

Indiana Election Commission
Minutes
August 27, 2014

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

Members Absent: S. Anthony Long, Vice-Chairman of the Commission; Zachary E. Klutz, Commission member.

Staff Attending: Trent Deckard, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); J. Bradley King, Co-Director of the Election Division; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division.

Others Attending: The Honorable Tim Harman, Indiana State Representative.

1. Call to Order

The Chair called the August 27, 2014 meeting of the Commission to order at 1:34 p.m. EDT in the offices of the Election Division, Room E-204, Indiana Government Center South, 302 West Washington Street, Indianapolis, Indiana.

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

2. Transaction of Business

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

3. Adjournment

The Commission meeting was then adjourned at 1:58 p.m.

Respectfully submitted,

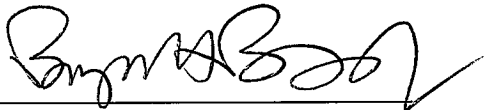


Trent Deckard
Co-Director



J. Bradley King
Co-Director

APPROVED:



Bryce H. Bennett, Jr. , Chairman

In the Matter Of:

INDIANA ELECTION COMMISSION HEARING

HEARING PROCEEDINGS

August 27, 2014



CONNOR REPORTING

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INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

Conducted On: Wednesday, August 27, 2014

Location: Indiana Government Center South
302 West Washington Street
Room E-204 Conference Room
Indianapolis, Indiana 46204

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

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

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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 Anthony Long)
- Ms. Barbara McClellan (Proxy for Commission Member Zachary Klutz)
- Ms. Suzannah Wilson Overholt - Commission Member

INDIANA ELECTION DIVISION STAFF:

- Mr. Dale Simmons - Co-Legal Counsel
- Mr. Bradley King - Co-Director
- Mr. Trent Deckard - Co-Director

1 CHAIRMAN B. BENNETT: The meeting of the
2 Indiana Election is called to order. It's
3 approximately 1:04 p.m. on August -- 1:34 p.m.
4 on August 27th, 2014. We are in the Election
5 Division office, and the following members of
6 the commission are present: Myself, Bryce
7 Bennett, Chairman; Adam Dickey, Proxy for Vice
8 Chairman Anthony Long; Suzannah Wilson Overholt;
9 Barbara McClellan, Proxy for Member Zachary
10 Klutz.

11 The Indiana Election Division staff,
12 Co-Directors Trent Deckard and Brad King are
13 present; and the Co-General Counsel, Dale Simmons
14 is here. I understand Leslie Barnes is ill and not
15 with us today.

16 I want to thank you all for being here on
17 short notice. We have some business to do that's
18 been presented to us by the State of Indiana and
19 we're prepared to conduct that business. Welcome
20 to the proxies here today.

21 As you have already heard, we are recording
22 today's proceedings, rather than using a court
23 reporter by a tape recorder, which Mr. King has
24 described as Twentieth Century technology. So
25 hopefully, we will all speak loudly and clearly and

1 our meeting can be transcribed appropriately.

2 The first item of business is the
3 documentation of compliance with the Open Door Law,
4 and I would request Mr. Deckard and Mr. King to
5 confirm that the commission meeting has been
6 properly noticed as required under the Open Door
7 Law.

8 MR. B. KING: Mr. Chairman, Members of the
9 Commission, the August 27th, 2014 meeting of the
10 Election Commission has been noticed in
11 compliance with the Open Door Law.

12 CHAIRMAN B. BENNETT: Very good. The next
13 item of business is the ratification of campaign
14 finance settlement agreements and I would ask
15 for those to be presented by Mr. Deckard and Mr.
16 King.

17 MR. B. KING: Mr. Chairman, Commission
18 Members, in your binder behind the tab labeled
19 campaign finance is a list of settlement
20 agreements which consist of one. These
21 settlement agreements are executed by, in this
22 case, a political action committee in full
23 payment of the fine that would be due in a
24 campaign finance enforcement proceeding and so
25 we submit those to you for ratification by the

1 Commission in accordance with statute.

2 CHAIRMAN B. BENNETT: Is there a motion to
3 ratify the settlement agreement attached to our
4 materials as Exhibit 1?

5 PROXY A. DICKEY: So moved.

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

8 PROXY B. McCLELLAN: Second.

9 CHAIRMAN B. BENNETT: We have a second. Is
10 there any discussion?

11 COMMISSION MEMBER S. OVERHOLT: I just have
12 a question. So is this one of the -- is this an
13 issue that arose before us before or is the
14 Division recommending -- am I understanding this
15 is the fine they would had to pay because of the
16 violation, no -- there's no compromise. It's
17 just a fine. Okay.

18 MR. T. DECKARD: Correct.

19 COMMISSION MEMBER S. OVERHOLT: Okay.

20 MR. T. DECKARD: Correct, Commissioner.
21 And if I may, Mr. Chairman, Members of the
22 Commission, every time you see one of these
23 appear before you, it will be a hearing that we
24 will not have as a commission. It's someone
25 that's accepted the full penalty --

Hearing Proceedings
August 27, 2014

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1 COMMISSION MEMBER S. OVERHOLT: Okay.

2 MR. T. DECKARD: -- in advance of -- in
3 lieu of a hearing --

4 COMMISSION MEMBER S. OVERHOLT: Okay.

5 MR. T. DECKARD: -- and proposed...

6 CHAIRMAN B. BENNETT: These are not
7 negotiated settlements, these are the full
8 penalties?

9 MR. T. DECKARD: Yes, sir.

10 CHAIRMAN B. BENNETT: Any further
11 discussion?

12 (No response.)

13 CHAIRMAN B. BENNETT: Hearing none, all in
14 favor of ratification, say aye?

15 THE COMMISSION: Aye.

16 CHAIRMAN B. BENNETT: All opposed, the same
17 sign?

18 (No response.)

19 CHAIRMAN B. BENNETT: Motion carried. The
20 next item of business is the adoption of
21 candidate challenge hearing proceedings. We are
22 here on a candidate challenge today in a timely
23 fashion and we will follow the procedures that
24 we have followed in the past, and those
25 procedures are as follows:

1 A. After the candidate challenge is called,
2 the hearing will begin by recognizing Election
3 Division staff to provide information about the
4 documents provided to the Commission members,
5 including candidate challenge forms, and the notice
6 given to the candidate and challenger.

7 B. Unless there is objection, the documents
8 provided to the Commission by the Election Division
9 will be entered into the record of this meeting.

10 C. After the Election Division staff completes its
11 presentation, the challenger will be recognized
12 first. The challenger (or the challenger's
13 representative) may present their case for no more
14 than ten minutes, unless the Commission votes to
15 allow additional time for the presenter.

16 D. Commission members may ask questions
17 during a presentation, but the time spent answering
18 these questions will not be counted against a
19 presenter's time. The Election Division may signal
20 the Chair when a presenter's time is up.

21 E. If the presenter offers additional
22 documents or other physical evidence not previously
23 received by the Commission, then the original must
24 be provided to the Election Division staff, which
25 would be Dale, to preserve for the record.

1 F. The candidate or the candidate's
2 authorized representative will be recognized
3 following the last presentation by a challenger.
4 The candidate may present their case for no more
5 than 10 minutes, unless the Commission votes to
6 allow additional time for the presenter.

7 G. Following presentation by a challenger,
8 the candidate may cross-examine the challenger.
9 Following the presentation by a candidate, a
10 challenger may cross-examine the candidate. The
11 cross-examination in all cases is limited to 2
12 minutes, unless the Commission votes to allow
13 additional time. The cross-examination must be
14 limbed to questions regarding statements made by
15 the presenter. Following presentation by a
16 candidate, the challenger may present a rebuttal of
17 no more than 2 minutes.

18 H. The commission may dismiss the cause of
19 any challenger who has failed to appear or testify
20 before the Commission.

21 Is there a second to my motion for the
22 commission to adopt these procedures for today's
23 candidate challenge hearings?

24 COMMISSION MEMBER S. OVERHOLT: Second.

25 CHAIRMAN B. BENNETT: Is there any

1 discussion?

2 (No response.)

3 CHAIRMAN B. BENNETT: Hearing none, all in
4 favor of adoption of the procedures, say aye?

5 THE COMMISSION: Aye.

6 CHAIRMAN B. BENNETT: All opposed, the same
7 sign?

8 (No response.)

9 CHAIRMAN B. BENNETT: The motion carries.
10 The procedures are adopted. Everyone present
11 here today who plans to testify before the
12 election commission regarding any matter today,
13 please stand for the administration of the oath,
14 and I recognize Dale Simmons to administer the
15 oath.

16 MR. D. SIMMONS: Raise your right hand and
17 say I do after the administration of the oath.

18 (Participants complied.)

19 MR. D. SIMMONS: Do you solemnly swear or
20 affirm under the penalties of perjury the
21 testimony you're about to give is the truth, the
22 whole truth, and nothing but the truth?

23 THE PARTICIPANTS: I do.

24 MR. D. SIMMONS: Thank you.

25 CHAIRMAN B. BENNETT: We'll begin the

1 hearing. We'll begin consideration of candidate
2 challenges and I want to remind our witness to
3 identify himself for the record before you begin
4 speaking.

5 MR. T. HARMON: Sure. Tim Harmon, State
6 Representative, District 17, challenger. I live
7 in Breman in my district, obviously. That's who
8 I am.

9 CHAIRMAN B. BENNETT: Okay. Very good.
10 Thank you. We are going to begin the hearing on
11 Cause No. 2014-130 in the matter of the
12 challenge to Terry Thomas Burch, candidate for
13 the Libertarian Party for State Representative,
14 District 17. The Election Division has provided
15 a copy of the candidate filing challenge form,
16 which I understand, given in this matter.

17 MR. B. KING: Mr. Chairman, Members of the
18 Commission, if I could add, in your binders,
19 behind candidate challenge, you'll also see a
20 copy of the notice of hearing signed by Mr.
21 Deckard and myself, along with proof of service
22 for both the challenger and the candidate.

23 CHAIRMAN B. BENNETT: Thank you, Mr. King.
24 At this time the Commission recognizes Timothy
25 Harmon, challenger, for presentation.

1 MR. T. HARMON: Thank you, Mr. Chairman and
2 Members of the Commission. I apologize that you
3 had to be on the short notice and we'll just go
4 ahead and do our business here. Approximately,
5 a month or so ago, I saw I had a challenger for
6 district 17, a Libertarian candidate, and upon
7 seeing who it was, I remember that he was 15
8 years old four years ago.

9 I kind of know the gentleman so I actually
10 have him as a Facebook friend, and I just kind of
11 looked at his birth date on Facebook, and it
12 confirmed that he will turn 20 this September. And
13 according to our constitution, Article IV, Section
14 7, a representative must be 21 at the time of his
15 election. So I believe that disqualifies him from
16 running or even being a state representative.

17 I did contact him through Facebook. He was
18 aware of my concern here and he thanked me for the
19 heads up. I just assumed he was going to unfile,
20 and I was looking at the records on the Secretary
21 of State's website and saw that he did not unfile
22 so I came down and challenged, and that's the basis
23 for my challenge.

24 I had a campaign associate confirm, I believe
25 with the voter's registration that he was under 21

1 years of age or will be under 21 as well. That's
2 the basis.

3 CHAIRMAN B. BENNETT: Very good. Thank
4 you. It does not appear that Terry Thomas
5 Burch, the challenged candidate is here today.
6 If I'm wrong about that, someone please speak up
7 and let me know.

8 (No response.)

9 CHAIRMAN B. BENNETT: Hearing nothing,
10 we'll let the record reflect that Terry Thomas
11 Burch is not present and apparently will not be
12 performing any cross-examination of Mr. Harmon.
13 Is there any cross-examination by the
14 Commission?

15 (No response.)

16 CHAIRMAN B. BENNETT: Hearing none, is
17 there any further evidence that you would like
18 to present, Mr. Harmon?

19 MR. T. HARMON: Well, I don't have the
20 physical evidence -- I mean, other than it's
21 posted on Facebook. I probably should have got
22 a voter registration record. From my
23 understanding, though, he, I believe, tried to
24 unfile, but it was after the date set, if I'm
25 not mistaken. But the evidence I have forwarded

1 is yes, there's a Facebook posting of his birth
2 date on his own account. You know, again, our
3 campaign folks had told me directly that he was
4 under age and that's the evidence I can provide.

5 CHAIRMAN B. BENNETT: So you have
6 personally seen a statement from the candidate
7 indicating that he will be less than 21 at the
8 time of the election?

9 MR. T. HARMON: Well, you know, I have a
10 conversation on Facebook, and again, it's posted
11 on his Facebook page, his birth date, and we
12 were Facebook friends. Again, I don't have a
13 voter registration, a record to show you, but
14 I'm a hundred percent sure he is under 21.

15 CHAIRMAN B. BENNETT: But you're familiar
16 with the statement from the candidate himself
17 with regard to his true age?

18 MR. T. HARMON: Well, again, it's on
19 Facebook. I said that it was great that he was
20 running. I liked his -- basically attempt, but
21 that you have to be 21 to be a representative,
22 25 for a senator, and he acknowledged by saying
23 okay, thank you for the heads-up.

24 I also know his mother, and his mother
25 provided corroborating evidence on Facebook that he

1 is under 21. No direct birth date by her, but his
2 birth date is on Facebook so...

3 CHAIRMAN B. BENNETT: Okay.

4 MR. T. HARMON: And to give you the exact
5 time on that or exact date of his birth, I will
6 tell you in five seconds, if I can get to it,
7 September 14th of 1994.

8 CHAIRMAN B. BENNETT: Okay. And you have
9 the Facebook page --

10 MR. T. HARMON: Yeah.

11 CHAIRMAN B. BENNETT: -- with you here
12 today --

13 MR. T. HARMON: Yeah.

14 CHAIRMAN B. BENNETT: -- at these
15 proceedings?

16 MR. T. HARMON: Yeah, uh-huh.

17 CHAIRMAN B. BENNETT: Does anyone -- any of
18 the commissioners wish to take a look at that
19 Facebook page?

20 COMMISSION MEMBER S. OVERHOLT: I wonder.
21 This is kind of getting our 20th Century
22 technology to jive with the 21st Century
23 technology so I'm not exactly sure. I don't
24 have -- for -- I don't know. Should we all look
25 at it just to -- since it keeps being

1 referenced -- I don't know. I'm not --

2 CHAIRMAN B. BENNETT: I'll take a look at
3 it.

4 COMMISSION MEMBER S. OVERHOLT: I haven't
5 been in court for a while so I...

6 MR. T. HARMON: It's the only physical
7 evidence I can give you at this point. I --
8 Terry Thomas Burch. That's Terry without a
9 doubt. That little icon is a birthday cake.

10 CHAIRMAN B. BENNETT: There's a little icon
11 with a birthday cake --

12 MR. T. HARMON: Birthday cake.

13 CHAIRMAN B. BENNETT: -- that says
14 September 14th, 1994.

15 MR. T. HARMON: Yeah.

16 CHAIRMAN B. BENNETT: And this is on Terry
17 Thomas Burch's Facebook page --

18 MR. T. HARMON: Yeah.

19 CHAIRMAN B. BENNETT: -- that you're
20 printing here today at this hearing?

21 MR. T. HARMON: Yes. Yes.

22 CHAIRMAN B. BENNETT: Any other --

23 MR. T. HARMON: Slam it around if anybody
24 want to say see it. I don't -- okay. All
25 right.

1 CHAIRMAN B. BENNETT: Any other questions
2 of the witness?

3 (No response.)

4 CHAIRMAN B. BENNETT: Hearing none, we will
5 close the public hearing on Cause No. 2014-130
6 and open discussion by Commission members. Is
7 there anything discussion?

8 (No response.)

9 CHAIRMAN B. BENNETT: Hearing none, is
10 there a motion to sustain the challenge to the
11 candidacy of Terry Thomas Burch -- I will make
12 that motion. Is there a second?

13 PROXY B. McCLELLAN: Second.

14 CHAIRMAN B. BENNETT: I have a motion and a
15 second, any discussion?

16 (No response.)

17 CHAIRMAN B. BENNETT: All in favor, say
18 aye?

19 THE COMMISSION: Aye.

20 CHAIRMAN B. BENNETT: All opposed, the same
21 sign?

22 (No response.)

23 CHAIRMAN B. BENNETT: Motion carried. The
24 challenge is sustained. Thank you for your
25 presentation.

1 MR. T. HARMON: Okay. Thank you.

2 CHAIRMAN B. BENNETT: The challenge being
3 upheld, the Election Division is directed to
4 amend the certified list of general candidates
5 to indicate that the name of this candidate is
6 not to be printed on the ballot.

7 The Indiana Election Commission has finished
8 its business for today, is there a motion for the
9 election commission to adjourn?

10 PROXY A. DICKEY: So moved.

11 CHAIRMAN B. BENNETT: I have a motion,
12 second?

13 PROXY B. McCLELLAN: Second.

14 CHAIRMAN B. BENNETT: The motion and
15 second, those in favor say aye?

16 THE COMMISSION: Aye.

17 CHAIRMAN B. BENNETT: All opposed, same
18 sign?

19 (No response.)

20 CHAIRMAN B. BENNETT: Motion carries.
21 We're adjourned. Thank you.

22 (At this time the proceedings were adjourned.)

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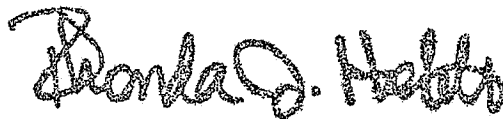
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1 STATE OF INDIANA)
2) SS:
3 COUNTY OF MARION)

4 I, Rhonda J. Hobbs, RPR, and a Notary Public
5 and Stenographic Reporter within and for the County
6 of Hendricks, State of Indiana at large, do hereby
7 certify that I transcribed the recording from the
8 27th day of August, 2014, and I took down in
9 stenograph notes the foregoing proceedings;

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

12 IN WITNESS WHEREOF, I have hereunto set
13 my hand and affixed my notarial seal this _____
14 day of October, 2014.

15
16 

17
18 NOTARY PUBLIC

19 My Commission Expires:
20 August 24, 2017
21 County of Residence:
22 Hendricks County
23
24
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|--|--|---|--|
| 1 | <p>administration 9:13,17</p> <p>adopt 8:22</p> <p>adopted 9:10</p> <p>adoption 6:20 9:4</p> <p>advance 6:2</p> <p>affirm 9:20</p> <p>age 12:1 13:4,17</p> <p>agreement 5:3</p> <p>agreements 4:14,20,21</p> <p>ahead 11:4</p> <p>amend 17:4</p> <p>answering 7:17</p> <p>Anthony 3:8</p> <p>apologize 11:2</p> <p>apparently 12:11</p> <p>appropriately 4:1</p> <p>approximately 3:3 11:4</p> <p>arose 5:13</p> <p>Article 11:13</p> <p>associate 11:24</p> <p>assumed 11:19</p> <p>attached 5:3</p> <p>attempt 13:20</p> <p>August 3:3,4 4:9</p> <p>authorized 8:2</p> <p>aware 11:18</p> <p>aye 6:14,15 9:4,5 16:18, 19 17:15,16</p> | <p>16:1,4,9,14,17,20,23 17:2,11,14,17,20</p> <p>binder 4:18</p> <p>binders 10:18</p> <p>birth 11:11 13:1,11 14:1, 2,5</p> <p>birthday 15:9,11,12</p> <p>Brad 3:12</p> <p>Breman 10:7</p> <p>Bryce 3:6</p> <p>Burch 10:12 12:5,11 15:8 16:11</p> <p>Burch's 15:17</p> <p>business 3:17,19 4:2,13 6:20 11:4 17:8</p> | <p>16:10,24 17:2</p> <p>challenged 11:22 12:5</p> <p>challenger 7:6,11,12 8:3,7,8,10,16,19 10:6,22, 25 11:5</p> <p>challenger's 7:12</p> <p>challenges 10:2</p> <p>close 16:5</p> <p>Co-directors 3:12</p> <p>Co-general 3:13</p> <p>commission 3:6 4:5,9, 10,17 5:1,11,19,22,24 6:1,4,15 7:4,8,14,16,23 8:5,12,18,20,22,24 9:5,12 10:18,24 11:2 12:14 14:20 15:4 16:6,19 17:7, 9,16</p> |
| 2 | <p>2 8:11,17</p> <p>20 11:12</p> <p>2014 3:4 4:9</p> <p>2014-130 10:11 16:5</p> <p>20th 14:21</p> <p>21 11:14,25 12:1 13:7,14, 21 14:1</p> <p>21st 14:22</p> <p>25 13:22</p> <p>27th 3:4 4:9</p> | <p style="text-align: center;">C</p> <p>cake 15:9,11,12</p> <p>called 3:2 7:1</p> <p>campaign 4:13,19, 11:24 13:3</p> <p>candidacy 16:11</p> <p>candidate 6:21,22 7:1,5, 6 8:1,4,8,9,10,16,23 10:1, 12,15,19,22 11:6 12:5 13:6,16 17:5</p> <p>candidate's 8:1</p> <p>candidates 17:4</p> <p>carried 6:19 16:23</p> <p>carries 9:9 17:20</p> <p>case 4:22 7:13 8:4</p> <p>cases 8:11</p> <p>Century 3:24 14:21,22</p> <p>certified 17:4</p> <p>Chair 7:20</p> <p>Chairman 3:1,7, 4:8,12, 17 5:2,6,9,21 6:6,10,13, 16,19 8:25 9:3,6,9,25 10:9,17,23 11:1 12:3,9,16 13:5,15 14:3,8,11,14,17 15:2,10,13,16,19,22 16:1, 4,9,14,17,20,23 17:2,11, 14,17,20</p> <p>challenge 6:21,22 7:1,5 8:23 10:12,15,19 11:23</p> | <p>Commissioner 5:20</p> <p>commissioners 14:18</p> <p>committee 4:22</p> <p>completes 7:10</p> <p>compliance 4:3,11</p> <p>complied 9:18</p> <p>compromise 5:16</p> <p>concern 11:18</p> <p>conduct 3:19</p> <p>confirm 4:5 11:24</p> <p>confirmed 11:12</p> <p>consideration 10:1</p> <p>consist 4:20</p> <p>constitution 11:13</p> <p>contact 11:17</p> <p>conversation 13:10</p> <p>copy 10:15,20</p> <p>Correct 5:18,20</p> <p>corroborating 13:25</p> <p>Counsel 3:13</p> <p>counted 7:18</p> <p>court 3:22 15:5</p> <p>cross-examination 8:11,13 12:12,13</p> <p>cross-examine 8:8,10</p> |
| A | B | | |
| <p>accepted 5:25</p> <p>accordance 5:1</p> <p>account 13:2</p> <p>acknowledged 13:22</p> <p>action 4:22</p> <p>Adam 3:7</p> <p>add 10:18</p> <p>additional 7:15,21 8:6, 13</p> <p>adjourn 17:9</p> <p>adjourned 17:21,22</p> <p>administer 9:14</p> | <p>ballot 17:6</p> <p>Barbara 3:9</p> <p>Barnes 3:14</p> <p>basically 13:20</p> <p>basis 11:22 12:2</p> <p>begin 7:2 9:25 10:1,3,10</p> <p>Bennett 3:1,7 4:12 5:2,6, 9 6:6,10,13,16,19 8:25 9:3,6,9,25 10:9,23 12:3,9, 16 13:5,15 14:3,8,11,14, 17 15:2,10,13,16,19,22</p> | | |

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| <hr/> <p style="text-align: center;">D</p> <hr/> <p>Dale 3:13 7:25 9:14</p> <p>date 11:11 12:24 13:2,11 14:1,2,5</p> <p>Deckard 3:12 4:4,15 5:18,20 6:2,5,9 10:21</p> <p>Dickey 3:7 5:5 17:10</p> <p>direct 14:1</p> <p>directed 17:3</p> <p>directly 13:3</p> <p>discussion 5:10 6:11 9:1 16:6,7,15</p> <p>dismiss 8:18</p> <p>disqualifies 11:15</p> <p>district 10:6,7,14 11:6</p> <p>Division 3:5,11 5:14 7:3, 8,10,19,24 10:14 17:3</p> <p>documentation 4:3</p> <p>documents 7:4,7,22</p> <p>Door 4:3,6,11</p> <p>doubt 15:9</p> <p>due 4:23</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>election 3:2,4,11 4:10 7:2,8,10,19,24 9:12 10:14 11:15 13:8 17:3,7,9</p> <p>enforcement 4:24</p> <p>entered 7:9</p> <p>evidence 7:22 12:17,20, 25 13:4,25 15:7</p> <p>exact 14:4,5</p> <p>executed 4:21</p> <p>Exhibit 5:4</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>Facebook 11:10,11,17 12:21 13:1,10,11,12,19, 25 14:2,9,19 15:17</p> <p>failed 8:19</p> <p>familiar 13:15</p> | <p>fashion 6:23</p> <p>favor 6:14 9:4 16:17 17:15</p> <p>filing 10:15</p> <p>finance 4:14,19,24</p> <p>fine 4:23 5:15,17</p> <p>finished 17:7</p> <p>folks 13:3</p> <p>follow 6:23</p> <p>form 10:15</p> <p>forms 7:5</p> <p>forwarded 12:25</p> <p>friend 11:10</p> <p>friends 13:12</p> <p>full 4:22 5:25 6:7</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>general 17:4</p> <p>gentleman 11:9</p> <p>give 9:21 14:4 15:7</p> <p>good 4:12 10:9 12:3</p> <p>great 13:19</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hand 9:16</p> <p>Harmon 10:5,25 11:1 12:12,18,19 13:9,18 14:4, 10,13,16 15:6,12,15,18, 21,23 17:1</p> <p>heads 11:19</p> <p>heads-up 13:23</p> <p>heard 3:21</p> <p>hearing 5:23 6:3,13,21 7:2 9:3 10:1,10,20 12:9, 16 15:20 16:4,5,9</p> <p>hearings 8:23</p> <p>hundred 13:14</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>icon 15:9,10</p> <p>identify 10:3</p> | <p>ill 3:14</p> <p>including 7:5</p> <p>Indiana 3:2,11,18 17:7</p> <p>indicating 13:7</p> <p>information 7:3</p> <p>issue 5:13</p> <p>item 4:2,13 6:20</p> <p>IV 11:13</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>jive 14:22</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>kind 11:9,10 14:21</p> <p>King 3:12,23 4:4,8,16, 10:17,23</p> <p>Klutz 3:10</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>labeled 4:18</p> <p>Law 4:3,7,11</p> <p>Leslie 3:14</p> <p>Libertarian 10:13 11:6</p> <p>lieu 6:3</p> <p>limbed 8:14</p> <p>limited 8:11</p> <p>list 4:19 17:4</p> <p>live 10:6</p> <p>Long 3:8</p> <p>looked 11:11</p> <p>loudly 3:25</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>made 8:14</p> <p>make 16:11</p> <p>materials 5:4</p> <p>matter 9:12 10:11,16</p> <p>McClellan 3:9 5:8 17:13</p> <p>meeting 4:1,5, 7:9</p> | <p>Member 3:9 5:11,19 6:1, 4 8:24 14:20 15:4</p> <p>members 3:5 4:8,18 5:21 7:4,16 10:17 11:2 16:6</p> <p>minutes 7:14 8:5,12,17</p> <p>mistaken 12:25</p> <p>month 11:5</p> <p>mother 13:24</p> <p>motion 5:2,6 6:19 8:21 9:9 16:10,12,14,23 17:8, 11,14,20</p> <p>moved 5:5 17:10</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>negotiated 6:7</p> <p>notice 3:17 7:5 10:20 11:3</p> <p>noticed 4:6,10</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 9:13,15,17</p> <p>objection 7:7</p> <p>offers 7:21</p> <p>office 3:5</p> <p>open 4:3,6,11 16:6</p> <p>opposed 6:16 9:6 16:20 17:17</p> <p>order 3:2</p> <p>original 7:23</p> <p>Overholt 3:8 5:11,19 6:1, 4 8:24 14:20 15:4</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>p.m. 3:3</p> <p>participants 9:18,23</p> <p>Party 10:13</p> <p>past 6:24</p> <p>pay 5:15</p> <p>payment 4:23</p> <p>penalties 6:8 9:20</p> <p>penalty 5:25</p> |
|--|---|--|---|

| | | | |
|---|--|---|--|
| <p>percent 13:14</p> <p>performing 12:12</p> <p>perjury 9:20</p> <p>personally 13:6</p> <p>physical 7:22 12:20 15:6</p> <p>plans 9:11</p> <p>point 15:7</p> <p>political 4:22</p> <p>posted 12:21 13:10</p> <p>posting 13:1</p> <p>prepared 3:19</p> <p>present 3:6, 7:13 8:4,16 9:10 12:11,18</p> <p>presentation 7:11,17 8:3,7,9,15 16:25</p> <p>presented 3:18 4:15</p> <p>presenter 7:15,21 8:6,15</p> <p>presenter's 7:19,20</p> <p>preserve 7:25</p> <p>previously 7:22</p> <p>printed 17:6</p> <p>printing 15:20</p> <p>procedures 6:23,25 8:22 9:4,10</p> <p>proceeding 4:24</p> <p>proceedings 3:22 6:21 14:15 17:22</p> <p>proof 10:21</p> <p>properly 4:6</p> <p>proposed 6:5</p> <p>provide 7:3 13:4</p> <p>provided 7:4,8,24 10:14 13:25</p> <p>proxies 3:20</p> <p>Proxy 3:7,9 5:5,8 16:13 17:10,13</p> <p>public 16:5</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 5:12</p> <p>questions 7:16,18 8:14 16:1</p> | <hr/> <p style="text-align: center;">R</p> <hr/> <p>Raise 9:16</p> <p>ratification 4:13,25 6:14</p> <p>ratify 5:3</p> <p>rebuttal 8:16</p> <p>received 7:23</p> <p>recognize 9:14</p> <p>recognized 7:11 8:2</p> <p>recognizes 10:24</p> <p>recognizing 7:2</p> <p>recommending 5:14</p> <p>record 7:9,25 10:3 12:10, 22 13:13</p> <p>recorder 3:23</p> <p>recording 3:21</p> <p>records 11:20</p> <p>referenced 15:1</p> <p>reflect 12:10</p> <p>regard 13:17</p> <p>registration 11:25 12:22 13:13</p> <p>remember 11:7</p> <p>remind 10:2</p> <p>reporter 3:23</p> <p>representative 7:13 8:2 10:6,13 11:14,16 13:21</p> <p>request 4:4</p> <p>required 4:6</p> <p>response 6:12,18 9:2, 12:8,15 16:3,8,16,22 17:19</p> <p>running 11:16 13:20</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>seconds 14:6</p> <p>Secretary 11:20</p> <p>Section 11:13</p> <p>senator 13:22</p> <p>September 11:12 14:7 15:14</p> | <p>service 10:21</p> <p>set 12:24</p> <p>settlement 4:14,19,21 5:3</p> <p>settlements 6:7</p> <p>short 3:17 11:3</p> <p>show 13:13</p> <p>sign 6:17 9:7 16:21 17:18</p> <p>signal 7:19</p> <p>signed 10:20</p> <p>Simmons 3:13 9:14,16, 19,24</p> <p>sir 6:9</p> <p>Slam 15:23</p> <p>solemnly 9:19</p> <p>speak 3:25 12:6</p> <p>speaking 10:4</p> <p>spent 7:17</p> <p>staff 3:11 7:3,10,24</p> <p>stand 9:13</p> <p>state 3:18 10:5,13 11:16</p> <p>State's 11:21</p> <p>statement 13:6,16</p> <p>statements 8:14</p> <p>statute 5:1</p> <p>submit 4:25</p> <p>sustain 16:10</p> <p>sustained 16:24</p> <p>Suzannah 3:8</p> <p>swear 9:19</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>tab 4:18</p> <p>tape 3:23</p> <p>technology 3:24 14:22, 23</p> <p>ten 7:14</p> <p>Terry 10:12 12:4,10 15:8, 16 16:11</p> <p>testify 8:19 9:11</p> | <p>testimony 9:21</p> <p>thanked 11:18</p> <p>Thomas 10:12 12:4,10 15:8,17 16:11</p> <p>Tim 10:5</p> <p>time 5:22 7:15,17,19,20 8:6,13 10:24 11:14 13:8 14:5 17:22</p> <p>timely 6:22</p> <p>Timothy 10:24</p> <p>today 3:15,20 6:22 9:11, 12 12:5 14:12 15:20 17:8</p> <p>today's 8:22</p> <p>told 13:3</p> <p>transcribed 4:1</p> <p>Trent 3:12</p> <p>true 13:17</p> <p>truth 9:21,22</p> <p>turn 11:12</p> <p>Twentieth 3:24</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>uh-huh 14:16</p> <p>understand 3:14 10:16</p> <p>understanding 5:14 12:23</p> <p>unfile 11:19,21 12:24</p> <p>upheld 17:3</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>Vice 3:7</p> <p>violation 5:16</p> <p>voter 12:22 13:13</p> <p>voter's 11:25</p> <p>votes 7:14 8:5,12</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>website 11:21</p> <p>Wilson 3:8</p> <p>wrong 12:6</p> |
|---|--|---|--|

| | |
|-----------------|--|
| Y | |
| years 11:8 12:1 | |
| Z | |
| Zachary 3:9 | |