second.

7 CHAIRPERSON BENNETT: I have a motion and a
8 second.

9 All in favor, say aye.

10 All opposed, say nay.

11 The motion is carried for \$750, plus
12 mailing costs.

13 MR. FRIEDMAN: Thank you.

14 CHAIRPERSON BENNETT: Thank you.

15 BRADFORD W. MOULTON

16 2017-6557-45 and 135

17 MR. MOULTON: This will be Administrative
18 Cause 2017-6557-45 and -135. A supplemental
19 report for a loan --

20 CHAIRPERSON BENNETT: Your name is?

21 MR. MOULTON: Bradford W. Moulton,
22 M-O-U-L-T-O-N. And a supplemental report for a
23 thousand dollar loan that I loaned myself. And
24 then a late year-end reporting. At the last
25 hearing I was given a continuance and was asked

1 to file a supplemental report.

2 CHAIRPERSON BENNETT: Before you make your
3 presentation, let us --

4 MS. THOMPSON: Mr. Chairman, this is on
5 page 3 and on the bottom of page 8.

6 This is the report of Bradford Moulton,
7 State Representative, Cause No. 2017-6557-45 for
8 his report he filed late. The report is now
9 closed.

10 On page 8, it's 2017-6557-135, this is for
11 the supplemental report. At the top of page 9
12 under Comments, some of yours got changed and
13 some of them didn't. This actually should say
14 that his report is filed instead of not failed.
15 His report is here. And again, the committee is
16 closed.

17 MEMBER KLUTZ: So what was the basis of our
18 continuance at the last meeting? Were there
19 conditions?

20 MS. TAYLOR: He was given another 30 days
21 to file the report. The report was filed
22 outside of the 30 days, but it was filed.

23 MS. THOMPSON: And he's closed.

24 MS. TAYLOR: That day he just continued a
25 handful and gave them all an opportunity to

1 close within 30 days or file within 30 days and
2 then revisit.

3 CHAIRPERSON BENNETT: Anything else from
4 the Division staff?

5 MS. TAYLOR: No.

6 CHAIRPERSON BENNETT: The floor is yours.

7 MR. MOULTON: So I apologize as well, I did
8 not file that within the 30 days. Evidently I
9 was not as clear on that as other. But I came
10 in, we went through, we filed the final year's
11 report, we filed the CFA-11 that was required
12 for the loan that was to myself. At the time, I
13 think I said I had a few dollars and some change
14 in my account. I since zeroed that out via bank
15 fees. So there was a zero balance on the
16 account, it was closed out for the year, and the
17 committee itself is completely closed, per your
18 request.

19 So I would humbly say that I have closed
20 out my account and will not have to deal with
21 you guys ever again hopefully.

22 VICE CHAIR CELESTINO-HORSEMAN: So why
23 didn't you take the deal, it would have been
24 your first time, it would have been \$250.

25 MR. MOULTON: It would not have been, it

1 was a thousand dollars plus a late fee, and I
2 had been late before. My campaign treasurer was
3 not the best about getting with me and getting
4 everything in timely. She would often just give
5 it to me and then I would have to bring it in.
6 I'm not blaming her, it's my responsibility as a
7 candidate to make sure it gets through. But I
8 shouldn't have to worry about that anymore, and
9 I wouldn't recommend her to be a finance person
10 for anyone.

11 MEMBER KLUTZ: The supplemental
12 contribution.

13 MR. MOULTON: Was a loan to myself, and I
14 was unaware that because it was a loan, within
15 that three-week window between the preelection
16 report and the year end that I needed to report
17 a thousand dollars or more that was a loan to
18 myself. That was an oversight on my part, and
19 that one was totally my fault.

20 CHAIRPERSON BENNETT: Anything else? Any
21 questions? I declare the hearing closed and ask
22 for a motion.

23 VICE CHAIR CELESTINO-HORSEMAN: I would
24 move that we waive all fines on this one.

25 CHAIRPERSON BENNETT: Is there a second?

1 MEMBER KLUTZ: Second.

2 CHAIRPERSON BENNETT: Motion and a second.

3 All in favor, say aye.

4 All opposed, say nay.

5 Motion carried, fines are waived.

6 MR. MOULTON: Thank you guys, so much, I
7 appreciate it. You have a blessed day.

8 IEC CHAIRPERSON BENNETT: Anyone else here
9 for a campaign finance?

10 I propose a quick recess.

11 REQUESTS FOR CONTINUANCE

12 MS. TAYLOR: We have a handful of
13 continuances, request for continuance.

14 CHAIRPERSON BENNETT: Do you want to cover
15 those before we take a quick break?

16 MS. TAYLOR: It's up to you.

17 CHAIRPERSON BENNETT: Let's handle those
18 then for a second.

19 I would ask that the campaign finance staff
20 identify any matters which a motion or
21 continuance was received for today's meeting.

22 MS. TAYLOR: First is Cause
23 No. 2015-6645-91, it's the Wabash Democratic
24 PAC. Second is Cause No. 2017-6724-57, the
25 Committee to elect Michael Harkness, State

1 Representative, District 73. Third is Cause No.
2 2016-6873-166, Wabash County Democrat. And the
3 last one was 2017-6938-86, Hoosiers for Justice
4 Political Action Committee.

5 CHAIRPERSON BENNETT: Is there a motion to
6 grant the request for continuance?

7 VICE CHAIR CELESTINO-HORSEMAN: So moved.

8 CHAIRPERSON BENNETT: Is there a second?

9 MEMBER KLUTZ: Second.

10 Any discussion?

11 All in favor, say aye.

12 All opposed, say nay.

13 The continuance requests are granted.

14 Thank you.

15 Is anyone present to testify in any
16 remaining campaign finance hearing scheduled for
17 today? If not, I declare the hearings on all
18 remaining campaign finance matters scheduled for
19 today closed.

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

24 MEMBER KLUTZ: So moved.

25 CHAIRPERSON BENNETT: Is there a second?

1 VICE CHAIR CELESTINO-HORSEMAN: Second.

2 CHAIRPERSON BENNETT: Any further
3 discussion?

4 All in favor of the motion, say aye.

5 All opposed, say nay.

6 The ayes have it, the motion to impose the
7 penalty is adopted.

8 At this point, let's recess for a 10-minute
9 comfort stop.

10 (A recess was taken between 4:07 p.m. and
11 4:17 p.m.)

12 VSTOP OVERSIGHT PROGRAM

13 CHAIRPERSON BENNETT: We'll resume the
14 meeting after a brief recess.

15 At this time I'll recognize Dr. Jay Bagga,
16 Jessica Martin, Dr. Bryan Byers and other
17 representatives from the VSTOP program to report
18 regarding voting system issues.

19 The first item on the agenda is the
20 recommendation from VSTOP concerning an
21 engineering change order.

22 DR. BAGGA: Thank you, Mr. Chairman, and
23 members of the Commission. If I may, I'd like
24 to begin by introducing the members of our team,
25 and then several of us will make presentations.

1 I'm Jay Bagga, Co-Director for VSTOP. Next
2 to me is Jessica Martin, project manager for
3 VSTOP. And then Co-Director Bryan Byers, and
4 Mani Kilaru, review specialist. We're glad to
5 be here.

6 We will ask Jessica Martin to make a
7 presentation on the ECO for Micro Vote.

8 MS. MARTIN: Hi. Micro Vote has formally
9 requested approval of an engineering change
10 order to a certified voting system in Indiana.
11 This engineering change order is an addition of
12 headphones to the list of certified components
13 for the EMS 4.1 and has been evaluated by the
14 VSTOP team in accordance with the requirements
15 of the policies and procedures for managing
16 changes in Indiana's certified voting system,
17 which was approved by the Indiana Election
18 Commission on June 27th, 2011.

19 Members of the VSTOP team have also
20 reviewed this ECO and the VSTL report of the
21 voting system testing lab report. VSTOP finds
22 that this engineering change order is in
23 compliance with the requirements for de minimus
24 changes to hardware components. The end of life
25 Radio Shack headphone was not originally in the

1 Indiana certification, so this ECL is an
2 addition of a component to the Indiana certified
3 Micro Vote EMS 4.1.

4 Furthermore, this new hardware is
5 compatible with the Micro Vote EMS 4.1 voting
6 system certified in the state of Indiana. This
7 ECO applies only to Micro Vote EMS 4.1, and
8 VSTOP recommends approval by the Indiana
9 Election Commission.

10 CHAIRPERSON BENNETT: Very well. Is there
11 a motion to approve the recommended engineering
12 change order?

13 MEMBER KLUTZ: So moved.

14 CHAIRPERSON BENNETT: Is there a second?

15 VICE CHAIR CELESTINO-HORSEMAN: Second.

16 CHAIRPERSON BENNETT: Any discussion?

17 Hearing none, all in favor of the motion,
18 say aye.

19 All opposed, say nay.

20 Motion carried.

21 I'll now ask for a presentation from VSTOP
22 regarding the application for certification of
23 the election systems and software 5.2.0.0
24 optical scan voting system.

25 DR. BAGGA: Thank you, Mr. Chairman, I'll

1 make that presentation. The ES&S EVS 5.2.2.0 is
2 a paper-based end-to-end Election Management
3 System that supports a jurisdiction's election
4 needs by creating and maintaining a central
5 election database, formatting and printing
6 ballots, programming election equipment and
7 collection and reporting of election results.

8 This Voting System was tested on
9 January 24th, 2018 by VSTOP at Ball State
10 University. VSTOP conducted tests on hardware,
11 firmware and software components that included
12 demonstration of these components. The test
13 also included verification of all the
14 requirements of the Indiana statutes regarding
15 voting systems as well as ADA Compliance
16 demonstration. Mock elections were held,
17 including the IED approved test case scenarios
18 for straight party voting, and these were
19 conducted on the voting system.

20 VSTOP also reviewed the lab reports from
21 Voting System Testing Labs, and VSTOP also
22 reviewed the EAC Scope of Certification and the
23 EAC guidelines. This system was certified by US
24 EAC on February 27th, 2017.

25 In our report we list all the components of

1 the system that we recommend and, furthermore,
2 list some of the limitations on the use of some
3 components. There are two scanners, the Symbol
4 QR4 scanner and the Zebra QR scanner, and they
5 are limited to scanning only 128c bar codes that
6 contain ballot style information yet generated
7 by Electronic Poll Books which are certified in
8 Indiana. Attachment 4 has that information.

9 The user of any of the features for these
10 scanners is prohibited, including the use of any
11 QR codes, Ballot Online QR codes and
12 ExpressPass. Any functionality related to the
13 prohibited features shall be disabled if
14 possible. Also the Ballot Online application
15 and the Ballot Online QR scan shall not be used.

16 On the basis of VSTOP's review and
17 evaluation, we find that the working system
18 referenced in herein (and with the Scope of
19 Certification and limitations as applied) meets
20 all the requirements of Indiana Code for use in
21 the State of Indiana. This finding includes
22 compliance with legal requirements for voters
23 with disabilities.

24 Thank you.

25 CHAIRPERSON BENNETT: Thank you. Is there

1 a motion to approve the application for
2 certification of the 5.2.2.0 Optical Scan Voting
3 Application submitted by ES&S in accordance with
4 the recommendations of VSTOP and subject to any
5 restriction or additional requirement in that
6 recommendation?

7 VICE CHAIR CELESTINO-HORSEMAN: So moved.

8 CHAIRPERSON BENNETT: Is there a second?

9 MEMBER KLUTZ: Second.

10 CHAIRPERSON BENNETT: A motion and a
11 second.

12 All in favor, say aye.

13 All opposed, say nay.

14 The ayes have it, and the application for a
15 certification is approved.

16 I now ask for a presentation requesting the
17 Commission to determine whether specific types
18 of voting booths tested as part of their review
19 of the Election Systems and software 5.2.0.0
20 optical scan voting system can be marketed to
21 county customers along with the certified ES&S
22 5.2.0.0 scanner.

23 Is there a recommendation?

24 DR. BAGGA: Thank you, Mr. Chairman. I
25 would like to give some background on this.

1 These working booths and these photographs
2 attached were also brought by ES&S on
3 January 24th, 2018, when we tested the EVS
4 voting system. These booths are manufactured by
5 third-parties and they are not part of the
6 certified components of working system. ES&S
7 asked VSTOP whether these booths can be marketed
8 along with the working system. And clearly
9 these are not part of the certified system, and
10 VSTOP contacted the Indiana Election Division
11 and we were advised to present this question to
12 the Indiana Election Commission.

13 CHAIRPERSON BENNETT: All right. Thank
14 you.

15 At this time I would ask the Co-Directors
16 for the Indiana Election Division for their
17 opinion regarding this question.

18 CO-DIRECTOR NUSSMEYER: Mr. Chairman, thank
19 you. After consulting with my attorney Matthew
20 Kochevar, he and I believe that the booth itself
21 is, as Dr. Bagga said, outside the scope of the
22 voting system, and it just happens to be
23 compatible with the actual system by which the
24 voter is able to cast their ballot on election
25 day. So I would advise my commissioners that

1 ES&S would not need permission to use the voting
2 booth, since the voting booth is a component
3 outside the system in and of itself.

4 However, Mr. Kochevar suggested that in an
5 abundance of caution, perhaps the ES&S make a
6 disclaimer that this voting booth is from a
7 third-party vendor and is not subject to
8 certification under Indiana law.

9 CO-DIRECTOR KING: Mr. Chairman and members
10 of the Commission, I concur with Co-Director
11 Nussmeyer's opinion as expressed. I'll just add
12 that we looked in particular at the definition
13 of voting system in Indiana law 3-5-2-53, and
14 considering the additional information she's
15 provided, we concur with the recommendation of
16 the Commission is the final enforcement
17 authority with regard to matters concerning the
18 use of uncertified voting equipment, provide
19 guidance to this and other vendors regarding the
20 voting booth question by determining that the
21 voting booth may be marketed without Commission
22 certification.

23 CHAIRPERSON BENNETT: Very well, thank you.
24 Is there a representative from ES&S present
25 who wishes to speak regarding this matter?

1 Yes, sir.

2 MR. MANGANARO: Mark Manganaro and Jeremy
3 Burton with ES&S, and we're here to answer any
4 questions that you may have.

5 CHAIRPERSON BENNETT: Any questions from
6 the commissioners?

7 VICE CHAIR CELESTINO-HORSEMAN: What are
8 those things coming off the side on a regular
9 voting booth, like little shelves or something.

10 MR. BURTON: That's where the machines can
11 rest, and there are privacy panels on either
12 side. There's a total of four.

13 VICE CHAIR CELESTINO-HORSEMAN: Yeah, but
14 it looks like a privacy panel and then a shelf
15 comes out. What is that for? I'm just curious.

16 MR. MANGANARO: Which one?

17 VICE CHAIR CELESTINO-HORSEMAN: This one
18 right here.

19 MR. MANGANARO: This is what the
20 manufacturer calls a dual cart, so they would
21 mount actually one Express Vote unit on this
22 side, one on the backside. If there was an
23 instance where maybe this voting place got
24 really busy and they wanted to bring two
25 additional machines out, they could actually

1 mount one on that side and that side as well.

2 VICE CHAIR CELESTINO-HORSEMAN: Thank you.

3 CHAIRPERSON BENNETT: Anything else?

4 Any discussion from the commissioners? Is
5 there a motion to find that the voting booths
6 used in VSTOP's testing of the ES&S 5.2.2.0
7 optical scan voting system applications can be
8 marketed in Indiana without additional
9 Commission certification of the voting booths as
10 a component of the voting system?

11 MEMBER KLUTZ: So moved.

12 MEMBER WILSON OVERHOLT: Second.

13 CHAIRPERSON BENNETT: There's a motion and
14 second.

15 All in favor, say aye.

16 All opposed, say nay.

17 The ayes have it, the motion is adopted.

18 Thank you.

19 I would now ask for a presentation from
20 VSTOP concerning its investigation of the
21 certification status of the ES&S bar code
22 scanner for the EVS 5.2.0.0 in response to the
23 issue of whether this voting system component
24 was marketed to a county without prior
25 certification of the Commission.

1 DR. BAGGA: Thank you. Dr. Byers will make
2 that presentation.

3 DR. BYERS: Thank you, Dr. Bagga. Thank
4 you, Mr. Commissioner, and members of the
5 Commission. My name is Bryan Byers, I'm also
6 Co-Director of the VSTOP program.

7 In response to a request on August 29th,
8 2017 from the Indiana Election Division
9 Co-Director Brad King, VSTOP conducted an
10 investigation about the certification status of
11 the ES&S Express Code QR bar code scanner for
12 the Indiana Certified EVS 5.2.0.0 voting system.

13 A sales order agreement signed on
14 August 23rd, 2017, between Henry County and ES&S
15 included 190 units of the ES&S Express Code QR
16 bar code scanner. VSTOP was asked to
17 investigate that the bar code scanner was
18 included in the list of components of the
19 EVS 5.2.0.0 voting system that was certified by
20 the Indiana Election Commission on April 24th,
21 2017, and then recertified on June 23rd, 2017.

22 VSTOP's investigation included the review
23 of two IEC-11 applications, associated
24 application materials, system manuals and guides
25 and the Technical Data Package submitted by

1 ES&S. VSTOP also consulted the U.S. Election
2 Assistance Commission about this matter.
3 VSTOP's investigation found that the Bar Code
4 Scanner was not included in the list of
5 components of the ES&S 5.2.0.0 voting system
6 certified in Indiana. On September 15, 2017,
7 VSTOP submitted its findings to the Indiana
8 Election Division Co-Directors Brad King and
9 Angie Nussmeyer. The Co-Directors sent a letter
10 to ES&S seeking information regarding this
11 matter. In its response on October 6, 2017,
12 ES&S agreed that the Bar Code Scanner was not
13 certified with EVS 5.2.0.0 in Indiana and,
14 therefore, it should not have been included in
15 ES&S's RFP response or subsequent Sales Order
16 Agreement with Henry County.

17 ES&S admitted this error and issued an
18 apology for the mistake. In a letter on
19 November 21st, 2017, Honorable Connie Lawson,
20 Secretary of State of Indiana, informed ES&S
21 that Indiana law provides for penalties if a
22 voting system vendor markets, sells, leases,
23 installs or implements a system before it is
24 certified by the Indiana Election Commission.
25 However, the Secretary elected not to pursue

1 sanctions against the Vendor at this time.

2 And this concludes our report.

3 CHAIRPERSON BENNETT: Thank you for that
4 report.

5 Any thoughts by any of the Commission
6 members about that?

7 I guess I would suggest that we acknowledge
8 receiving the report and perhaps defer any
9 discussion on this specific matter until we have
10 an opportunity to review the report in more
11 detail before that application be developed by
12 VSTOP.

13 Is that sufficient by consensus?

14 MEMBER KLUTZ: I'm fine with that.

15 CHAIRPERSON BENNETT: Thank you very much.

16 At this time, I'd like to speak for just a
17 moment on a matter of personal privilege. As
18 Commission members know, I sent a letter to our
19 Attorney General on June 19th, 2017. I sent
20 that letter in my individual capacity as the
21 appointed Chair of the Indiana Election
22 Commission, but not on behalf of the Commission
23 itself. I asked what options would be available
24 to the Commission if Lake County Board of
25 Elections Registration and its small precinct

1 committee have not produced proposed findings
2 that are recommended order of precinct
3 consolidation.

4 I received no acknowledgment of my letter
5 nor any response, and so on January 29th, 2018,
6 we finalized and posted our Indiana Election
7 Commission agenda for today's meeting. On
8 January 31st, 2018, I emailed a courtesy copy of
9 my letter to the AG, to my co-directors for
10 distribution and to my fellow Indiana Election
11 Commission Commissioners offering to discuss the
12 matter in my individual capacity in the manner
13 consistent with the Indiana Open Door Law.

14 And February 1st, 2018, I received a letter
15 from the AG's office, Official Opinion
16 No. 2018-2 sent by Curtis T. Hill, Attorney
17 General. And that opinion was forwarded to the
18 Co-Directors Brad King and Angela Nussmeyer on
19 February 8th, 2018 for immediate distribution to
20 all Commission members. And I have additional
21 copies of that report here today for anybody who
22 needs a copy of those.

23 As you know, if you read that letter, the
24 Attorney General has concluded that this
25 Commission must adopt an order for Lake County

1 that will realize savings and does not impose
2 unreasonable burdens on the ability of voters to
3 vote at the polls. This obligation is mandatory
4 and is continuing, and the Commission should
5 remain in session until an order is developed
6 and agreed upon.

7 I know that we as a Commission have already
8 offered motions on competing proposals, none of
9 which have passed, but the Attorney General says
10 that that's not enough, we need to do more.

11 So with that preface, I will now yield the
12 floor for further discussions on appropriate
13 next steps to fulfill our Commission's legal
14 duties imposed upon the Commission by law. Is
15 there any discussion on this issue?

16 MEMBER WILSON OVERHOLT: Well,
17 Mr. Chairman, I understand that the decision
18 from the Attorney General came out after the
19 agenda was posted, but under the Open Door Law
20 the agenda of the meeting doesn't actually have
21 to be posted or finalized until just before the
22 meeting. And what I'm uncomfortable -- because
23 at this point it appears that you are amending
24 the agenda that we, although we don't formally
25 adopt the agenda, we've been acting on it all

1 during this meeting. So I would suggest that in
2 order to discuss this, we should be taking a
3 vote to determine whether we should be amending
4 the agenda to add this item to it after the
5 meeting has already begun.

6 CHAIRPERSON BENNETT: I would ask I guess
7 for a legal opinion on that. My understanding
8 is that an agenda is not even necessary and it
9 can be amended during a meeting at any time.

10 So I would at this time look for proposals
11 on how we can fulfill our duty.

12 VICE CHAIR CELESTINO-HORSEMAN:

13 Mr. Chairman, and I read this letter, quite
14 interesting from a legal perspective, very
15 unusual. I am a temporary person here, and I
16 know this has been ongoing for a few years. I
17 know that various discussions have occurred.
18 And I would really feel more comfortable if this
19 waited to be handled when Mr. Long, the Vice
20 Chair of this body, would return.

21 MEMBER KLUTZ: Mr. Chairman, if the floor
22 is open for discussion. I did read this --

23 MEMBER WILSON OVERHOLT: Sorry, I've raised
24 an issue and I guess I would like a
25 determination on that issue before we proceed

1 with the discussion, because I'm essentially
2 objecting to the discussion without having given
3 any public notice to the fact that we would be
4 talking about this at this meeting.

5 CHAIRPERSON BENNETT: I guess it would be
6 appropriate to ask for any legal opinion about
7 the agenda, or we could --

8 MEMBER WILSON OVERHOLT: Do you have an
9 opinion regarding, Mr. Kochevar?

10 CHAIRPERSON BENNETT: Commissioner Klutz
11 has asked to speak on the record to this. What
12 would you like to say?

13 MEMBER KLUTZ: I did receive this. I was
14 hoping we would talk about it. I'm not
15 necessarily asking that we submit plans, but I
16 do have some comments on this.

17 This is an opinion from the Attorney
18 General of Indiana, the Commissioner's legal
19 counsel, the office that routinely represents us
20 as a Commission, and I think the opinion is the
21 directors are deserving of discussion and
22 consideration.

23 I don't think there's any need to read this
24 verbatim, but I think the punchline is the
25 following: "The statutory procedure at issue

1 makes clear that if all else fails at the county
2 level," which it has, "the Commission at the
3 state level must act. And should the Commission
4 become deadlocked and fail to act," which it has
5 here, "then the Commission still 'must act.'"

6 I don't think any of us would dispute that
7 we've taken extensive attempts to act. Last
8 summer we as a Commission all agreed to a
9 timeline and structure to resolve this issue,
10 the Lake County small precinct issue. We set a
11 July 13th deadline, extended to August 1st, for
12 any member, director or deputy director of the
13 major political parties in Lake County to submit
14 proposals and plans. And you'll recall that as
15 a Commission we collectively created and adopted
16 an order that set forth the details and
17 instructions for the submission of plans by the
18 county level, details such as timing, how to
19 submit, what information was required to be
20 included in each plan, and the review and
21 hearing process, et cetera.

22 On August 9th, 2017, this Commission held
23 hearings and allowed those groups with plans to
24 speak and those opposed to speak against.

25 The point is, we were able to work together

1 and create a plan and structure for the county
2 level to submit plans. Now, despite our
3 efforts, the Attorney General was pretty clear
4 in his opinion that a single vote of the
5 Commission on August 9th of last year was
6 "probably not enough" to sufficiently fulfill
7 our obligations as a Commission. And as further
8 set forth in the opinion, "When the Commission
9 reached a stalemate, the Commission retained the
10 authority, 'indeed the responsibility' to build
11 its own plan from the ground up using the
12 principles set forth in Indiana Code 36-52-10."

13 I note that the Attorney General in his
14 opinion recognized the experienced and capable
15 staff of the Indiana Election Division on both
16 sides of the party, and I think we worked
17 together in the past to create a structure for
18 the counties to submit a plan, and I think we
19 can do it again for purposes of the Commission
20 to create a plan for both.

21 Mr. Chairman, I say that we take advantage
22 of this time, or perhaps another time, to work
23 together to develop a timeline and process for
24 our Commission, utilizing the Election Division
25 staff, to develop a small precinct plan for Lake

1 County. The structure can include the timing
2 for the plan development process, generally
3 similar to that utilized for the county
4 officials. We can set forth the direction and
5 structure for Election Division party staff,
6 prepare a plan, a process for exchanging of
7 plans with the opposite party staff, a period
8 for review, a timeline for comments or
9 objections to be submitted and exchanged, and a
10 timeline and process for reconciling plans for
11 eventual submission to the Commission for a
12 vote.

13 I'd be happy to talk about that structure
14 in more detail and drafting an order this
15 evening, or we can continue --

16 CHAIRPERSON BENNETT: Let me say this. It
17 has been a long day. I agree with everything
18 Commissioner Klutz has said with regard to our
19 duties and obligations to work on a plan. And
20 I'm optimistic that we as a Commission can work
21 together and come up with a plan.

22 I do think that given that it is
23 4:45 p.m. on Friday afternoon and that we have
24 had a long meeting already, that it would make
25 sense to recess this meeting and reconvene to

1 work on a plan.

2 MEMBER WILSON OVERHOLT: Before we do that,
3 since Commissioner Klutz has had the opportunity
4 to say something, I would like to point out that
5 I appreciate that finally you seem to have come
6 around to what Vice Chair Long and I were
7 proposing at the August 9th meeting. We made a
8 motion at that meeting to do what you just said.
9 We voted on it and you voted against it.

10 We voted at that meeting -- and I'm not
11 saying in terms of the statement from the
12 Attorney General what he found we should be
13 doing is what Commissioner Long and I proposed
14 on August 9, 2017, which was that the Commission
15 should direct the staff to prepare a plan to
16 work with -- to gather the information they
17 needed to prepare a proposal for us. We had
18 moved that, and you two voted against it. So
19 I'm glad that you appear to have come around to
20 what we were trying to accomplish in August.

21 And that's what I would like to say for the
22 record. So I think we're amenable to work on
23 it, because we haven't since August. But I
24 don't think tonight is the night to do it
25 because it wasn't properly -- it was not on the

1 agenda and should not be discussed at this time.

2 VICE CHAIR CELESTINO-HORSEMAN: May I add
3 one thing?

4 CHAIRPERSON BENNETT: Yes.

5 VICE CHAIR CELESTINO-HORSEMAN: I have
6 eaten a box of Tic-Tacs because my blood sugar
7 is starting to drop. I didn't eat my lunch like
8 I should. So your notion of adjourning at 4:45
9 would be very well received by myself.

10 CHAIRPERSON BENNETT: Give me one second.

11 Okay. Very well, as the Chair, I'm going
12 to recess this meeting of the Commission until
13 Friday, March 9th, 2018, 1:30 p.m., when we'll
14 continue the meeting in the office of the
15 Indiana Election Division, in Room E204 of the
16 Indiana Government Center South, 302 West
17 Washington Street in Indianapolis. And with
18 that, we are in recess.

19 (Time noted: 4:45 p.m.)

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1 STATE OF INDIANA)
) SS:
2 COUNTY OF MARION)

3 I, Craig Williams, a Notary Public in and for the
4 County of Marion, State of Indiana at large, do
5 hereby certify that on February 23, 2018, I took down
6 stenographically the foregoing proceedings, and that
7 the transcript is a full, true and correct transcript
8 made from my stenographic notes.

9 IN WITNESS WHEREOF, I have hereunto set my hand
10 and affixed my notarial seal this 1st day of March,
11 2018.

12 

13
14
15 NOTARY PUBLIC

16
17 My Commission Expires:

18 January 14, 2024

19 County of Residence:

20 Marion County

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In the Matter Of:

INDIANA ELECTION COMMISSION

TRANSCRIPT OF HEARING

March 09, 2018



CONNOR REPORTING

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Transcript of Hearing
March 09, 2018

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INDIANA ELECTION COMMISSION
COMMITTEE MEETING

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Conducted on: March 9, 2018

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Conducted at: Indiana Government Center
Indiana Election Division
302 West Washington Street
Room E-204
Indianapolis, Indiana 46204

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A Stenographic Record By:
Lisa C. Pierce

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A P P E A R A N C E S

INDIANA ELECTION COMMISSION:

- Mr. Bryce Bennett - Chairman
- Mr. Adam Dickey - Proxy for
Vice Chairman Mr. S. Anthony Long
- Mr. Zachary Klutz - Member
- Ms. Suzannah Overholt - Member

INDIANA ELECTION DIVISION STAFF:

- Mr. J. Bradley King - Co-Director
- Ms. Angela M. Nussmeyer - Co-Director
- Mr. Dale Simmons - Co-Legal Counsel
- Mr. Matthew Kochevar - Co-Legal Counsel

1 CHAIRMAN BENNETT: I'll call the meeting of
2 the Indiana Election Commission back in session
3 following the end of recess announced on
4 February 23rd, 2018. The following members of the
5 Commission are present today: Myself, Bryce
6 Bennett, the Chairman; Adam Dickey, proxy for Vice
7 Chairman, Anthony Long; member, Suzannah Overholt;
8 member, Zachary Klutz.

9 The Indiana Election Division staff is here:
10 Co-Directors Brad King and Angie Nussmeyer.
11 Co-General Counsels, Dale Simmons and Matthew
12 Kochevar. The court reporter today is Lisa Pierce
13 from Connor & Associates.

14 We have only one item remaining to be
15 discussed today, and that is the issue of how to
16 proceed with the Lake County Precinct Consolidation
17 Plan. And I want to commend everyone here today
18 for their transparency and diligence in preparing
19 and exchanging proposed plans for --

20 MS. OVERHOLT: Mr. Chair, if I might, before
21 you go further, I have a point of order that I
22 raised when we were last in session, which is that
23 we actually don't have an agenda item. We
24 concluded the agenda for the last meeting or for
25 this meeting when we were last in session. And I

1 had raised at that time that if we're going to
2 discuss this, I would assume the appropriate route
3 would be to amend the agenda to include whatever
4 topic it is we're discussing. You didn't entertain
5 that motion. But it would seem today that it would
6 be appropriate to do that.

7 So I would -- I would move that we amend the
8 agenda to include I guess it's discussion about
9 kind of next steps for the Lake County
10 reprecincting.

11 CHAIRMAN BENNETT: Are you making it a motion?

12 MS. OVERHOLT: Yes, I said I was making that
13 motion --

14 CHAIRMAN BENNETT: Okay.

15 MS. OVERHOLT: Yes.

16 MR. DICKEY: I'll -- I'll second that.

17 CHAIRMAN BENNETT: Okay. We have a motion and
18 a second.

19 MR. KLUTZ: Open for discussion?

20 CHAIRMAN BENNETT: Yes.

21 MR. KLUTZ: So the purpose is just to amend
22 the agenda and then have the discussion here during
23 this meeting?

24 MS. OVERHOLT: Or then to talk about what -- I
25 mean, I -- it appears that that's what the chair

1 wants to discuss. I'm raising the issue that
2 there's -- as far as the agenda goes, we -- we have
3 nothing in front of us. So I am trying to -- I'm
4 just -- I'm concerned about our compliance with the
5 open door law and the fact that it wasn't on the
6 agenda, isn't on the agenda, and I feel that we
7 should amend the agenda to include.

8 CHAIRMAN BENNETT: I would say this with
9 regard to the open door law, I raised this issue as
10 a point of personal privilege, and we had some
11 discussion at the last meeting. And we recessed
12 the meeting and sent a second notice out after
13 that.

14 MS. OVERHOLT: With nothing on the agenda.

15 CHAIRMAN BENNETT: Well, the item that we
16 already discussed was on the agenda. And,
17 furthermore, we had -- I mean, the item we
18 discussed was a -- was a carryover from my point of
19 personal privilege. And we exchanged documents
20 which indicated everyone understood what would be
21 on the agenda. And in terms of legally complying
22 with the open door law, I guess I would ask counsel
23 if you have any thoughts, opinions on that.

24 MR. SIMMONS: Mr. Chairman, members of the
25 Commission, just on a technical open door

1 violation, I did ask the Public Access Counselor,
2 Luke Britt, a question about whether what -- I gave
3 him the whole scenario on the Commission recessing
4 and then reconvening two weeks later and then going
5 ahead and posting open door law notice like we did.
6 Witnesses of -- there's been a post -- posted open
7 door law for this meeting, as I understand it.

8 And his view of the open door law was that
9 because of the passage of time and the posting of a
10 new notice, the Commission can proceed even without
11 an agenda and discuss whatever -- whatever items.
12 But -- but it certainly does no harm, you know, in
13 my view, to, you know, pass a motion. But there's
14 no -- I -- according to the open -- the Public
15 Access Counselor anyway there's no open door law
16 violation if you just proceeded with the business
17 you suggested.

18 CHAIRMAN BENNETT: Yes. Thank you. Any --

19 MR. KOCEVAR: Yeah. I will just say, I've
20 not seen the -- if it was in correspondence between
21 Mr. Simmons and Mr. Britt. But I will recognize,
22 having read various official opinions from the
23 Public Access Counselor, that it is certainly a
24 right of a public agency, which this Commission is,
25 to amend its agenda while it's in its meeting. But

1 the key thing that I noted -- or that I notice is
2 that the public agency has to act to amend its
3 agenda. And so my whole point is that I agree with
4 Commissioner Overholt that a vote has to be taken
5 so this can be added on and so it can be discussed.

6 And the only other point I will make is that I
7 would -- I suggested to Commissioner Overholt and
8 Mr. Dickey, just because on this particular issue
9 is under adjudication in federal court. And I
10 would just like to, with an abundance of caution,
11 make sure that, you know, things are done as
12 carefully as possible. 'Cause I think everyone
13 around this table would desire to have that, you
14 know, issue resolved as cleanly and as quickly as
15 possible.

16 MS. OVERHOLT: And I guess I don't quite see
17 it. 'Cause we're all clearly here for this
18 meeting. And I guess to correct, the notice that
19 is hanging up outside this door has nothing on it
20 in terms of what's going to be discussed at this
21 meeting. I -- I mean, we're all here. I guess I
22 don't understand why it -- it seems like there is
23 reluctance to take action to add this to the
24 agenda. I just don't quite --

25 CHAIRMAN BENNETT: I guess --

1 MR. KLUTZ: I just want to be able to meet
2 today and continue.

3 MS. OVERHOLT: Right.

4 MR. KLUTZ: I don't want this to mean that
5 we're amending the agenda, we have to adjourn
6 and -- you know.

7 CHAIRMAN BENNETT: I don't think you're
8 suggesting that. And I think that's what we need
9 to understand. You're suggesting that we do amend
10 the agenda today to discuss this issue, and that --

11 MS. OVERHOLT: Right.

12 CHAIRMAN BENNETT: -- we proceed with
13 discussions today, if that motion carries. Is
14 that --

15 MR. KLUTZ: Yes.

16 MS. OVERHOLT: Yes.

17 MR. DICKEY: Yes.

18 CHAIRMAN BENNETT: Is that helpful to you,
19 Commissioner?

20 MR. KLUTZ: Yeah.

21 CHAIRMAN BENNETT: So the motion has been made
22 and it has a second. We've had our discussion.

23 (A discussion was held off the record between
24 Mr. King and Chairman Bennett.)

25 CHAIRMAN BENNETT: I am reminded that if we do

1 amend the agenda, we need to post the agenda. And
2 we can do that right outside the door here today.
3 Is anyone going to object to that?

4 MS. OVERHOLT: Well, I -- I don't think that's
5 right. I think we can amend the agenda during the
6 meeting to dis -- but what -- if that's what
7 you're -- we'll let the actual official
8 attorneys discuss that. But I don't think that's
9 required.

10 MR. KOICHEVAR: I will just read that --

11 MS. OVERHOLT: But if you want to do that,
12 that's fine at this point.

13 MR. KOICHEVAR: I don't think -- I don't
14 actually think that is required. Again, I'm going
15 off my notes, but this is from two weeks ago.
16 That's either because an official opinion,
17 12-FC-43, or formal complaint is before the Public
18 Access Counselor. 05-SC-04 just states that even
19 if you -- if you post an agenda, the public agency
20 has a right to agenda at the meeting and then
21 continue that meeting on.

22 I've never read anything into it that the
23 public agenda had to have been reprinted and
24 republished in order for the public agency to
25 continue. Just merely the vote to add on an item

1 to the agenda and then, you know, act on it.

2 CHAIRMAN BENNETT: Thank you. Mr. Simmons,
3 any comments on that?

4 MR. SIMMONS: Well, I can understand the
5 Chairman's concern because the public -- or the
6 open door law does say if the -- if the body
7 operates from an agenda, the agenda has to be
8 posted. So I'm not sure. I mean, I understand why
9 you're saying that. Again, I guess it does no harm
10 to post it. If -- if Mr. Kochevar's concerned
11 about making sure we have no problems in litigation
12 and we're in bad form, why not?

13 CHAIRMAN BENNETT: Yeah. Okay. So -- so the
14 distinction here is that if we are going to go with
15 an agenda, which it's our position is that's not
16 necessary. But if we are going to go with an
17 agenda, then it needs to be posted. That would be
18 your opinion?

19 MR. SIMMONS: Right. And, as I mentioned, the
20 open -- or the Public Access Counselor said you
21 don't have to have an agenda, that you can --
22 that's not something --

23 CHAIRMAN BENNETT: Right.

24 MR. SIMMONS: -- that's required.

25 CHAIRMAN BENNETT: I think we've had an

1 agreement to disagree on the issue of whether we
2 need an agenda. So if we go with the agenda, then
3 are you willing to go with posting that agenda?

4 MR. DICKEY: I mean, are we -- are we
5 literally talking about taking two minutes to print
6 it out on a computer and put it on the door?

7 CHAIRMAN BENNETT: Yes. The door is steps
8 away from us.

9 MR. DICKEY: Yeah. I don't see an issue.

10 CHAIRMAN BENNETT: Okay. So can we amend the
11 motion to put this item on the agenda and post that
12 agenda on the door and continue our discussion of
13 this matter today?

14 MS. OVERHOLT: Sure.

15 MR. DICKEY: Sure.

16 CHAIRMAN BENNETT: Okay. So that motion
17 has -- I'll make that motion. Is there a second to
18 that amended motion?

19 MR. KLUTZ: Second.

20 CHAIRMAN BENNETT: Okay. Any further
21 discussion? All in favors say "aye."

22 THE COMMISSION: Aye.

23 CHAIRMAN BENNETT: All opposed, "nay." Motion
24 carries. We will add this item to our agenda and
25 take a few seconds to post it.

1 MR. KING: Take a minute or two.

2 CHAIRMAN BENNETT: A minute or two, okay.

3 MS. NUSSMEYER: Or could we handwrite it --

4 MS. OVERHOLT: Why don't we handwrite it on
5 the piece of paper that's hanging up there right
6 now.

7 MR. DICKEY: Sure.

8 MS. OVERHOLT: I mean, who's gonna' look at
9 it, quite frankly.

10 CHAIRMAN BENNETT: Well --

11 MR. KING: Exhibit Number 1.

12 MR. KLUTZ: It'll just be handwritten.

13 CHAIRMAN BENNETT: Would you read for us the
14 new agenda, please.

15 MR. KING: Pass it around --

16 CHAIRMAN BENNETT: Okay.

17 MR. KING: -- so everyone sees it.

18 MR. DICKEY: Looks good to me.

19 CHAIRMAN BENNETT: Should I read it for the
20 record? Just read the agenda item for the record.

21 MR. KING: The agenda item Number 1, Lake
22 County Precinct Consolidation.

23 CHAIRMAN BENNETT: Okay. And you will post it
24 on the door.

25 MR. KING: I will scan it and I will post it

1 immediately.

2 CHAIRMAN BENNETT: Okay.

3 And has the agenda been posted, Mr. King?

4 MR. KING: Yes, Mr. Chairman, the agenda has.

5 CHAIRMAN BENNETT: This is precisely the kind
6 of cooperation that gives me optimism that we may
7 get something resolved. Thank you all.

8 Okay. I was saying that how much I appreciate
9 everybody's work that went into exchanging these
10 proposed plans prior to this meeting. And I think
11 it would be appropriate for us to use these plans
12 as a starting point for our discussions today. See
13 if we can agree on a single plan that will move
14 this matter forward in hopes of coming up with
15 ultimate plan for the precinct consolidation in
16 Lake County.

17 MS. OVERHOLT: I think for clarity -- so we're
18 talking about the proposals regarding how the
19 process to actually identify a plan for
20 restructuring. I know what you're talking about.
21 I'm thinking if someone tries to read this
22 transcript --

23 CHAIRMAN BENNETT: I'm sorry.

24 MS. OVERHOLT: I said that I -- I am thinking
25 in terms of if anyone tried to read this

1 transcript, they might get confused about what
2 we're --

3 CHAIRMAN BENNETT: Yes, yes. Specifically I'm
4 talking about the proposed plan of action for
5 Indiana Election Commission and Indiana Election
6 Division to prepare and adopt Lake County Precinct
7 Consolidation Plan which was delivered to the
8 Democratic co-director I believe it was Wednesday
9 of this week?

10 MR. KING: I believe it's two days ago.

11 MS. NUSSMEYER: Two days ago.

12 CHAIRMAN BENNETT: Wednesday of this week.

13 And I'm also talking about the process
14 recommendation for Lake County Precinct
15 Consolidation Plan that was delivered Thursday. Or
16 was it Wednesday also?

17 MS. NUSSMEYER: I --

18 MR. KING: Following day.

19 CHAIRMAN BENNETT: The following day?

20 MS. NUSSMEYER: Yeah.

21 CHAIRMAN BENNETT: On Thursday.

22 MS. NUSSMEYER: Yeah. I think yours may have
23 came on Tuesday and ours came on Wednesday.

24 Because Thursday, yesterday, we were at the --

25 MR. KING: Successive days.

1 MS. OVERHOLT: Earlier this week.

2 CHAIRMAN BENNETT: Can -- can we all agree on
3 that, or do we want to look up the dates?

4 MR. KING: No.

5 CHAIRMAN BENNETT: Okay. All right.
6 Successive days. Does everyone have both of those
7 documents in front of you?

8 MR. KLUTZ: Yes.

9 CHAIRMAN BENNETT: Okay. We have some
10 comments to items one through four that we could go
11 through here and discuss. I don't think any of
12 them are particularly controversial.

13 MS. NUSSMEYER: Mr. Chairman, if I may, which
14 plan are you referring to?

15 CHAIRMAN BENNETT: Actually referring to --
16 let's -- let's label these as exhibits here.

17 MS. NUSSMEYER: Okay.

18 CHAIRMAN BENNETT: We have Exhibit 1 was the
19 notice of agenda --

20 MR. KING: I'm speaking facetiously. Mark
21 them in order. Exhibit 1.

22 MS. NUSSMEYER: Okay. And that would be the
23 Republican plan?

24 MR. KING: Correct.

25 MS. NUSSMEYER: Yeah.

1 MR. KING: I'm doing this in the order which
2 they were --

3 MS. NUSSMEYER: Perfect.

4 MR. KING: And I am giving this to Mr. Simmons
5 as the usual practice for the record. Those.

6 MS. OVERHOLT: So could we refer to them maybe
7 as, like, process plans or something. Just because
8 I'm -- because we have two plans that we -- for
9 consolidation that we received last summer. So
10 should we maybe call these process plans just so --

11 MR. KLUTZ: I agree.

12 MR. DICKEY: Yeah.

13 CHAIRMAN BENNETT: Okay.

14 MS. OVERHOLT: The three of us just agreed
15 that we could call them process plans.

16 MR. KLUTZ: Process plans.

17 MS. OVERHOLT: So if you agree then we can to
18 that by consensus I think.

19 CHAIRMAN BENNETT: Yeah, okay. Exhibit 1
20 or --

21 MR. DICKEY: I knew that's what you were
22 looking for.

23 CHAIRMAN BENNETT: Okay. And maybe it would
24 be good to start with maybe a discussion generally
25 about what we had both hoped to accomplish with our

1 -- our plans. Is that the one or do you want me
2 to?

3 MR. KLUTZ: Well, I mean it was simply I think
4 an effort to create a structure that we could
5 operate to ask the Election Division to work
6 together and prepare a small precinct plan using
7 this proposed process and a timeline and -- and
8 dates and deadlines.

9 CHAIRMAN BENNETT: Okay.

10 MR. KLUTZ: Now, we -- we did that. I -- I
11 would say it's a fairly basic structure where we
12 kind of create, you know, deadlines and timelines
13 for reporting. And then we have -- we received a
14 much more detailed process proposal from the
15 Democrat members or Democrat staff that we'd be
16 happy to kind of walk through. And we could add
17 comments to it. Maybe we could start from that and
18 work from that.

19 CHAIRMAN BENNETT: Do you --

20 MS. OVERHOLT: -- Miss Nussmeyer to maybe
21 present that plan before we start talking about it?
22 Or how do you want to proceed then?

23 CHAIRMAN BENNETT: Are you talking about
24 Exhibit 2?

25 MS. OVERHOLT: Yes. Since you all said you

1 wanted to start with questions about it. So I
2 think it might make sense to have Miss Nussmeyer
3 actually --

4 CHAIRMAN BENNETT: Talk about it then --

5 MS. OVERHOLT: -- present it.

6 CHAIRMAN BENNETT: That would be great.

7 MS. NUSSMEYER: Thanks, Mr. Chairman. If I
8 may, I worked with Vice Chair Long and Commissioner
9 Overholt on a process document which primarily
10 recognizes the fact that we have an election coming
11 up very soon. And I know my staff person, who
12 would be would be assisting me in this process,
13 will be tied up with election responsibilities like
14 getting absentee applications scanned and sent to
15 counties and answering voter registration calls and
16 that sort of thing.

17 And so what we attempted to do was to at least
18 get to a place where we were all in agreement which
19 precincts should be consolidated or could be
20 consolidated which had 600 or fewer active voters.
21 And I actually recommended using the data that's
22 current can and fresh, if you will, which would be
23 on Monday's date which would be March 11th. It
24 allows for all the -- any work the County may be
25 doing now to process voter registrations, to be

1 fully incorporated in the Statewide Voter
2 Registration System. And the report that is
3 generated is what is named in that process plan.

4 And the co-directors would sit down with their
5 team and identify which precincts had 600 or fewer
6 precincts or active voters. And we should also
7 look to see whether or not there was any sort of
8 conflict with congressional or state legislative
9 district boundaries. There would not be any
10 conflict with congressional boundaries but there
11 may be with state legislative district boundaries.

12 The thinking next was to actually get some
13 feedback from the Lake County Board of Elections
14 and Registration, understanding that we don't
15 necessarily have to respect local office district
16 boundaries; that what the County could do instead
17 was would be to create splits so that when a voter
18 came into precinct day there would be a split one
19 and a split two.

20 I -- as a former County Election
21 Administrator, I'm not a big fan of precinct
22 splits. I think it invites some confusion at the
23 local level with poll workers and with voters. And
24 the intent of this, of course, is not to create
25 obstacles to voters when they go vote on election

1 day.

2 There are some safeguards in place, that if we
3 would not receive cooperation from the Lake County
4 Board of Elections and Registration, there is some
5 data that we have access to within the Statewide
6 Voter Registration System. We would just not know
7 how current the polling location data would be, for
8 example, because the County may not have entered it
9 into SVRS.

10 And then it would be a matter of just working
11 together as -- as a staff to determine which
12 precincts should be consolidated, and from there
13 point out any disagreements that we would bring to
14 the Commission for you all to decide. But the goal
15 would be, of course, to get to a place where both
16 sides of the office were in complete agreement so
17 that you wouldn't have to decide those
18 disagreements. But it also just makes note that if
19 there were some, then the Commission would
20 ultimately be responsible for deciding where --
21 whether or not those precincts should be
22 consolidating and, of course, updating -- adopting
23 the plan.

24 And I will note too, I did not account for --
25 and I thought about this on my drive back from

1 beautiful Lafayette last night, after our clerk's
2 conference, that I did not include time for the
3 Legislative Service -- Services Agency to review
4 it, which they often do just to confirm that we're
5 not breaching any state legislative district
6 boundaries.

7 But I think there's plenty of time within
8 this -- this timeline to be able to ask LSA oh to
9 weigh in and provide their input. So I wouldn't
10 expect that to derail the process by any means.
11 But it is something that I did not account for in
12 the timeline.

13 MR. DICKEY: Angie, where would you anticipate
14 putting that in, just for --

15 MS. NUSSMEYER: Well, quite frankly, depending
16 on the availability of LSA staff, we could go so
17 far as to ask them to be part of this conversation
18 the next week to determine whether there might be
19 some breaches to State legislative district
20 boundaries. Or if we get to a place where before
21 the commission would sit down and meet, if we -- we
22 allowed LSA two weeks, for example, to review the
23 -- the information that they might be able to -- to
24 do so before the commission meets.

25 And so I think we can invite LSA in the

1 conversation at any point once we're in a place for
2 them to do their review. And that would be the
3 Office of Census Data. I apologize, but the Office
4 of Census Data within the Legislative Services
5 Agency.

6 CHAIRMAN BENNETT: Thank you. You -- you
7 mentioned cooperation from Lake County. Has there
8 been any more discussion about Lake County or
9 anyone else in the Democratic party that -- anyone
10 in the Democratic party about preparing and
11 proposing their own plan?

12 MS. NUSSMEYER: I haven't had those
13 conversations with anyone in -- in Lake County, the
14 Democratic party.

15 CHAIRMAN BENNETT: So nobody's currently
16 working on a plan that you know of.

17 MS. NUSSMEYER: I'm not aware of them doing
18 so. I have asked the -- the Elections Director in
19 Lake County, Michelle Fajman, if -- if she would be
20 interested in providing feedback on the local
21 election district boundary conflicts. Because I
22 think that's important to their team that we not
23 create split precincts in Lake County. But that's
24 the gist of -- the extent of my conversation with
25 Lake County.

1 CHAIRMAN BENNETT: Okay. Well, I know that
2 Lake County had submitted an objection last July to
3 any plan that -- that did not comply with State law
4 and the requirements of the -- of Indiana Code. Do
5 you have any critique of the plans that the
6 Republicans presented at our August hearing that
7 would show what, if anything, in those plans fails
8 to comply with the Indiana law?

9 MS. NUSSMEYER: What my concern would be is,
10 one, the data for those plans now is more than a
11 year-and-a-half old. And so I think it is
12 important that the Commission consider where we're
13 at with 600 or fewer active voters within Lake
14 County.

15 And I don't want to speak for Commissioner
16 Overholt or Mr. Dickey or even the Vice Chairman.
17 But the other concern that I would have is that the
18 polling location impact I don't believe is very
19 well detailed in either one of those plans. And so
20 we don't have a full appreciation or understanding
21 about how consolidation may impact an individual's
22 ability to go to the polling location on election
23 day.

24 MR. KLUTZ: But we -- we have no say in
25 polling locations.

1 MS. NUSSMEYER: Other than the law requires us
2 to not create obstacles to voters. And so
3 transportation: Having your polling location moved
4 from one mile from your house to ten miles may
5 create an obstacle for voters in that type of
6 analysis. I don't recall it being part of their
7 plan. And I do think that is something that is --
8 the Commission is required to look at. Whether
9 you're looking at current statute or what is
10 proposed in House Bill 1383, that I suspect will be
11 going to the governor for signature soon.

12 MR. KLUTZ: So precinct locations are
13 determined by the County?

14 MS. NUSSMEYER: By the County executive. But
15 in Lake County that would be the Board of Elections
16 and Registration.

17 MR. KLUTZ: Okay. And those could change at
18 any time, right? I mean, they could decide this
19 location no longer works; we're gonna' have it
20 here, the -- the voting location here, voting
21 location?

22 MR. KING: Right.

23 MS. NUSSMEYER: Certainly. But --

24 MS. OVERHOLT: Right. So --

25 MS. NUSSMEYER: -- we're --

1 MS. OVERHOLT: I mean, they could do that.

2 But I think -- I think the point though that we've
3 been trying to make is that if you -- I mean, part
4 of this issue is looking at, first of all, you
5 know, consolidating the number of precincts that
6 are in the County. And the question that is a
7 subsidiary of that is if you decide to combine
8 precincts A through E in this particular area, what
9 is that likely to do for the -- in terms of the
10 voters.

11 You can look at, you know, precinct A is all
12 voting at this church and, yes, it could -- that
13 church could move at any time. But every single
14 voter might be within a mile of the polling
15 location. And if there's a consolidation of four
16 precincts -- and I'm just making this up 'cause I
17 don't know. But if there's a consolidation of four
18 precincts, you know, what is that likely to do in
19 terms of, you know, those people living in precinct
20 A right now? You know, what's likely to happen to
21 them in terms of where they vote?

22 We wouldn't be decide -- I don't -- none of us
23 would want to decide, 'cause we can't, that, you
24 know, church, you know, whoever is gonna' be a
25 polling location. But you can get an idea of the

1 impact.

2 MR. KLUTZ: Yeah. So I guess the impact in my
3 mind would be that the local County Election Board
4 would say, Here's our new consolidated precinct.
5 We have to move to this voting location.

6 MS. NUSSMEYER: Except that it's often not
7 that easy. I mean, I can speak from a local -- my
8 local level experience that it is very difficult to
9 find polling locations, especially in larger areas;
10 that churches and other places don't often want
11 to --

12 MR. KLUTZ: No, I -- not to interrupt. But
13 I -- I know. I mean, I was on the Allen County
14 Election Board for several years. I was the
15 president of it so I understand that. I mean, to
16 me it's not that difficult. But it -- it just
17 doesn't seem to be part of our -- we -- we can't
18 let that get in the way of this.

19 CHAIRMAN BENNETT: Any other objections to the
20 proposed plan that you can think of? The plan that
21 was proposed by the Republicans at the August
22 meeting?

23 MS. OVERHOLT: Well, I think the primary
24 objection to that plan was that it did not come
25 from a small precinct, Reconsolidate, whatever that

1 group was called, that was supposed to have formed
2 and presented a plan; that that group, that actual
3 group that was created by statute did not present a
4 plan for this board, for this commission to
5 consider.

6 MR. KLUTZ: But then we unanimously created a
7 structure to allows others to --

8 MS. OVERHOLT: Well, are we -- so are we
9 rehashing that discussion now? 'Cause, I mean, we
10 try -- I mean, you all kept voting in favor of
11 those two plans last September, August, whenever
12 that meeting was.

13 CHAIRMAN BENNETT: Right.

14 MS. OVERHOLT: And we voted against those
15 plans. Are -- I mean, is -- is -- I thought what
16 we were trying to do was to come up with a
17 structure that would -- that -- so I didn't think
18 that today we were actually trying to decide again
19 if we're gonna' adopt those two plans. Because I
20 think we could probably end that discussion --
21 well, I won't speak for Mr. Hickey -- for
22 Mr. Hickey.

23 But, anyway, I mean, I thought we were trying
24 to -- I thought we were coming up with a process
25 where at a future date we would hopefully be

1 considering new proposals that the staff of the
2 commission had developed. Or is all you want to do
3 have another discussion about the two plans that
4 were submitted by the Republicans?

5 CHAIRMAN BENNETT: Well, I -- I thought a
6 discussion about the plans which have been
7 submitted would help to inform our discussions
8 going forward about a plan that we might be able to
9 agree on.

10 MS. OVERHOLT: Well, I haven't reviewed those
11 plans in preparation for this meeting that didn't
12 have an agenda item on it. So --

13 CHAIRMAN BENNETT: Okay.

14 MS. OVERHOLT: I thought we were talking about
15 a process based on your comment at the last --

16 MR. DICKEY: Yeah. I -- I would -- I would
17 echo that. I -- I did not have a in-depth
18 conversation before today with Anthony about the
19 particular proposals. So I would feel a little bit
20 hesitant to wade into those waters without a little
21 bit more review.

22 CHAIRMAN BENNETT: Any other discussion on
23 that issue?

24 MR. DICKEY: But, you know, I -- I guess from
25 my standpoint, I mean, I think the paramount piece

1 to this is, you know, we've got a fluid population.
2 You know, I know, for example, that there's a -- a
3 site up in Lake County that, you know, has toxicity
4 in terms of environmental pollution, contamination.
5 Several people are being moved out of that area.
6 So I don't know how that's affected things.
7 Populations move. We have deaths; we have births.
8 You know, more people are being registered. I -- I
9 think we would want to have the newest data. And I
10 think that -- that would be the paramount concern
11 of the deliberation of this body is to start from
12 the standpoint of fresh data.

13 You know, I -- I think going back and looking
14 at plans, you know, I -- you know, we could -- we
15 could talk about what the -- the maps looked like
16 in 1800 too. But I'm relatively certain that they
17 looked a heck of a lot different than they do
18 today.

19 MS. OVERHOLT: They may have looked better
20 then. But --

21 CHAIRMAN BENNETT: Do you think we'll get
22 cooperation from Lake County on the data, our
23 request for the data?

24 MS. NUSSMEYER: Mr. Chairman, if I may. So we
25 at the Division can run this report out of SVRS,

1 the Statewide Voter Registration System, to get the
2 active voter counts in each precinct within Lake
3 County. And then the additional step was to
4 provide it to both the Director and Deputy Director
5 of the Lake County Board of Elections and
6 Registration to identify precincts where they have
7 concerns about consolidation due to local election
8 district boundaries.

9 If that conversation doesn't happen, I don't
10 think that derails our process. You know, asking
11 them for a current list of polling locations,
12 because they may not have yet entered them into the
13 Statewide Voter Registration System, would be
14 beneficial to us. But, again, if they don't
15 provide that data to us, we can go into the
16 statewide registration system and at least pull the
17 polling location data down, as it is entered on X
18 date.

19 We could certainly work with the Lake County
20 County government to see if they have GIS
21 shapefiles of local election district boundaries if
22 that was a concern of the Commission. And so the
23 idea of inviting the Lake County Board of Elections
24 and Registration into the conversation, at least as
25 it relates to the local election district

1 boundaries, is that they understand their -- their
2 local offices way better than we do at the
3 Division. And they could identify potential
4 problems and consolidation before we even discuss
5 consolidating.

6 And so I think that is good information to
7 have, and that we would have a universal list of
8 agreed-upon precincts, if you will, to begin the --
9 the conversation with consolidation. That's all
10 that was truly endeavoring to do.

11 CHAIRMAN BENNETT: Uh-huh. So you would agree
12 that -- go ahead.

13 MR. KING: I was just going to say,
14 Mr. Chairman, members of the Commission, if I
15 could. I share Co-Director Nussmeyer's view that
16 we are better served if we start with a universally
17 agreed-upon base of information. And that's one
18 reason why I think Number 5 on the Exhibit 2,
19 process plan, is particularly important.

20 Although Number 4 references asking both the
21 Democratic director and the Republican assistant
22 director to provide a report, Number 5 refers to
23 staff generically. And my initial concern would be
24 as we -- we have seen in different forums, whether
25 it's at a meeting at the Commission or in the

1 legislature, there have been questions and disputes
2 raised regarding the simple definition of active
3 voters.

4 And so it -- we might find ourselves in a
5 position where one or more of the interested
6 parties disagrees about which precinct should be
7 included because of the question they've raised on
8 that particular issue. And so we would -- and so,
9 from my perspective, it's important, to the
10 greatest extent possible, to nail down exactly what
11 the universe is. And having Lake County's input is
12 essential, in my view, to prevent questions from
13 being raised later about the validity of the entire
14 plan and the process that's already been referred
15 to.

16 MS. NUSSMEYER: And if I may add to Mr. King's
17 comments, and perhaps I was inelegant in the
18 description here. It would be that you and I pull
19 this report down, agree that these are the
20 precincts with 600 or fewer active voters, as
21 defined in SVRS. Because the report provides an
22 active voter column, an inactive voter column, a
23 canceled voter column.

24 So we could quick -- pretty quickly identify
25 where there were 600 or fewer. And so 600 or

1 fewer, that would be the initial list that we would
2 then give to Lake County and say, Look at this
3 initial list; and please let us know if there are
4 any conflicts with your boundaries.

5 And so perhaps calling it the final active
6 voter list in step four is not the most elegant
7 term. Perhaps it's the revised active voter list.
8 But I wasn't trying to imply that we were asking
9 Lake County to create their own report; that
10 instead they would be working from our data that we
11 would be giving -- providing to them to further
12 define where potential conflicts may be with those
13 local election district boundaries.

14 MR. KING: I -- I appreciate that information.
15 I think what -- the issue I was getting at was the
16 legislation refers to a specific definition of
17 active voters that's in Indiana Code 3-6-5.2 to be
18 used in this process --

19 MS. NUSSMEYER: Uh-huh.

20 MR. KING: -- which is different than the
21 definition of active voters used for other precinct
22 purposes.

23 MS. NUSSMEYER: Uh-huh.

24 MR. KING: And so the issue that was raised in
25 the legislature, and I believe was raised during

1 the Commission hearing --

2 MS. NUSSMEYER: Uh-huh.

3 MR. KING: -- on some of the initial plans,
4 was the objection that some parties had to the use
5 of that definition of active voter.

6 MS. NUSSMEYER: Hm.

7 MR. KING: And so I'm -- I want -- I want to
8 be -- I want to be particularly careful that if we
9 provide information to the Commission that we're
10 clear on the basic definition that determines --

11 MS. NUSSMEYER: Uh-huh.

12 MR. KING: -- which precincts fall into the
13 list and which don't.

14 MS. NUSSMEYER: Uh-huh. Well, arguably we're
15 working under potentially two sets of different
16 standards. We are currently operating under a
17 standard that defines what active voter is. But
18 when, or if, House Enrolled Act 1383 is signed by
19 the governor, there is no such definition for the
20 work the Commission does.

21 What it commands the Commission, at least the
22 way that I understand it after conversations with
23 my attorney, Mr. Kochevar, is that the Commission
24 has to adopt a plan by July 1st that doesn't create
25 an obstacle for voters, and that is it -- what's

1 the other second piece? Doesn't create an
2 obstacle, and it realizes cost savings for the
3 County. And in that it doesn't really discuss what
4 the Commission is obligated to do in order to
5 definitive active voters.

6 So, I mean, I understand your position: Which
7 definition do we use? If it's important to this
8 process plan that we identify the right definition,
9 so be it. But I don't -- I don't think we're held
10 to an active voter definition should 1383 become
11 law.

12 CHAIRMAN BENNETT: But as far as the
13 Commission's work on this issue, we are held to
14 some definition of active voter.

15 MS. NUSSMEYER: Well, the Statewide Voter
16 Registration System uses a definition of active
17 voter or else this report could not be generated.
18 And so is that the -- do we say that we just rely
19 on the active voter definition within the Statewide
20 Voter Registration System?

21 MR. KING: That -- that expresses the -- the
22 concern I have about confusion. Because I know
23 that there are different reports that can be run in
24 SVRS.

25 MS. NUSSMEYER: Uh-huh.

1 MR. KING: And I understand it's possible to
2 run a report that would identify the precinct
3 subject to this requirement using that definition
4 in current law, which will be in effect until, I
5 believe -- I don't have it in front of me.

6 MS. NUSSMEYER: It's effective --

7 MR. KING: Until -- until the governor signs
8 it anyway.

9 MS. NUSSMEYER: Signs it, yeah.

10 MR. KING: Yeah. And it's been -- and it's
11 been the definition that's been used throughout
12 this entire process so far.

13 MS. NUSSMEYER: Uh-huh.

14 MS. OVERHOLT: And does that meet the
15 definition -- is that the same that is the
16 definition under the SVRS in terms of -- or we
17 don't know?

18 MS. NUSSMEYER: I -- I --

19 MR. KING: That's -- that's -- excuse me.

20 MS. OVERHOLT: Well, what about -- what
21 about -- in terms -- 'cause we're actually -- I
22 mean, our goal is to solve a problem, right, and to
23 try to fix the problem that Lake County hasn't
24 wanted to fix for us.

25 So it would seem that if -- I mean, if -- so

1 we've got a current database that is set up to run
2 certain queries using certain terms of art. Seems
3 to me it would make sense to have the work move
4 forward, to use, you know, to use the query within
5 the SVRS that pulls -- you know, has a column that
6 is labeled active voter.

7 And if that needs to be revised or -- I mean,
8 it seems like it's a good start to kind of pull
9 that report and start working based on that, given
10 the fact that we've got two sets of laws that are
11 going back and forth. And, I mean, that is the
12 term -- the term that's in SVRS controls the
13 report. So why not use what's in SVRS. And if
14 someone wants to challenge -- I mean, I don't know.
15 Maybe we pull it and see what is.

16 CHAIRMAN BENNETT: I guess -- I guess from my
17 perspective I'm a little bit reluctant to have this
18 Commission embark on a -- a fool's errand of -- of
19 spending a lot of time to come up with a process
20 and plan that is only going to be challenged and
21 put into question about its validity over this
22 issue. That's not to say we can't make some
23 progress. We can certainly agree on the processes
24 up to this point.

25 But it seems to me that the input from Lake

1 County is -- is critically important to get -- to
2 get their buying in, that they're willing to
3 cooperate with us in the development of a plan that
4 they're not going to challenge out of hand. And
5 the only -- only way to do that is to assure some
6 cooperation from -- from Lake County as early in
7 our process as we can so we don't feel like we're
8 wasting our time and spinning our wheels.

9 MS. NUSSMEYER: Mr. Chairman, if I may.
10 Patrick is printing off a couple pages out of the
11 report that we've mentioned here. But then there's
12 an additional report that we could also use too to
13 look at.

14 And if it makes sense, we could attempt to
15 call Sean Fahey with Quest to see if he happens to
16 know somewhere in the business rules if they can
17 determine which defining active voter is used by.
18 Or we could report back to the Commission if we can
19 stipulate to something today.

20 MR. KING: Mr. Chairman, I can say I made
21 inquiries of Quest and determined that a report
22 could be run using the definition of active voter
23 set forth in the current law.

24 MS. NUSSMEYER: Okay. Did Quest tell you
25 which report that would be?

1 MR. KING: I believe it was an ad hoc report.

2 CHAIRMAN BENNETT: Well, I think -- any other
3 comment on that? 'Cause it seems to me we have an
4 consensus that we could start to go through. And
5 we can start with Exhibit 2, the plan that --
6 consolidated plan -- consolidation plan that the
7 Democrats proposed. And we have some comments and
8 questions we can talk through on that.

9 And then maybe if we need to take a -- take a
10 breath and maybe even a recess, reschedule another
11 meeting, we could -- we could go a little further
12 down the list and talk about the active voter list
13 issue after that. Any objections to that
14 procedure?

15 MR. KLUTZ: Suggesting kind of bifurcating
16 this and trying to get down -- as far down the list
17 as we can today and coming back and --

18 CHAIRMAN BENNETT: Yeah.

19 MR. KLUTZ: I'm --

20 CHAIRMAN BENNETT: Where we left off and maybe
21 have additional information available to us at that
22 time.

23 MR. KLUTZ: There are some things on here that
24 seems like we could get in motion --

25 MS. NUSSMEYER: Uh-huh.

1 MR. KLUTZ: -- subject to just a couple
2 comments that we have.

3 CHAIRMAN BENNETT: Right.

4 MR. KLUTZ: And, I don't know, come back and
5 see if Lake County's on board with doing these
6 reports or assisting us.

7 MS. NUSSMEYER: Uh-huh.

8 CHAIRMAN BENNETT: Yeah. We --

9 MR. KLUTZ: I -- I'm not optimistic that they
10 are. We've asked them for help before.

11 MS. OVERHOLT: Well, see, and that's why --
12 the thing I think we were trying to accomplish here
13 is that while we were providing Lake County with
14 the courtesy of seeking their input, that it wasn't
15 gonna' stop this process from moving forward. Lake
16 County --

17 MR. DICKEY: Yeah. What --

18 MS. OVERHOLT: -- yeah, Lake County had its
19 chance.

20 CHAIRMAN BENNETT: But maybe things have
21 changed in their minds, given some of the
22 developments, including the statute that I
23 understand -- House -- House Enrolled Act
24 Number 1383 is moving along through -- through the
25 process --

1 MS. NUSSMEYER: Uh-huh.

2 CHAIRMAN BENNETT: -- being implemented.

3 Maybe their thoughts about cooperation will soften.

4 MR. DICKEY: Well, I'm -- I'm curious. What
5 are the other -- you mentioned some of the other
6 points.

7 CHAIRMAN BENNETT: Yeah, let's talk about --

8 MR. DICKEY: Let's talk about them real quick.

9 CHAIRMAN BENNETT: Let's talk about them. So
10 if we were just going from an editorial standpoint,
11 the Election Division. I mean, we can just --

12 MS. OVERHOLT: You guys want to share with us
13 the proposed order you've already written up?

14 MR. KLUTZ: It's just yours.

15 CHAIRMAN BENNETT: It is -- it is basically
16 yours. And number one has just a couple of redline
17 issues here. We were talking about striking out
18 Indiana election -- Indiana elections to shorten
19 this up. Co-directors of the Division shall, we
20 insert the word "shall," shall direct staff.

21 MS. OVERHOLT: Well, what -- okay. Can we
22 talk about -- why don't we talk about this overall
23 as a concept as opposed to -- 'cause if you guys
24 have created a document that you've put into a more
25 formal proposal, why don't we talk about the

1 general items that are here. And then in terms of
2 wordsmithing -- 'cause it'll take us forever if
3 we're trying to wordsmith. Why don't -- I mean,
4 are there -- are there --

5 CHAIRMAN BENNETT: Not -- not really. I mean,
6 number -- in Number 1, I mean, Mar -- Sunday -- or,
7 I'm sorry, March 11th is a Sunday. So we suggested
8 changing that to March 12th which is a Monday.

9 MS. NUSSMEYER: Mr. Chairman, if I may, here
10 too. If -- if Brad has spoken to Quest, and they
11 believe it is an ad hoc report, can we at least be
12 somewhat generic in the term of art here? Because
13 it's -- it could be an ad hoc report or we may --
14 there may be other reports within the system that
15 would satisfy the active voter definition.

16 Because there are -- there are several reports
17 within the system that we can pull without doing
18 something that's ad hoc, which would take a little
19 longer for them to pull.

20 MR. KING: If I may.

21 CHAIRMAN BENNETT: Yeah.

22 MR. KING: Yeah. I -- I can say I would agree
23 with the idea that it's better not to specify a
24 particular report. But, frankly, it took less than
25 a day. It takes less than a day to generate this

1 particular ad hoc report.

2 MS. NUSSMEYER: I --

3 MR. KING: So we're not talking about any
4 significant delays.

5 MS. NUSSMEYER: I haven't had those
6 conversations with Quest, so I can't speak to --

7 MR. KING: Yeah. I -- I --

8 MS. NUSSMEYER: -- whether or not a day is
9 correct or not. But --

10 CHAIRMAN BENNETT: You're talking about the
11 voter status count --

12 MR. KING: To pull a report.

13 CHAIRMAN BENNETT: Okay. Pull a report from
14 the Indiana Statewide Voter Registration System on
15 Monday, March 12th, 2018. Are we all okay so far?

16 MS. NUSSMEYER: Could we say, if I may, a
17 report of active voters as defined by the statute,
18 that I am not recalling the specific number, so
19 it's more clear? Do you recall the statutory --

20 MR. SIMMONS: 365.210.

21 MS. NUSSMEYER: Three --

22 MR. KING: No, no. It's -- actually it's
23 3-11-18.1-2, I think.

24 MR. SIMMONS: I thought you were using the one
25 at 352. You're using a different one?

1 MR. KING: Here it's in the current statute, I
2 think.

3 MS. NUSSMEYER: I think we had this
4 conversation at the last Commission meeting when we
5 were discussing the plans, that they used a
6 definition of active voters as it relates to vote
7 center counties? And that was --

8 MR. KING: 3-11-18.1.

9 MS. NUSSMEYER: Yeah.

10 MR. KING: I believe it's -2.

11 MS. OVERHOLT: 1383 is --

12 CHAIRMAN BENNETT: Okay. So it would be a
13 report from 3-11 --

14 MR. KING: Mr. Chairman, if I could -- could
15 read what I understand the -- the consensus to be
16 is, one, Co-Directors of the Division shall direct
17 staff to pull a report from the Indiana Statewide
18 Voter Registration System on Sunday, March 12th,
19 2018.

20 CHAIRMAN BENNETT: Monday.

21 MR. KING: Monday.

22 CHAIRMAN BENNETT: Uh-huh.

23 MR. KING: To ensure that the most current
24 vote count is -- vote count data is used for
25 analysis. This report must use the definition of

1 active voter set forth in IC 3-11-18.1-2.

2 MS. NUSSMEYER: Uh-huh.

3 MR. KING: Which reads, just for the record,
4 active voter means a voter who is not an inactive
5 voter under 3-7-38.2 which refers to voter --

6 MS. NUSSMEYER: Uh-huh.

7 CHAIRMAN BENNETT: Any concerns? Any
8 objections to that?

9 MS. NUSSMEYER: Huh-uh.

10 CHAIRMAN BENNETT: Okay. We'll move on to
11 Paragraph 2. Indiana Election Division staff will
12 identify those precincts with 600 or fewer active
13 voters. And then do we want to change the
14 definition --

15 MR. KING: No. Mr. Chairman, the definition's
16 already been set forth in Section -- or in
17 Section 1 of that process at this point. If I
18 could suggest that just adding in Number 2 the
19 Election Division staff shall identified those
20 precincts in the report, that nails that.

21 CHAIRMAN BENNETT: In the report, period?

22 MR. KING: No. In the report --

23 CHAIRMAN BENNETT: In the report where 600 or
24 fewer active voters in Lake County, Indiana. Is
25 that a period?

1 MR. KING: Period.

2 CHAIRMAN BENNETT: You want to read that again
3 or --

4 MR. DICKEY: Just to be clear, are we
5 striking -- we're striking the parentheses, right?

6 MR. KING: Mr. Chairman, if I can respond.

7 CHAIRMAN BENNETT: Yeah.

8 MR. KING: I -- I don't think it's necessary
9 to strike it since we've redefined what's going to
10 be in it. Just --

11 MR. DICKEY: I'll consent to that. I just
12 wanted to be clear.

13 CHAIRMAN BENNETT: So we are gonna' strike
14 the --

15 MR. KING: No, no, you don't need to.

16 CHAIRMAN BENNETT: Leave it in. Okay.

17 MR. DICKEY: 'Cause you've -- 'cause we've
18 made a definition.

19 CHAIRMAN BENNETT: Yeah. Should I read it
20 again or do you think we all -- we have it already
21 memorized?

22 MR. KING: Just for the record.

23 CHAIRMAN BENNETT: For the record. All right.
24 So -- go ahead.

25 MR. KING: I can read it.

1 THE REPORTER: Can you just all speak up a
2 little bit?

3 MR. KING: Sure. Paragraph 2, Indiana
4 Election Division staff will identify those
5 precincts in the report with 600 or fewer active
6 voters in Lake County, comma, Indiana, parentheses,
7 quote, IED, active voter list, closed quote, closed
8 paren, period.

9 CHAIRMAN BENNETT: Anybody have any objections
10 to that? Hearing none, let's move to Paragraph 3.
11 I guess the question is: Do we need
12 "congressional" in there?

13 MR. KLUTZ: I don't believe so I think. It's
14 on district one.

15 MS. NUSSMEYER: Yeah. It's a requirement that
16 we have to follow, but there is only one
17 congressional district in Lake County.

18 CHAIRMAN BENNETT: Okay. So we can strike
19 "congressional or."

20 MS. OVERHOLT: Is someone going to claim we're
21 not meeting the legal requirements?

22 MR. KING: Challenge them to produce an order.

23 MS. OVERHOLT: That's true.

24 CHAIRMAN BENNETT: It's -- it's a fact. Court
25 could take judicial notice that Lake County is

1 entirely in Congressional District Four. Should be
2 okay.

3 MS. NUSSMEYER: Uh-huh.

4 CHAIRMAN BENNETT: Any objections to changing
5 Paragraph 3 as previously discussed?

6 MR. KING: Mr. Chairman, just to add because
7 the paragraph has a Subsection A, which just reads
8 the IED staff review must be completed by Friday,
9 March 16th, 2018 by 12:00 p.m. Eastern Time.

10 CHAIRMAN BENNETT: Is that new?

11 MR. DICKEY: That's new.

12 MR. KING: That is new, yes.

13 MS. NUSSMEYER: But Lake County's on Central
14 Time. And so --

15 CHAIRMAN BENNETT: It says noon Eastern Time.

16 MS. NUSSMEYER: Noon Eastern Time, yes, sir.

17 CHAIRMAN BENNETT: I think everybody knows
18 that p.m. is noon, I guess? Okay? So take three
19 by consensus as amended? Is there any objection?

20 So those are all things that the Election
21 Division can do. Now, Number 4 we're providing
22 information to Lake County and requesting that they
23 provide information and documentation and data to
24 us. Yeah, provide a -- a report to us. Which must
25 include certain things.

1 Would it make sense for us to pause here and
2 take some initiative to determine whether we can
3 expect cooperation from Lake County in providing
4 that information before we go further to try to
5 establish an order?

6 MR. DICKEY: Doesn't the process
7 hypothetically -- you know, the way that I think
8 we're talking about it and laying it out, doesn't
9 it continue regardless of what they do? So, I
10 mean --

11 CHAIRMAN BENNETT: But then we've got these
12 concerns about challenges because we didn't have
13 all the information we should have had and relied
14 upon in drafting our order.

15 MS. OVERHOLT: Well, but they had their
16 chance. I mean, the reason we're doing this now is
17 because they had their chance and they didn't do
18 it.

19 CHAIRMAN BENNETT: They also had a chance to
20 file a plan, and they didn't do that either.

21 MS. OVERHOLT: Right. No, I know. That's
22 what I mean. They didn't do it. So why -- I mean,
23 we're giving them a chance with this. But then if
24 they don't do anything, we move forward.

25 MR. DICKEY: Under 1383, once that's signed by

1 the governor, we're going to be under an order by
2 the legislature to -- to move forward. So, I mean,
3 I'm -- I guess the way I'm looking at it is: We
4 want to have that courtesy, but we're gonna' move
5 forward.

6 MS. OVERHOLT: Uh-huh.

7 CHAIRMAN BENNETT: Look at 4B though. How --
8 how are we going to determine what polling
9 locations are anticipated to be used in the
10 May 2018 election?

11 MS. NUSSMEYER: If I may, Mr. Chairman. This
12 would be what Lake County anticipates will be the
13 list of polling locations. Because the Lake County
14 Board of Elections and Registration sets those
15 locations, they may already know that their
16 locations are set in stone for the May election.

17 What we at the State don't have visibility to
18 is whether or not those -- that location data has
19 actually been updated and is current within
20 Statewide Voter Registration System. And so the
21 goal here is to get them to provide a list that the
22 Director and Deputy Director agrees are likely to
23 be the polling locations for the May primary
24 election. And if they fail to produce it, then we
25 just pull the list out of the Statewide Voter

1 Registration System and call it a day.

2 MR. KING: Mr. Chairman, if I can respond.

3 The -- the deadline for Lake County, and all
4 counties, to set polling places for the May primary
5 is April 9th.

6 MS. NUSSMEYER: Uh-huh.

7 MR. KING: And I don't understand how we can
8 put ourselves in the shoes of the Lake County folks
9 with the unknown events that can occur between
10 March 23rd, for example, and April 9th that might
11 require the location -- relocation of a polling
12 place.

13 And so from my perspective I see the benefit
14 of asking for ongoing input from Lake County when
15 we know when those polling places are set, as
16 firmly as they can be set barring an emergency.

17 CHAIRMAN BENNETT: I don't think that's too
18 much to ask.

19 MS. NUSSMEYER: Huh-uh.

20 MR. KLUTZ: If we could -- Chairman, if we
21 could jump up to A. I guess we're asking Lake
22 County to identify precincts on the active voter
23 list that may not be consolidated due to local
24 election district boundaries. Do we have
25 particular boundaries that we're talking about in

1 which all location election or -- say "yes" for the
2 court reporter.

3 MS. NUSSMEYER: Yes. It would not be party
4 offices. It would be elected office. So it would
5 be complying with all of their township, town.

6 CHAIRMAN BENNETT: Schools?

7 MS. NUSSMEYER: School board districts
8 perhaps. Although school board districts tend to
9 split precincts, if -- if memory serves. And I --
10 I believe the plan that's -- plans that were
11 presented last year provided that level of analysis
12 that they were trying to -- trying to prevent there
13 being breaches or consolidations occurring around
14 their local election districts.

15 And so I would suspect this would be a fairly
16 simple issue for them to resolve at the -- the
17 County level for us.

18 MR. KING: My -- my -- my response would be
19 that that certainly is accurate. But I think,
20 again, ambiguity is an invitation for dispute and
21 frustration and litigation. And so what -- what I
22 would suggest to the Commission is, if we're going
23 to talk about local election districts, that you
24 clearly specify the ones you mean, such as City
25 Council districts, Town Council districts, to go

1 beyond a couple that Co-Director Nussmeyer
2 mentioned.

3 And so it would be better, if we're going to
4 have that as a consideration, to make it clear
5 exactly what has to be checked.

6 MS. OVERHOLT: I think that's fine. Although
7 I would, out of an abundance of caution, I think
8 any language that's added like that should say,
9 Including but not limited to -- limited to, in case
10 we miss some.

11 CHAIRMAN BENNETT: Uh-huh. Uh-huh.

12 MS. NUSSMEYER: Shall we recite those for the
13 record now or work on language to share with the
14 Commission for the next meeting?

15 CHAIRMAN BENNETT: Well, I guess that's what I
16 was thinking is we might want to --

17 MR. DICKEY: If you're trying to move forward,
18 I think you better do it now.

19 MS. NUSSMEYER: Okay. I'm gonna' allow
20 Mr. Kochevar to recite -- or Dale or Brad -- or you
21 may have a list in front of you currently.

22 MR. KOCHEVAR: Well, I -- I was thinking about
23 that as you were discussing it. I do know -- and I
24 am from Lake County originally. I do know that the
25 districts do -- local election district boundaries

1 would want to make sure that you have and are being
2 reviewed would be the County Commissioner
3 districts, County Council districts. 'Cause they
4 are a county that uses single-member districts
5 only. City Council districts, Town Council
6 districts.

7 I will state this: I think it's an option
8 that you can look at the township boundaries. But
9 my view, my -- my recollection is that the -- the
10 County does not, and they're not allowed to, go
11 take a precinct boundary from one township and
12 across into another one. That's not lawful.
13 And -- but I will mention that nonetheless as there
14 are a number of townships in Lake County. That's
15 all I can think of off the top of my head. And I
16 will defer to Mr. King or Mr. --

17 MR. KING: I -- I would agree with
18 Mr. Kochevar's list so far as to say he's correct
19 that under State law precincts cannot cross
20 township and townships, at least outside of Marion
21 County, don't have legislative bodies. But I think
22 the additional one is school corporations which do
23 have.

24 In fact, just for the record, the metes and
25 bounds legal descriptions of the Lake Station

1 School Corporation Districts are set forth in State
2 statute for several years. So I know from having
3 seen that statute that such creatures do exist.
4 But I'm not -- not aware of any others.

5 But I -- I would echo Commissioner Overholt's
6 comment that there can be a variety of local
7 service districts that are unique to particular
8 counties, that we have no comprehensive list of
9 that may not have elected officials but may
10 nonetheless --

11 MR. SIMMONS: Lake County has -- I'm sorry.
12 Do you have a sewer district up there?

13 MS. OVERHOLT: That's what -- sewer district
14 is what just came to my mind because I seem to
15 remember --

16 MR. SIMMONS: I think they have one the last
17 two that are elected. I don't know.

18 MS. OVERHOLT: Well, but if we -- so we're
19 not -- I mean, I think if we do the "including but
20 not limited to" these are the main --

21 MR. KING: And so --

22 MS. OVERHOLT: -- ones that we need to be
23 concerned about.

24 CHAIRMAN BENNETT: To go back to the beginning
25 of Paragraph 4, it talks about the Director and

1 Deputy. Is that the correct title or is it
2 Assistant?

3 MR. KING: Assistant.

4 CHAIRMAN BENNETT: So we should change that to
5 -- to the Director and Assistant.

6 MS. NUSSMEYER: Uh-huh. And, Mr. Chairman,
7 this might be part of your mark up. But it's
8 probably good to clarify. In that second sentence
9 where it says before 5:00 p.m. Eastern Time, comma,
10 March 16th, 2018.

11 CHAIRMAN BENNETT: I think that would be
12 helpful.

13 MS. NUSSMEYER: I think it's implied, but it
14 would be better to be spelled out.

15 CHAIRMAN BENNETT: Just have the -- the four
16 or 5:00 p.m. Eastern Time, March 16th, just --

17 MR. KING: Oh, yes, I see.

18 CHAIRMAN BENNETT: Maybe a period after final
19 voter or active voter list? We can say, This
20 report must. I think it was Co-Director King on
21 Paragraph B, that was talking about ongoing input
22 from Lake County with regard to polling locations.
23 I don't know that we resolved that issue.

24 MR. KING: Mr. Chairman, I can just say we --
25 we do know the list that -- of polling locations

1 that have been entered by Lake County into SVRS.
2 Whether that is complete, and certainly whether
3 it's final, I don't know.

4 CHAIRMAN BENNETT: Seems to me it would be
5 instructive to us if we asked for information
6 regarding the ones that were anticipated to be used
7 in the May 2018 election, and see what kind of a
8 response we get, if any.

9 From current list of polling locations to be
10 used or anticipated -- or anticipated to be used in
11 the May 2018 election. And strike "preferably
12 those." If this is going to be an order from us,
13 it should be a little more definite.

14 MS. NUSSMEYER: And, Mr. Chairman, if I may.
15 Just to assuage concerns, perhaps at the after --
16 on Subsection B here after "election," put a comma,
17 and provide ongoing updates as requested from the
18 Co-Directors or the Commission.

19 MR. KING: I'm -- Mr. Chairman, if I may
20 respond.

21 CHAIRMAN BENNETT: Yes.

22 MR. KING: I -- I'd say, And provide updates
23 of any change. Note of any change no later than
24 April 9th. I guess they have until April 9th,
25 under the general law, to change --

1 CHAIRMAN BENNETT: Change?

2 MR. KING: Polling locations.

3 CHAIRMAN BENNETT: Right. So we'd want --
4 before April 9th, April 8th, close of business or
5 something?

6 MS. NUSSMEYER: Uh-huh.

7 MS. OVERHOLT: Their deadline is April 9th.

8 MR. DICKEY: Their deadline is April 9th to
9 have it. So you're getting -- you're getting a
10 list in advance, and then they're providing updates
11 until it's final.

12 MS. NUSSMEYER: Uh-huh.

13 MR. KING: Uh-huh.

14 CHAIRMAN BENNETT: Uh-huh. Is that the
15 language we would use "until it's final" or just
16 until April 9th?

17 MR. KING: April 9th is the statutory --

18 CHAIRMAN BENNETT: Yeah.

19 MR. DICKEY: I think you put April 9th.

20 MS. NUSSMEYER: Uh-huh. The only change would
21 be if there was an emergency like a building burned
22 down, and I suspect we would likely hear about
23 that.

24 MR. KING: Right.

25 CHAIRMAN BENNETT: So are we committed to

1 pressing on?

2 MS. NUSSMEYER: Uh-huh.

3 CHAIRMAN BENNETT: -- whether we --

4 (A discussion was held off the record between
5 Mr. King and Chairman Bennett.)

6 CHAIRMAN BENNETT: Are we ready to move on to
7 4B? Okay. So 4C, share estimated cost per
8 precinct per staff. I know it says "more." Should
9 be and other hard costs associated with managing a
10 precinct polling place on election day.

11 MS. OVERHOLT: Should share be include instead
12 of share?

13 CHAIRMAN BENNETT: Or provide?

14 MS. OVERHOLT: Well, it says that -- I'm going
15 back to the top of four. It says -- that last line
16 says, The Lake County staff provide to the
17 Co-Directors a report which must --

18 CHAIRMAN BENNETT: Yeah.

19 MS. OVERHOLT: -- identify precincts, provide
20 a current list. And then say include estimated
21 cost per precinct.

22 CHAIRMAN BENNETT: Yeah. I think that --
23 point of personal privilege: I didn't bring a
24 glass of water to this meeting. Can we take --
25 does anybody mind if we take a quick recess?

1 MS. OVERHOLT: No.

2 CHAIRMAN BENNETT: No objection, we'll --
3 let's take a five-minute recess.

4 MR. KING: Some water.

5 (A recess was taken between 2:49 p.m. and
6 2:57 p.m.)

7 CHAIRMAN BENNETT: Reconvening the Commission
8 Meeting about 3:00 p.m.

9 I believe we finished up with Paragraph 4 and
10 are ready to talk about Paragraph 5.

11 MR. KLUTZ: Mr. Chairman, if I could just
12 propose -- I don't know if this is necessarily a
13 motion -- but just propose, for purposes of this
14 meeting, procedurally, we've got -- we've made good
15 progress. So we've -- we've gotten through one
16 through three, which kind of deals with what the
17 Election Division and Commission and staff are
18 going to be going. We've just gotten through four,
19 which talks about Lake County officials. Five also
20 deals with Lake County officials.

21 I'd kind of propose that we finish up through
22 five and kind of pause and/or just cut it off
23 there. That's the end of what we're doing today.
24 And get that out to people with our staff and the
25 Lake County officials and reconvene shortly after,

1 whatever the latest deadline is, the Lake County
2 people have to report back to us, and see what
3 their cooperation level was, what information was
4 provided and where do we go from here.

5 CHAIRMAN BENNETT: Is -- is that a motion
6 or --

7 MR. KLUTZ: Sure.

8 CHAIRMAN BENNETT: Okay. Is there a second?

9 MS. OVERHOLT: So the -- just to make sure I
10 understand. So --

11 MR. KLUTZ: Yeah.

12 MS. OVERHOLT: Okay? So to -- so we'll
13 continue talking about Item 5 on Exhibit 2.

14 MR. KLUTZ: Correct.

15 MS. OVERHOLT: And then issue something based
16 on --

17 MR. DICKEY: Issue -- issue one through five.

18 MR. KLUTZ: Correct.

19 MS. OVERHOLT: Issue one through five. And
20 then meet again to sort of talk about six through
21 eight.

22 MR. KLUTZ: Yeah.

23 CHAIRMAN BENNETT: When you say "issue" do you
24 mean vote on an order and issue an order or you
25 just stand -- or just talk through issue five?

1 MR. KLUTZ: Well, talk through issue five.

2 CHAIRMAN BENNETT: And then reconvene the
3 meeting and talk --

4 MR. KLUTZ: Yeah. So get -- talk through
5 five, just as we talked through one through four.
6 Get it to where everything's agreeable. Turn that
7 into an order --

8 CHAIRMAN BENNETT: Okay.

9 MR. KLUTZ: -- and then reconvene at this
10 latest deadline when we should have things. If
11 it's March 23rd, maybe we meet on 24th, or sometime
12 after that deadline --

13 MS. NUSSMEYER: Uh-huh.

14 MR. KLUTZ: -- and see where do we -- did --
15 you know, what did they turn in? What do we have?
16 And how should we go forward? Maybe it is six
17 through eight as proposed by the Democrat proposal.
18 But -- but maybe it's not based upon what the
19 cooperation and what we received.

20 CHAIRMAN BENNETT: Okay. And I think I
21 understand the motion. Is there a second?

22 MS. OVERHOLT: I'll second for purposes of
23 discussion.

24 CHAIRMAN BENNETT: Okay.

25 MR. DICKEY: Yeah. And I think -- I think the

1 other advantage is essentially that would take you
2 through a timeline through the end of the month,
3 which at that point -- bringing to mind we're
4 talking about the legislature -- will get you
5 through 1383 and -- and get that solidified into
6 law. So that might also help clarify.

7 CHAIRMAN BENNETT: Very good. Any other --
8 any further discussions?

9 MS. NUSSMEYER: Mr. Chairman, if I may. And
10 maybe I'm just being a Girl Scout here. Is it
11 worth staff reaching out to the Lake County GIS
12 Department to ask for a shapefile of their local
13 election districts in case we want to consider
14 that? I say "we." The Commission wants to
15 consider that moving forward after this March 23rd
16 deadline in the event that Lake County isn't
17 responsive? I guess I would hate for -- if that
18 was something that was going to inform your
19 decisionmaking, if it was something that was going
20 to take a month to get, I guess I would rather know
21 that next week than find out about it after the
22 23rd.

23 And so maybe we -- we add something to
24 Number 3 that asks staff to request a shapefile
25 from Lake County so that we have it in our

1 possession should it be needed. That would be a
2 suggestion, if I might. Maybe it's --

3 MR. KING: Well, can I --

4 CHAIRMAN BENNETT: Mr. King, can you respond?

5 MR. KING: May I respond? I think one simple
6 way to do that is to -- on 5A just perhaps strike
7 should the staff not comply with Section 5, say
8 I -- IED staff are directed to request a shapefile
9 from County GIS Department so that we can -- we can
10 do that independently.

11 MS. NUSSMEYER: And you're comfortable with
12 doing that on March 23rd instead of March 12th?
13 That would -- that's the only reason why I
14 suggested moving it up in the order a little bit so
15 that there would not be much of a delay. But
16 that's a suggestion; I'm not married to it.

17 CHAIRMAN BENNETT: Well, I guess I'm back to
18 my confusion about whether we're going to issue
19 this order or whether we're just trying to get in
20 position to make an order.

21 MS. OVERHOLT: I thought -- I thought we
22 were -- I thought we were gonna' get this to a
23 certain point today, as Commissioner Klutz
24 suggests, get to the end of five. And then I
25 thought once that that would -- that one through

1 five would be issued as an order is what I thought
2 that Commissioner Klutz -- maybe I misunderstood.

3 MR. KLUTZ: That's what I was suggesting.

4 CHAIRMAN BENNETT: That we get through one
5 through five, and then we would vote on it and make
6 it an order.

7 MR. KLUTZ: Correct.

8 MS. NUSSMEYER: Uh-huh.

9 CHAIRMAN BENNETT: Okay. So then back to the
10 question of whether the March 23rd date is
11 appropriate.

12 MR. DICKEY: Would it be easier if we just
13 pulled it out as a new -- if we're -- if we're only
14 going to go through items five, essentially what
15 we'd say here is we're deleting six on for the
16 purposes of our order. Pull out the language about
17 the -- the GIS file, shapefile, as a new Number 6.

18 MS. OVERHOLT: Uh-huh.

19 MR. DICKEY: And just instruct the staff to
20 request that now. I mean, at their earliest
21 convenience.

22 MS. OVERHOLT: Right.

23 MR. DICKEY: 'Cause what -- what I worry
24 about, knowing County offices and the requests that
25 they receive, is that if we don't make that

1 request, there is -- there is that delay, and then
2 that causes a ripple effect in subsequent
3 discussions and meetings.

4 MS. OVERHOLT: Uh-huh.

5 MR. DICKEY: And then you can -- and then the
6 Commission could come back once that process has
7 gotten us to the end of March and rediscuss whether
8 we need to do anything else or if we need to
9 continue with six through eight or new proposals.

10 MS. OVERHOLT: Right. Right.

11 MR. KLUTZ: I -- I don't have any problem with
12 that.

13 MR. KING: Mr. Chairman --

14 CHAIRMAN BENNETT: Yes.

15 MR. KING: -- if I can respond. I think that
16 the point that Mr. Dickey raised is well taken in
17 that we don't know who the County GIS Department
18 is. We don't know that they're responsible to the
19 County Commissioners. They're certainly not
20 responsible to the Board of Elections and
21 Registration, I'm sure.

22 And so if five were amended and simply keep
23 the first sentence, A, B and C could form a
24 separate -- a new six. The -- the only other
25 question I had about five is when Lake County staff

1 is referred to, does that refer to both the
2 Director and the Assistant Director? In other
3 words, does this require bipartisan agreement
4 between those two bodies with regard to providing
5 the final active voter list?

6 MS. NUSSMEYER: Uh-huh.

7 MS. OVERHOLT: Is it -- Angie, I'm turning --
8 Co-Director Nussmeyer, I'm turning to you since
9 you've been in these shoes. And what -- what does
10 it require on the County level to -- should it be
11 both of them, the Director and the --

12 MS. NUSSMEYER: My recommendation to my
13 commissioners would be that it would come from
14 both. I suppose if they can't reach an agreement
15 on something they could highlight a disagreement in
16 any report to the Co-Directors. But I do think
17 it's worthwhile to have as much cooperation in this
18 report it that we receive and share with the
19 commissioners that there can be.

20 CHAIRMAN BENNETT: So we would identify the
21 staff as the Assistant Director --

22 MR. KING: Strike staff and just say --

23 CHAIRMAN BENNETT: Director.

24 MR. KING: -- Lake County Director and
25 Assistant Director.

1 CHAIRMAN BENNETT: And what about that date?

2 Is that date, March 23rd, still viable?

3 MS. NUSSMEYER: Uh-huh.

4 MR. KING: So far as I'm aware.

5 CHAIRMAN BENNETT: Okay. Okay. And then six.

6 MR. KING: This becomes the new six, if you
7 accept the suggestion that's been made.

8 CHAIRMAN BENNETT: Okay.

9 (A discussion was held off the record between
10 Mr. King and Chairman Bennett.)

11 CHAIRMAN BENNETT: So is that where we would
12 draw the line under Zach's motion, would be at the
13 end of five after we make the changes we've already
14 discussed.

15 MR. KING: Before 5A.

16 CHAIRMAN BENNETT: Yeah, before 5A. Which
17 means that we'd be essentially near completion of
18 our work for today.

19 MS. NUSSMEYER: Mr. Chairman, if I may just
20 clarify with you. I believe this is where we're
21 all at, is for 5A -- either that is 5A or it
22 becomes a new Number 6, but that the -- should the
23 staff of the Lake County Board of Elections and
24 Registration not comply with Section 5, that that
25 is stricken, and we are directing staff to request

1 that shapefile and to pull the report out of SVRS?
2 And that would be done today, or even Monday, so
3 that we have at the least the ball rolling in
4 getting a shapefile from Lake County so that we're
5 not hamstrung with delays because we don't know
6 where their local election district boundaries
7 might be.

8 CHAIRMAN BENNETT: So -- so we -- we could
9 just move 6A up to five and Lake County Staff --
10 Lake County Director and Assistant Director --

11 MS. OVERHOLT: No.

12 MR. DICKEY: Huh-uh.

13 MR. KING: No.

14 CHAIRMAN BENNETT: I thought the idea was to
15 get a request out for the GIS --

16 MS. NUSSMEYER: Uh-huh.

17 CHAIRMAN BENNETT: -- file --

18 MR. KING: Uh-huh.

19 MS. OVERHOLT: Right.

20 CHAIRMAN BENNETT: -- following this meeting.

21 MS. OVERHOLT: Right. And that's why -- so
22 we're pulling it out -- right now under five it
23 look -- it's kind -- it's tied to that Friday,
24 March 23rd timeline. So we're --

25 CHAIRMAN BENNETT: But if you put a different

1 date -- I was going to suggest that we put a
2 different date in there that -- well, okay.

3 MS. OVERHOLT: I think we're just saying that
4 the whole -- that whole from -- from A -- A, B and
5 C under five now can be pulled out and stand alone
6 as a new -- that would become Section 6.

7 CHAIRMAN BENNETT: That we would vote on
8 today.

9 MS. OVERHOLT: Right. 'Cause we're
10 revising -- yes, we would vote on today.

11 CHAIRMAN BENNETT: Okay.

12 MR. DICKEY: So -- so essentially IED staff
13 are directed to request a shapefile to pull the
14 polling location. I'm summarizing. Do you want to
15 put a date?

16 MS. NUSSMEYER: I think we certainly could put
17 a date.

18 (After off-the-record discussions,
19 the following proceedings were had:)

20 MR. DICKEY: I'm just wondering if it makes it
21 easier for you guys to have the clarity in there.

22 MS. NUSSMEYER: We don't control the County
23 GIS.

24 MR. DICKEY: No. But you're just -- it's an
25 order to you, essentially, to make the request-by

1 date.

2 MS. NUSSMEYER: Oh, well, sure. I -- at least
3 staff are directed to request these thing no later
4 than Monday, March 11th or March 12th, right? We
5 could put the request in Monday.

6 MR. KING: Assuming we know --

7 MS. NUSSMEYER: -- who?

8 MR. KING: -- who to put the request into. I
9 might suggest -- I mean, we -- I think we can try
10 to get it as soon as possible --

11 MR. DICKEY: So we don't need the date?

12 MR. KING: Well, I'm saying we can go with the
13 original suggestion of March the 23rd. It's just
14 the same date up above. Sometime during -- during
15 the course of the next week we will do that. And
16 if we find out who to make the request to on
17 Tuesday, we'll do it on Tuesday.

18 MS. OVERHOLT: I was going to say, it could
19 be -- we could put it in a good old "as soon as
20 possible" or "as soon as practicable."

21 MR. KING: That may make more sense.

22 MS. NUSSMEYER: Uh-huh.

23 MR. DICKEY: I'm fine with that. I just think
24 we need to be expressive in that.

25 CHAIRMAN BENNETT: Well, does somebody want to

1 say exactly what this should --

2 MS. OVERHOLT: The IED staff are directed,
3 comma, as soon as possible, colon. And then it's,
4 To request a shapefile to pull the poll locations.
5 And I think that -- are people -- well --

6 MR. KLUTZ: Uh-huh.

7 MR. DICKEY: B and C could just --

8 MS. OVERHOLT: And B and C could just --

9 MR. DICKEY: B and C could just be deleted,
10 right?

11 MR. KLUTZ: Uh-huh.

12 MS. NUSSMEYER: Uh-huh.

13 MR. KING: Can I make -- may I ask a question,
14 Mr. Chairman, about --

15 CHAIRMAN BENNETT: Yes.

16 MR. KING: I think I answered -- the effective
17 deleting, what's now 5C, which sets the deadline
18 for completing work on Wednesday, April 4th, under
19 this new six is only going to apply to the Election
20 Division anyway and therefore --

21 MS. NUSSMEYER: Uh-huh.

22 MR. KING: And we're -- you would also be
23 deleted sub B, IED staff will use the shapefile to
24 identify precincts that may not be consolidated?

25 MS. OVERHOLT: I don't know why we're

1 eliminating B.

2 MS. NUSSMEYER: You don't want to keep these
3 open?

4 MS. OVERHOLT: Yeah. And if you want to make
5 it clean, that B could just become a new Roman III.
6 And just -- and then to be consistent, it would
7 just start with the word "use." Or "to use,"
8 sorry. It would start with "to use."

9 MS. NUSSMEYER: If I may, just to reorder.
10 And I don't mean --

11 MR. DICKEY: You want to put three in two?

12 MS. NUSSMEYER: Could B become two and two
13 become three, Roman Numeral III? Because one and
14 two relate to the shapefile, and then three would
15 relate to the poll locations. And you might even
16 be able to combine one with that -- currently
17 Subsection B of Number 5.

18 CHAIRMAN BENNETT: What if we put these ideas
19 on paper and came back next Wednesday to approve
20 it? If we spent some time, the Co-Directors take
21 the ideas we've given at the meeting today and
22 renumber, rework, reorganize as appropriate and
23 then circulate that to Commissioners for review.

24 MS. OVERHOLT: That's cutting Lake County's
25 time --

1 MR. DICKEY: Uh-huh.

2 MS. OVERHOLT: -- to respond by -- I mean --

3 CHAIRMAN BENNETT: Okay.

4 MS. OVERHOLT: -- by a decent amount.

5 CHAIRMAN BENNETT: Okay. Well, let's do it --
6 we can do it tonight.

7 MS. NUSSMEYER: May I just read aloud what I
8 was proposing, and perhaps that would help, since I
9 was using a bunch of Roman Numerals and maybe
10 should not have?

11 CHAIRMAN BENNETT: Where are you going to
12 start?

13 MS. NUSSMEYER: IED staff are directed, as
14 soon as possible, colon, to request a shapefile
15 from the County GIS Department with the local
16 election district boundaries, comma, which will be
17 used -- and this is picking up now the current
18 Subsection B -- to identify precincts on the IED
19 active voter list that may not be consolidated to
20 avoid conflict with local election district
21 boundaries, semicolon, and to pull the poll
22 location by precinct report from the Indiana
23 Statewide Voter Registration System to identify
24 polling locations that may be used in the 2018
25 primary election, understanding the data in SVRS

1 may not be accurate or complete, period.

2 MS. OVERHOLT: Uh-huh.

3 MR. KING: And so to clarify, your language
4 would set forth the first sentence in five with A
5 and B as revised, as you've just described it.

6 MS. NUSSMEYER: So we're going to keep it as
7 5A and 5B? Or are we gonna' -- I thought we were
8 pulling it out for a new Number 6.

9 MR. KING: That's -- well, it can be a new --
10 it can be a new Number 6; I understand.

11 MS. NUSSMEYER: So it would start off --

12 MR. KING: Six -- 6 consists of what's now 5A
13 and 5B as --

14 MS. NUSSMEYER: Correct.

15 MR. KING: -- you reorganized it.

16 MS. NUSSMEYER: Yes.

17 MR. DICKEY: Yes.

18 MR. KING: Okay. That's -- that's --

19 MR. KLUTZ: For clarification, the -- the
20 reason or purpose for identifying polling locations
21 is simply a taken into consideration?

22 MS. NUSSMEYER: Yes.

23 CHAIRMAN BENNETT: How long would it take in
24 the computer to make these changes? I mean, is it
25 something we can do --

1 MR. KING: Oh --

2 CHAIRMAN BENNETT: -- really -- take a break
3 and get that done so we can --

4 MR. KING: We can certainly do our best.

5 MS. NUSSMEYER: Uh-huh, yeah. I can take this
6 back and --

7 MS. OVERHOLT: Well, they've already got some
8 things --

9 MR. KING: I -- I put -- I put together the
10 shell of an order. But it was the plan that had
11 been submitted by the Democratic Commissioners.
12 And so I can take that and rework it and then have
13 you review it, make sure we're in --

14 MS. NUSSMEYER: Oh, yeah. That's perfect.

15 MR. KING: Give us maybe 15 minutes.

16 MS. NUSSMEYER: Okay.

17 CHAIRMAN BENNETT: We are recessed for that
18 purpose.

19 (A recess was taken between 3:18 p.m. and
20 3:43 p.m.)

21 CHAIRMAN BENNETT: All right. Let's call our
22 meeting back to order. The time is 3:45
23 approximately. And Val had an opportunity to
24 prepare a proposed order. And I would ask
25 Co-Director Mr. King to report on that.

1 MR. KING: Thank you, Mr. Chairman, members of
2 the Commission. Order Number 2018-25 reflects the
3 changes discussed by Commission members previously
4 in this meeting. The Co-Directors made some
5 nonsubstantive, editorial polishing, which you've
6 had a chance to review. We believe we've
7 accurately captured all of the changes agreed to by
8 the Commission in its discussion. And I'll defer
9 to Co-Director Nussmeyer to add anything further.

10 MS. NUSSMEYER: No, I agree with Mr. King's
11 assessment here. I would say that the -- the
12 biggest change perhaps is in subdivision four,
13 where previously we had used the term of art of
14 final active voter list. And we felt that created
15 some confusion, and essentially just asked the Lake
16 County Director and Assistant Director to provide a
17 report. And that report then is outlined in
18 Subsection A, B and C of Number 6. And so that was
19 the -- the biggest change, I think, that editorial
20 change that he and I made.

21 CHAIRMAN BENNETT: Very good. Any questions
22 or comments by the Commissioners?

23 MS. OVERHOLT: Well, the -- the one comment I
24 had is the second whereas clause at the beginning.
25 Because I think we all understand that this is kind

1 of the first set of directives that we're issuing,
2 and we'll be coming back to determine whether we
3 need to issue anything else. I would suggest that
4 in that second whereas that we insert the word
5 "initial" before procedures so it would read,
6 Whereas the Commission determines that the initial
7 procedures for the development and adoption of a
8 plan should be set forth in this order. Just to
9 commemorate the fact that -- that I think we all
10 anticipate this is not necessarily the only order
11 we'll be issuing.

12 MR. KLUTZ: There will be more.

13 MS. OVERHOLT: Yeah.

14 CHAIRMAN BENNETT: Is there any discussion or
15 should we like that by consensus?

16 MR. KLUTZ: I'm -- I'm fine with that.

17 CHAIRMAN BENNETT: Fine with me.

18 MR. DICKEY: I think we have consensus.

19 CHAIRMAN BENNETT: Okay. I take that by
20 consensus, insert initial --

21 MR. KING: Uh-huh.

22 CHAIRMAN BENNETT: -- between D and procedures
23 in the second whereas paragraph. Anything else?

24 (A discussion was held off the record between
25 Mr. King and Chairman Bennett.)

1 MR. KING: I can do it. I didn't want to hold
2 you up if you were --

3 MS. NUSSMEYER: I'll take that.

4 (A discussion was held off the record.)

5 CHAIRMAN BENNETT: Okay. I have in my hand
6 Order Number 2018-25 of the Indiana Election
7 Commission that has been revised in accordance with
8 every comment that has been made in the last
9 session of our meeting. Is there a motion to adopt
10 this order?

11 MR. KLUTZ: So moved.

12 CHAIRMAN BENNETT: We have a motion and a --
13 do we have a second?

14 MR. DICKEY: I'll second.

15 CHAIRMAN BENNETT: Motion and a second. Any
16 further discussion? Hearing none, all in favor say
17 "aye."

18 THE COMMISSION: Aye.

19 CHAIRMAN BENNETT: All opposed say "nay."
20 Ayes have it; motion carries. Order Number
21 2018-25.

22 (A discussion was held off the record.)

23 MS. OVERHOLT: Do you guys care about the
24 color of the ink?

25 MR. DICKEY: Oh, I do. Should I put "for"?

1 MS. NUSSMEYER: I would.

2 CHAIRMAN BENNETT: I think we've had a
3 productive day here today. Thank you, everyone,
4 for all your patience and best thinking. Is there
5 a motion -- motion to adjourn?

6 MS. OVERHOLT: Oh, before we do this, so are
7 we gonna' to set another meeting, or you'll send
8 out a notice of another meeting after --

9 CHAIRMAN BENNETT: We'll notice another
10 meeting.

11 MS. OVERHOLT: Okay.

12 CHAIRMAN BENNETT: So I'll move to adjourn.
13 Is there a second?

14 MR. KLUTZ: Second.

15 CHAIRMAN BENNETT: All in favor say "aye."

16 THE COMMISSION: Aye.

17 CHAIRMAN BENNETT: All opposed, "nay." Ayes
18 have it. Meeting adjourned.

19

20 (Time Noted: 3:49 p.m.)

21

22

23

24

25

1 STATE OF INDIANA)

2) SS:

3 COUNTY OF HAMILTON)

4

5 I, Lisa C. Pierce, a Notary Public in and for
6 the County of Hamilton, State of Indiana at large,
7 do hereby certify that the foregoing hearing was
8 taken on behalf of the Indiana Election Commission
9 at the Indiana Government Center, Indiana Election
10 Division, 302 West Washington Street, E-204,
11 Indianapolis, Marion County, Indiana, on
12 March 9, 2018, commencing at the hour of 1:38 p.m.,
13 pursuant to Rules of Applicable Procedure;

14 That said hearing was taken down in
15 stenographic notes and afterwards reduced to
16 typewriting under my direction, and that the
17 typewritten transcript is a true record of the
18 testimony given by said participants;

19 That the parties were represented by their
20 aforementioned counsel.

21 I do further certify that I am a disinterested
22 person in this cause of action; that I am not a
23 relative or attorney of any party, or otherwise
24 interested in the event of this action, and am not
25 in the employ of the attorneys for any party.

<p>-</p> <p>-2 44:10</p> <p>0</p> <p>05-SC-04 9:18</p> <p>1</p> <p>1 12:11,21 15:18,21 16:19 42:6 45:17</p> <p>11th 18:23 42:7 71:4</p> <p>12-FC-43 9:17</p> <p>12:00 48:9</p> <p>12th 42:8 43:15 44:18 64:12 71:4</p> <p>1383 24:10 34:18 35:10 40:24 44:11 49:25 63:5</p> <p>15 76:15</p> <p>16th 48:9 56:10,16</p> <p>1800 29:16</p> <p>1st 34:24</p> <p>2</p> <p>2 17:24 31:18 39:5 45:11, 18 47:3 61:13</p> <p>2018 3:4 43:15 44:19 48:9 50:10 56:10 57:7,11 74:24</p> <p>2018-25 77:2 79:6,21</p> <p>23rd 3:4 51:10 62:11 63:15,22 64:12 65:10 68:2 69:24 71:13</p> <p>24th 62:11</p> <p>2:49 60:5</p> <p>2:57 60:6</p> <p>3</p> <p>3 47:10 48:5 63:24</p> <p>3-11 44:13</p> <p>3-11-18.1 44:8</p> <p>3-11-18.1-2 43:23 45:1</p>	<p>3-6-5.2 33:17</p> <p>3-7-38.2 45:5</p> <p>352 43:25</p> <p>365.210 43:20</p> <p>3:00 60:8</p> <p>3:18 76:19</p> <p>3:43 76:20</p> <p>3:45 76:22</p> <p>4</p> <p>4 31:20 48:21 55:25 60:9</p> <p>4B 50:7 59:7</p> <p>4C 59:7</p> <p>4th 72:18</p> <p>5</p> <p>5 31:18,22 60:10 61:13 64:7 68:24 73:17</p> <p>5:00 56:9,16</p> <p>5A 64:6 68:15,16,21 75:7, 12</p> <p>5B 75:7,13</p> <p>5C 72:17</p> <p>6</p> <p>6 65:17 68:22 70:6 75:8, 10,12 77:18</p> <p>600 18:20 19:5 23:13 32:20,25 45:12,23 47:5</p> <p>6A 69:9</p> <p>8</p> <p>8th 58:4</p> <p>9</p> <p>9th 51:5,10 57:24 58:4,7, 8,16,17,19</p> <p>A</p> <p>ability 23:22</p>	<p>absentee 18:14</p> <p>abundance 7:10 53:7</p> <p>accept 68:7</p> <p>access 6:1,15,23 9:18 10:20 20:5</p> <p>accomplish 16:25 40:12</p> <p>accordance 79:7</p> <p>account 20:24 21:11</p> <p>accurate 52:19 75:1</p> <p>accurately 77:7</p> <p>act 7:2 10:1 34:18 40:23</p> <p>action 7:23 14:4</p> <p>active 18:20 19:6 23:13 30:2 32:2,20,22 33:5,7, 17,21 34:5,17 35:5,10,14, 16,19 37:6 38:17,22 39:12 42:15 43:17 44:6 45:1,4,12,24 47:5,7 51:22 56:19 67:5 74:19 77:14</p> <p>actual 9:7 27:2</p> <p>ad 39:1 42:11,13,18 43:1</p> <p>Adam 3:6</p> <p>add 7:23 9:25 11:24 17:16 32:16 48:6 63:23 77:9</p> <p>added 7:5 53:8</p> <p>adding 45:18</p> <p>additional 30:3 38:12 39:21 54:22</p> <p>adjourn 8:5 80:5,12</p> <p>adjourned 80:18</p> <p>adjudication 7:9</p> <p>Administrator 19:21</p> <p>adopt 14:6 27:19 34:24 79:9</p> <p>adopting 20:22</p> <p>adoption 78:7</p> <p>advance 58:10</p> <p>advantage 63:1</p> <p>affected 29:6</p> <p>agency 6:24 7:2 9:19,24 21:3 22:5</p> <p>agenda 3:23,24 4:3,8,22 5:2,6,7,14,16,21 6:11,25</p>	<p>7:3,24 8:5,10 9:1,5,19,20, 23 10:1,7,15,17,21 11:2, 3,11,12,24 12:14,20,21 13:3,4 15:19 28:12</p> <p>agree 7:3 13:13 15:2 16:11,17 28:9 31:11 32:19 37:23 42:22 54:17 77:10</p> <p>agreeable 62:6</p> <p>agreed 16:14 77:7</p> <p>agreed-upon 31:8,17</p> <p>agreement 11:1 18:18 20:16 67:3,14</p> <p>agrees 50:22</p> <p>ahead 6:5 31:12 46:24</p> <p>Allen 26:13</p> <p>allowed 21:22 54:10</p> <p>aloud 74:7</p> <p>ambiguity 52:20</p> <p>amend 4:3,7,21 5:7 6:25 7:2 8:9 9:1,5 11:10</p> <p>amended 11:18 48:19 66:22</p> <p>amending 8:5</p> <p>amount 74:4</p> <p>analysis 24:6 44:25 52:11</p> <p>and/or 60:22</p> <p>Angie 3:10 21:13 67:7</p> <p>announced 3:3</p> <p>answering 18:15</p> <p>Anthony 3:7 28:18</p> <p>anticipate 21:13 78:10</p> <p>anticipated 50:9 57:6,10</p> <p>anticipates 50:12</p> <p>apologize 22:3</p> <p>appears 4:25</p> <p>applications 18:14</p> <p>apply 72:19</p> <p>appreciation 23:20</p> <p>approve 73:19</p> <p>approximately 76:23</p> <p>April 51:5,10 57:24 58:4,</p>
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