Indiana Election Commission
Minutes
February 19, 2016

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

Members Absent: None.

Staff Attending: Angela M. Nussmeyer, Co-Director of the Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Matthew Kochevar, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division

Others Attending: Mr. Dan Ball; Mr. Jim Bopp; Ms. Ginger Bradford; Mr. David Brooks; Mr. Richard Carter; Mr. Jeff Embry; Mr. Ryan E. Farrar; Mr. Michael E. Gerrish; Ms. Roxanna Hanford; Mr. Kevin Howell; Mr. Tom John; Mr. Cody Kendall; Mr. Bob Kern; Ms. Jodi Lohrman; Ms. Cynthia Lopez; Mr. Gerald Magliocca; Ms. Stephanie McGowan; Mr. Clay Patton; Mr. Martin Shields; Mr. Alexander Will.

1. Call to Order:

The Chair called the February 19, 2016 meeting of the Commission to order at 1:30 p.m. EST in Conference Center Room A, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana.

2. Transaction of Commission Business:

The Commission proceeded to transact the business set forth in the Transcript of Proceedings for this meeting prepared by Jenny L. Reeve of Connor Reporting. This document is incorporated by reference into these minutes, with the following corrections of scrivener’s errors:

Page 24, line 12, replace “certifies” with “certificates”.

Page 56, line 6, replace “Democrat’s” with “Democrats”.

Respectfully submitted,

J. Bradley King
Co-Director

Angela M. Nussmeyer
Co-Director
APPROVED:

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

INDIANA ELECTION COMMISSION HEARING

TRANSCRIPT OF PROCEEDING

February 19, 2016

Connor Reporting
111 Monument Circle, Suite 4350
Indianapolis, IN 46204
Phone: 317-236-6022
Fax: 317-236-6015
Toll Free: 800-554-3376
INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

Conducted on: Friday, February 19, 2016

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

A STENOGRAPHIC RECORD BY:

Jenny L. Reeve, CSR-RPR
Notary Public
Stenographic Reporter
APPEARANCES

INDIANA ELECTION COMMISSION:

Mr. Bryce Bennett - Chairman
Mr. Anthony Long - Vice Chairman
Ms. Suzannah Overholt - Commission Member
Mr. Zachary Klutz - Commission Member

INDIANA ELECTION DIVISION STAFF:

Mr. Dale Simmons - Co-Legal Counsel/
    Co-Director Pro Tempore
Ms. Angela Nussmeyer - Co-Director
Mr. Matthew Kochevar - Co-Legal Counsel
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CHAIRMAN BENNETT: I'd like to call to order this meeting of the Indiana Election Commission public session for Friday, February 19, 2016. The time is approximately 1:30 p.m., and I will call the meeting to order.

The following members of the Commission are present: Myself, Chairman Bryce Bennett; Vice-Chairman Anthony Long; Member Suzannah Wilson Overholt; and Member Zachary Klutz.

The Election Division staff with us here today, we have Co-Director, Angela Nussmeyer. And Co-Director Brad King is absent today, but we have General Co-Counsel Dale Simmons and Matthew Kochevar.

Our court reporter today is Jenny Reeve of Connor & Associates.

Before we begin today, I want to remind everyone to identify yourself before you speak, spell your name when identifying yourself, speak clearly, and do not speak at the same time as others.

This hearing today is being videotaped and electronically streamed over the Internet. For those of you who may be watching online, please bear with us if we experience any technical
difficulties. And for those of you who are here
today in person, rest assured that we will not
pause or delay these proceedings based on any
technical difficulties that might be experienced
in our electronic video system.

At this point I would ask for documentation
of compliance with the Open Door Law. And I
call upon Ms. Nussmeyer and Mr. Simmons to
confirm that the Commission meeting has been
properly noticed as required under the Open Door
Law.

MR. SIMMONS: Thank you. Mr. Chairman and
Members of the Commission, the meeting has been
properly noticed under the Open Door Law.
CHAIRMAN BENNETT: Thank you. Next will be
the approval of minutes. And I call upon
Ms. Nussmeyer and Mr. Simmons to present the
minutes of the January 5, 2016 Indiana Election
Commission meeting.

MR. SIMMONS: Thank you. Mr. Chairman,
Members of the Commission, copies of the
January 5, 2016 meeting minutes have been
reviewed by Ms. Nussmeyer and Mr. King,
Co-Directors, and have been signed off on. They
are presented for approval and signature today.
CHAIRMAN BENNETT: Is there a motion to approve these minutes as presented?

VICE CHAIRMAN LONG: So move.

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

COMMISSION MEMBER KLUTZ: Second.

CHAIRMAN BENNETT: Motion and a second.

Any discussion?

(No response.)

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

THE COMMISSION: Aye.

CHAIRMAN BENNETT: All opposed say nay.

(No response. Motion carried.)

CHAIRMAN BENNETT: The ayes have it, and the motion to approve the minutes is adopted.

The Commission has followed certain procedures for conducting candidate challenge hearings, and I move that the Commission use the following procedures today.

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

Unless there's objection, the documents
provided to the Commission by the Election
Division will be entered into the record of the
meeting.

After the Election Division staff completes
its presentation, the challenger will be
recognized first.

Except as when more than one person has
challenged the same candidate, the challenger or
challenger's representative may present their
case for no more than five minutes, unless the
Commission votes to allow additional time to the
presenter. That is the general rule.

In cases where more than one person has
challenged the same candidate, the Commission
will begin with the cause first listed on the
agenda, and ask that the challenger present
their case. The first challenger may present
their case for no more than five minutes, unless
the Commission votes to allow additional time
for the presenter.

Each subsequent challenger will be given a
maximum of two minutes to present new or
different evidence in the matter, but may not
repeat evidence previously presented, other than
to simply affirm that the previously presented
evidence is true.

However, with respect to the challenge to
Todd Young, we have multiple challenges and a
good number of documents already filed with the
Commission. We will discuss the time limits
when we get to that case on our agenda.

Commission members may ask questions during
the presentation. But the time spent answering
these questions will not be counted against the
presenter’s time.

The Election Division may signal the chair
when their presenter’s time is up. If the
presenter offers additional documents or other
physical evidence not previously received by the
Commission, then the document must be provided
to the Election Division, Mr. Simmons, to
preserve the record.

The candidate or the candidate’s authorized
representative will be recognized following the
last presentation by a challenger. The
candidate may present their case for the same
amount of time allotted to the challengers,
unless the Commission votes to allow additional
time for the candidate's presenter.

Following each presentation by a challenger, the candidate may cross-examine the challenger. Following the presentation by a candidate, a challenger may cross-examine the candidate. The cross-examination in all cases is limited to two minutes.

Unless the Commission votes to allow additional time, the cross-examination must be limited to questions regarding statements made by the presenter.

Is there a second to my motion for the Commission to adopt these procedures for today's candidates-challenged hearings?

VICE CHAIRMAN LONG: I'll second it, and then I would like to ask a question.

CHAIRMAN BENNETT: Okay. We have a motion, and we have a second.

Do we have discussion?

VICE CHAIRMAN LONG: I didn't hear a section in there that the Commission can ask questions, or did I miss that?

CHAIRMAN BENNETT: Yes. Commission members may ask questions during the presentation.

VICE CHAIRMAN LONG: I'm sorry. I did not
hear that.

CHAIRMAN BENNETT: Any further discussion?

(No response.)

CHAIRMAN BENNETT: All in favor of adopting the motion say aye.

THE COMMISSION: Aye.

CHAIRMAN BENNETT: All opposed say nay.

(No response. Motion carried.)

CHAIRMAN BENNETT: The ayes have it.

Motion carries.

Next we will move to the administration of the oath for individuals testifying before the Commission. Everyone present who plans to testify before the Indiana Election Commission regarding any matter here today, please stand for the administration of the oath.

MR. SIMMONS: Please raise your right hand and say "I do" after the administration of the oath.

(At this time, the oath is administered.)

CHAIRMAN BENNETT: We will now begin consideration of candidates. I remind everyone to please identify yourself before you begin speaking.
IN THE MATTER OF
 THE CHALLENGE TO MARCO RUBIO

CHAIRMAN BENNETT: We will begin with consideration of Cause No. 2016-2, In the Matter of the Challenge to Marco Rubio, Candidate for the Republican Party Nomination for President of the United States.

I will now recognize staff for a description of what is in the binders.

MR. SIMMONS: Mr. Chairman, Members of the Commission, under the Marco Rubio tab of your binder, we have placed the challenge filed by Richard Carter, the appearance of Tom John for Marco Rubio, and a brief filed by Mr. Rubio's attorney, Tom John.

Also is included proof of notice of the meeting. And we have an additional proof of notice that we printed out this morning, if that issue comes up. We didn’t include it in the packet. We were including that as we went along.

CHAIRMAN BENNETT: Very well. I now recognize Richard Carter or his representative for presentation.

MR. CARTER: I am Richard Carter from

I have filed a CAN-1 form per the laws of the State of Indiana challenging that Marco Rubio does not qualify because he is not a natural-born citizen.

And I affirm the information I have sent to the Commission is true and to the best of my belief in what I can find on it. And I have one other document to provide you for consideration whenever you request it.

I would like to start off today with the comment on the Indianapolis Star, which said that the Cruz campaign was -- the Election Board was dismissed on there. I'd like to point out that Illinois has a Commission that has absolutely no stated rules as to what qualifies for a candidate to run for president in the State of Illinois.

And under Rubio, I'd like to say they were defended in Florida. Florida law has absolutely no law and no reference in their constitution to any requirements for a candidate for the president or vice president of the United States. Indiana does.
So the only other thing I can do here is say that I stand behind what I sent. And I would like to remind people that a natural-born citizen cannot be determined by a political body, nor the U.S. Supreme Court. Our Constitution was based on the Declaration of Independence, which stated that our republic will be under the laws of nature and the nature of God, God's nature.

So therefore, all that mankind gets into this cannot alleviate the fact of the natural-born citizen as known in the time of our Founding Fathers.

If there's no questions, that's my statement, pretty much.

CHAIRMAN BENNETT: Thank you. Did you have a document you wanted to admit into the record?

MR. CARTER: Yes, I certainly do. I'll pass it down.

VICE CHAIRMAN LONG: He'll see that they get distributed.

CHAIRMAN BENNETT: So you've submitted a document.

MR. JOHN: Might I get a copy?

MR. CARTER: Sorry about that.
CHAIRMAN BENNETT: Do you have copies for the other Commissioners?

MR. CARTER: Yes. Thank you.

(Exhibit 1-Carter was marked for identification.)

CHAIRMAN BENNETT: You're done with your presentation; is that correct?

MR. CARTER: Yes, I am, because I think my documentation that I sent you previously, plus this latest, confirms that.

Well, I do have one other statement, yes. Under Indiana law, it is up to the government to have the candidates prove their situation. In other words, I do not have to prove they are not a natural-born citizen. The government is responsible to prove that they are.

And just like when I come to get a driver's license in the State of Indiana, I had to have proof of citizenship, birth, and several other documents. I think being president and vice president and commander in chief of our country is a lot more important than a driver's license. And Indiana law is very specific as to the requirements for president and vice president.

CHAIRMAN BENNETT: Thank you. I now
recognize Tom John, an attorney who has filed a
written appearance on behalf of Marco Rubio.

    MR. JOHN: Do you have a preference one way
or the other (indicating)?

    CHAIRMAN BENNETT: As long as you speak
directly into the microphone, you can do it from
where you like.

    MR. JOHN: I'll just sit, if that's okay.

    Mr. Commissioner, Mr. Vice-Commissioner,
Commission Members, thank you. I'm Tom John
from Ice Miller, LLP, appearing on behalf of
Senator Marco Rubio, who is running for United
States president.

    This is a pretty simple matter, in my mind,
simply because we've been here before. Based on
an Indiana Court of Appeals decision from 2009,
this specific rule and this specific issue has
been addressed.

    And that is this: Marco Rubio, in his
filings, has affirmed that he is a citizen of
the United States, and he was born -- and it's
uncontroverted -- that he was born in the State
of Florida.

    Based on long history going back hundreds
of years of common law, back to actually England
and then the United States through the
Constitution, and the drafting of Article II,
Section 1, it's been unequivocated that, in
fact, when someone is born to this soil, that
they are, in fact, a United States citizen,
regardless of the citizenship of their parents.

Article II, Section 1 states, "No person
except a natural-born citizen or a citizen of
the United States, at the time of the adoption
of the Constitution, shall be eligible for the
office of president." That has been many times
construed by the United States Supreme Court,
going back to the mid-1800s.

And, in fact, in the Wong Kim Ark case, in
1852 -- or 1874, the Court looked at this
specific issue. And the Court was reviewing
whether or not a child of two Chinese parents
who were not citizens of the United States, but
had been born in the United States, left the
country, were presuming to come back to the
country, and, in fact, were denied entry as not
being a citizen of the United States.

The Court found that the fundamental rule
of citizenship by birth within the dominion of
the United States, notwithstanding alienage of
parents, has been affirmed since the adoption of
the Fourteenth Amendment of this Constitution.
That is pretty clear in and of itself.
But then in 2008, President Obama's
citizenship was challenged before the Indiana
Court of Appeals. The Indiana Court of Appeals
looked at this issue in-depth and said, quote,
"Nothing is better settled at the common law
than the doctrine that the children, even of
aliens, born in a country while the parents are
resident there under the protection of the
government, and owing a temporary allegiance
thereto, are subjects by birth." That seems
pretty clear.
But the Court went on in its holding and
stated, "Based upon the language of Article II,
Section 1, clause 4, and the guidance provided
by Wong Kim Ark, we conclude that persons born
within the borders of the United States are
natural-born citizens for Article II, Section 1
purposes, regardless of the citizenship of their
parents."
This challenge that was put forth by
Mr. Carter clearly is relying not upon where
Marco Rubio was born, because that has not been
disputed, but simply on whether or not there was
ture citizenship running through the lineage of
his parents.

And that is not the issue here. It is well
settled law in our state. It is well settled
law in our country.

And, in fact, if this interpretation were
to be given by this Commission, six of our
presidents would not have actually been eligible
to have served, inferring the last 150 years
having been mistaken at various times, including
our current president.

But, in fact, I would argue that's not the
case, and that this case should be dismissed.
On its face, it states that Marco Rubio was born
in Florida, and thus, under clear Indiana law,
should not proceed, or, in the alternative, this
Commission should deny that challenge to Marco
Rubio, and he should remain on the ballot.

Thank you. I'll take any questions.

CHAIRMAN BENNETT: Thank you. So we'll
close the public portion of the hearing, and
take questions from the Commission.

Is there anything else? Do you wish to
cross-examine?
MR. CARTER: I would like to remind the person here that the Fourteenth Amendment only made Kim Wong Ark [sic] a citizen. It did not make him a natural-born citizen in any way, shape, or form. Yes, and they were right in approving him as a citizen.

But in the Fourteenth Amendment, did it mention natural-born citizen? In fact, they went to very big trouble -- you'll notice that the Fourteenth Amendment did not address the natural-born citizenship for the qualifications for a president. They very definitely left that out. So the Fourteenth Amendment here is not a qualified item to make a natural-born citizen.

The other item, the Appeals Court -- I don't know exactly which one it was. I know that there were nine states that filed lawsuits. All of them but one were rejected on a technicality, or a term that they -- no standing. That did not settle anything. That was a judge, circuit court judges passing the buck, trying to find loopholes to not have to rule on it.

The State of New Jersey did allow an appeal to go to the United States Supreme Court. And
that was mishandled. I won't say it was
unlawful, but it was mishandled by the clerk of
courts for Justice Souter to the point --

CHAIRMAN BENNETT: You have 30 seconds
left.

MR. CARTER: That's in my paperwork.
So the ones that he's talked to have no
bearing on natural-born citizen. There's no
mention of it, and it is not approved by any
court. Thank you.

CHAIRMAN BENNETT: Thank you. Any
rebuttal?

MR. JOHN: I guess I will simply reiterate
the language from the McCain case, wherein it
said that, "We conclude that persons born within
the borders of the United States are
natural-born citizens for Article II, Section 1
purposes, regardless of citizenship of their
parents." That's Indiana precedent, which seems
directly on point, and, at the end of the day,
should control. Thank you.

CHAIRMAN BENNETT: Thank you. The public
hearing, admission of evidence and testimony is
concluded.

Questions from the Commissioners?
COMMISSION MEMBER OVERHOLT: Mr. John, are you now withdrawing your argument regarding the subject matter jurisdiction to this Commission?

MR. JOHN: No. I remain on the briefs on all the arguments I made. But I had five minutes, and I can't talk about everything. And this is the most direct point concerning the whole thing.

COMMISSION MEMBER OVERHOLT: Oh, because I would have thought subject matter jurisdiction was the most direct point and the more basic argument, so I just wanted to clarify.

MR. JOHN: I've not waived any arguments that I've made in the briefs for purposes of the Commission.

COMMISSION MEMBER OVERHOLT: Thank you.

CHAIRMAN BENNETT: Any further questions?

VICE CHAIRMAN LONG: I just want to make sure we're all on the same page factually.

Senator Rubio's parents were of Cuban descent?

MR. JOHN: Right.

VICE CHAIRMAN LONG: And they came to the United States and were residents of the United States lawfully?

MR. JOHN: Correct.
VICE CHAIRMAN LONG: Is that disputed?
MR. CARTER: No.
VICE CHAIRMAN LONG: Okay. And he was born here in the United States?
MR. JOHN: Correct.
MR. CARTER: May I ask one more question?
CHAIRMAN BENNETT: One question.
MR. CARTER: One question. Has the person against my challenge provided the State of Indiana any proof of the birth certificate of either of those candidates? Because I firmly believe that those birth certifies will state a citizen of Cuba.
CHAIRMAN BENNETT: Mr. John, you may respond, if you'd like, or not.
MR. JOHN: I will simply say that Senator Rubio affirmed that he has met all the requirements of Article II, Section 1. So that is proof in and of itself, absent some other proof.
CHAIRMAN BENNETT: Anything further from the Commission on those questions?
(No response.)
CHAIRMAN BENNETT: Hearing none, I will entertain a motion.
VICE CHAIRMAN LONG: My question is, comments? Or make the motion, and then comments? In which order do you want me to proceed, Mr. Chairman?

CHAIRMAN BENNETT: Well, go ahead with your comments first, if you like.

VICE CHAIRMAN LONG: As Ms. Overholt said, I have given some serious thought to the subject matter jurisdiction part of your argument. And I had almost convinced myself that maybe that was a mainstay.

But I came down to the point of saying, at least reconciling in my mind, that somebody's got to make a decision at this level. And we're charged with enforcing the laws of the State of Indiana. The State of Indiana charges us with responsibility in dealing with challenges.

And as we're going to deal with another challenge in a few minutes that is somewhat similar, but that does have some decided differences, I think we do have subject matter. And I'm convinced that we should go forward on that point.

That's where I come from. That's the only comment that I have, pre-motion, anyway.
CHAIRMAN BENNETT: Well, I would ask for a
motion, then, on either issue, I suppose.

VICE CHAIRMAN LONG: I would move that the
challenge be denied.

COMMISSION MEMBER KLUTZ: Second.

CHAIRMAN BENNETT: We have a motion and a
second. Is there any further discussion?

VICE CHAIRMAN LONG: One of the discussions
which I think is significant here is that this
has been one of the most interesting research
projects I've been on in a few years. And
obviously, I've done this for a long time.

I agree with Mr. John's comment that we
have to go back to English common law, because
that's where our Constitution evolves. That was
the next step.

And I'm not overly impressed with arguments
that I've read by some treatises that
legislative enactments by Congress that might
naturalize someone affect that. I guess that
would make me an originalist in my
interpretation of the Constitution. And I say
that in all deference to late Justice Scalia.

But those folks were here lawfully under
the jurisdiction and supervision of the
government, our government. And I think that's a significant thing.

As I read the common law from England, that was what the common law was in England. If a foreign citizen were there and subject to the jurisdiction of the country, and a child was born, that child was a citizen of that country. And I think that there's a big difference between a natural-born citizen and a naturalized citizen.

And my position is that in this case, I don't think that a legislative enactment, absent an amendment to the Constitution, that's the only way that would be changed. But I don't think the legislative enactment can broaden the definition of what a natural-born citizen is.

And I think, also, the Indiana courts have ruled that, at least as it relates to our laws, that it complies with the Constitution of the United States and is enough authority for us to approve Senator Rubio's position on the ballot.

CHAIRMAN BENNETT: We have a motion and a second. All in favor of the motion to deny say aye.

THE COMMISSION: Aye.
CHAIRMAN BENNETT: All opposed say nay.
(No response. Motion carried.)
CHAIRMAN BENNETT: The ayes have it. The motion is denied, and the Election Division is directed to include the name of Marco Rubio on the certified list of candidates and printed on the ballot.
Thank you for your time.
MR. JOHN: Thank you.
VICE CHAIRMAN LONG: Mr. Carter, thank you for taking the time to do this. As a citizen, we appreciate you coming forward.
And Mr. John, we appreciate your presence here again.
MR. JOHN: Thank you. It was a pleasure to appear.

IN THE MATTER OF
THE CHALLENGE TO TED CRUZ
CHAIRMAN BENNETT: The next item on the agenda is the Ted Cruz challenge. This is the consideration of Cause Nos. 2016-3 and 2016-4, which have been filed In the Matter of the Challenge to Ted Cruz, Candidate for the Republican Party Nomination for President of the United States.
I will recognize the staff for a description of what is in our binders.

MR. SIMMONS: Mr. Chairman and Members of the Commission, under the Ted Cruz tab of your binder, we have placed two challenges, one filed by Richard Carter under Cause No. 2016-3, and one filed by Bob Kern under Cause No. 2016-4.

Behind the red tape of this tab is the appearance of Alexander P. Will on behalf of Ted Cruz. And there's a brief, also in your packet, filed by Mr. Will.

CHAIRMAN BENNETT: Thank you. I would recognize the first challenger listed on our agenda, Richard Carter, for presentation.

MR. CARTER: As I said earlier, you have the same information, except under Ted Cruz.

Ted Cruz was born to Cuban nationals in Calgary, Canada, and had a birth mother as a citizen of the United States, according to the documentation.

But you cannot be a natural-born citizen due to one fact there. And that fact is until 1934, no citizenship was passed down from the wives of -- or the mothers of the children. The mothers of children being given citizenship,
like to Ted Cruz, came about through laws of the land, not constitutional amendments, and so forth, not even the Fourteenth Amendment.

Therefore, he definitely cannot be a natural-born citizen.

And No. 2, I do not believe that this committee should rule until they have a valid copy, certified by the candidates, that yes, they are citizens of the United States on their birth certificate. Thank you.

CHAIRMAN BENNETT: Thank you. I would now recognize Bob Kern for presentation.

I would ask that you not repeat what has already been presented.

MR. KERN: Good afternoon, ladies and gentlemen. My name is Bob Kern, B-O-B, K-E-R-N. I'm a resident of Indianapolis, Indiana, and I am challenging Ted Cruz.

I would like to approach. I don't have many -- I didn't realize how many people were going to be on the panel. I have six birth certificates because I have copies that I would like to render to you.

CHAIRMAN BENNETT: You may approach.

MR. KERN: Thank you.
(Exhibit 1-Kern was marked for identification.)

MR. KERN: As you can see, that's the birth certificate of Ted Cruz. Well, actually, it's Rafael. He has a different name, Rafael. And he says that his name is Ted Cruz on the birth certificate.

Like the gentleman said, you have to be a naturalized-born [sic] citizen in the United States to be president.

And we also, here in Indiana, have a law that was created back in 1998, also stating that whatever name appears on the ballot needs to appear on your birth certificate.

Nowhere on that birth certificate does it say Ted Cruz. Nowhere. It says Rafael. It does not say Ted Cruz anywhere on the birth certificate.

And by Indiana state law, your own law that was made law in 1998, we have to follow it. The Constitution says that you have to be born a naturalized [sic] citizen of the United States.

This came forth when -- before it was even law, I was challenged myself to ballot access, winning the ballot in 1998. They had said that
because my name did not appear as I had ran
under, that I would have to have been removed
from the ballot, even though it was not law.
But yet they still removed me.
And then I had to go to court, fighting the
challenge to get back on the ballot, proving who
I was by showing my birth certificate. And I am
a naturalized [sic] born citizen here in the
United States.
Where Rubio was born in Florida, is what
you guys were stating, but clearly, the birth
certificate clearly states where Mr. Cruz was
born, in Calgary. It doesn't say anywhere else,
and nowhere in the Constitution does it say that
you can live in another country --
CHAIRMAN BENNETT: Ninety seconds left.
MR. KERN: -- and run for president.
We have to protect the Constitution. We
have to protect Indiana law. There's a reason
why we made Indiana law.
And if you're going to hold me to it and
others accountable to it, you have to hold Ted
Cruz to it as well, because his name does not
appear on his birth certificate as it appears on
the ballot here in Indiana.
So I ask that you remove his name from the Indiana ballot.

CHAIRMAN BENNETT: Thank you. I would now recognize Alexander Will, who has entered his written appearance as attorney for the candidate, Ted Cruz.

MR. WILL: Thank you. Good afternoon. As stated, my name is Alexander Will, last name spelled W-I-L-L. I represent Senator Ted Cruz, candidate for president of the United States. I will be brief.

I think that a lot of the discussion here has addressed many of the issues, many of the same issues that are presented in the challenges to Senator Cruz.

I will start by picking up on a point that was raised earlier, which is the issue of jurisdiction. In fact, we have the same argument in our brief that we've submitted.

In particular, we'd like to point out that both Article I, Section 2, and the Fourteenth Amendment, control how presidents are eligible, and how that eligibility is determined by Congress.

Because the manner and approach of that
eligibility determination is constitutionally
to be controlled by Congress, under the political
question doctrine, we believe that issue is not
jurisdictionally before this Commission, before
Indiana courts. Instead, it lies solely before
the U.S. Congress.

The argument is there in the materials, and
I think it was raised by at least two of the
Commissioners this afternoon, but we wanted to
address it.

Second, with regard to even if the
Commission does approach the merits of this
determination, we believe that the natural-born
citizen language is clear both in plain meaning
and in historical interpretation and judicial
interpretation and congressional interpretation,
that a citizen that is born of a U.S. citizen,
even if that birth takes place abroad, is still
a U.S. citizen eligible for the presidency of
the United States.

When I say "plain language" and "plain
ordinary meaning," I want to make clear that a
natural-born citizen should be distinguished --
I think the term "naturalized" was thrown
around -- to say natural-born citizen, under the
plain and ordinary meaning, which is the course
of interpretation here in Indiana courts.

Plain and ordinary meaning would be someone
who is natural and a citizen upon birth. That
says nothing for the location of birth, and it
says everything for whether that person was a
citizen at the time of their birth. And that's
the case with Senator Cruz.

Additionally, with regard to historical
interpretation, our Founding Fathers had
discussions about what the natural-born citizen
requirement meant, and I don't think they could
fathom a situation where an American citizen
abroad, particularly those that might have been
serving their country abroad -- so, for example,
as discussed in our text, somebody like John
Jay, who fathered three children and who
discussed this particular provision, couldn't
fathom the idea that his children would not be
eligible for the presidency just because they
were born abroad while he was doing his duty.

So I think that the historical context of
that provision, as well, supports our position.

With regard to case law and congressional
intent, almost universally, cases have upheld
this interpretation and found that Article I --
or Article II, Section 1, discussion of
natural-born citizen, means natural born at the
time of birth, and not as to location.

So again, coming back to our point here,
both the case law, and particularly from 2008,
around Senator McCain's candidacy for president,
this issue was brought up again because he was
born in the Panama Canal Zone to U.S. citizens
while they were off doing their duty as U.S.
citizens.

And so I think this issue has been decided
in the past. I think that the historical and
judicial context of this are clear.

And to the extent that Congress weighed in
on Senator McCain's candidacy in 2008, they have
expressed their intent on that as well. And I
don't think there's any support for a different
interpretation.

With that, I will rest my brief and take
any questions that you have. Thank you.

CHAIRMAN BENNETT: Thank you. No
cross-examination having been requested by
either party, we will close the public hearing
portion.
MR. KERN: I'd like to question him.

CHAIRMAN BENNETT: Okay. You may.

MR. KERN: I think you just stated that -- if I'm correct; if I'm incorrect I apologize -- that a child that comes here doesn't have -- really, you know, it's not by choice, that they're just here, or they're not -- you know, it's not their fault.

But it is their fault if they have to be responsible. And everybody has to be responsible. If there's things that you want to do in life that keep you from doing the things that you want to do in life, you have to follow the rules.

And the rules are that you get your name changed. You go through a court system, and you get your name changed.

I also want to approach, again, one more time, to give you a copy of the mother's birth certificate and the father's birth certificate, which clearly is different from the birth certificate that I gave you the first time.

(Exhibit 2-Kern was marked for identification.)

MR. WILL: Mr. Chairman, could I also
request copies of this as well? I didn't see a copy of the initial one.

CHAIRMAN BENNETT: Yes, you have a copy in front of you now.

MR. WILL: I don't have the new exhibit.

MR. KERN: I'll give it to him.

VICE CHAIRMAN LONG: I think we have an additional one up here.

MR. WILL: Thank you, sir.

MR. KERN: So on the birth certificates, the names look pretty different. I don't see anywhere where the name Cruz is on either parent's name.

And I think, when you come into this world, you have to have the name Cruz somewhere from either the mother or the father. And neither one of them have the name Cruz as a last name.

CHAIRMAN BENNETT: Your two minutes are up.

Thank you.

MR. WILL: Was there a question presented there? I understood it was cross-examination.

CHAIRMAN BENNETT: Well, I think it was argument. Do you have any rebuttal argument?

MR. WILL: Just very briefly. To the extent that the issue was raised that the name
1 appeared in the manner that it appeared on the
2 ballot, in that manner, I don't think that was
3 raised in the challenge.
4
5 And I would state that certainly it's
6 outside the scope of the challenge. We weren't
7 prepared to address that today. And I guess
8 it's not -- it hasn't been previously addressed
9 or approached.
10
11 In any event, it should be rejected by this
12 Commission.
13
14 VICE CHAIRMAN LONG: The issue,
15 Mr. Chairman, I think is resolved in the
16 statute.
17
18 Mr. Kern, according to Indiana Code
19 3-5-7-5, talks about the designation of names on
20 the ballot. And I well remember his challenge a
21 few years ago using a different name than he's
22 using here today.
23
24 And I think, had he read a little further,
25 the requirements of this section, which would be
26 Indiana Code 3-5-7, do not apply to candidates
27 in a presidential primary election.
28
29 So I think that question troubled me also.
30 And we did some research preparing for this.
31 And I think, at least as far as my
interpretation, I submitted it to our counsel for confirming.

And I thank our counsel down here, Matt, for finding that section for me, because I raised that question myself.

CHAIRMAN BENNETT: Do you have anything to add to that?

MR. SIMMONS: Yes. Specifically, 3-5-7-5 is the applicable section in that code. And I'm not sure what the argument is, but it's with respect to use of a nickname. And clearly, a nickname can be used as first designation on the ballot, if you are commonly known by that.

VICE CHAIRMAN LONG: It's also my understanding that the filing that he made was under the name of Rafael Edward Cruz. Am I correct?

MS. NUSSMEYER: Correct.

VICE CHAIRMAN LONG: So the actual filing for president of the candidate's declaration was in his name. The only place we've got Ted, I think, is on this challenge.

MS. NUSSMEYER: It's his ballot name. I can pull that.

VICE CHAIRMAN LONG: But I asked that same
question, and I was told that he was -- it was
in his given name.

CHAIRMAN BENNETT: All right. All parties
having made their presentation, the public
hearing portion is now closed.

And I would ask the Commission if there's
any further discussion.

VICE CHAIRMAN LONG: Give Mr. Kern --

MS. NUSSMEYER: Sure.

VICE CHAIRMAN LONG: Just let him look at
it. This is the actual filing.

MR. KERN: Well, I have a question about
that law. Is that federal law?
You just said something about the president
-- the president -- that if I challenge that,
that it doesn't apply to the president.

But yet it applies to every American
citizen under the law, myself included, when I
ran for U.S. Congress. And that was my name
when I was born, was the name Kern.

But yet I was taken off the ballot, due to
the fact that even though it wasn't the law, for
you guys to tick me off about, but now it is the
law, to uphold the law here in Indiana that you
guys did create, especially because of myself --
CHAIRMAN BENNETT: Mr. Kern, you're --

MR. KERN: So my question --

CHAIRMAN BENNETT: -- out of order at this point.

MR. KERN: -- to you is --

CHAIRMAN BENNETT: The public portion of the hearing is concluded, and --

MR. KERN: Well, my question to you is -- and I'd like an answer.

CHAIRMAN BENNETT: Please do not talk while I'm speaking.

This is not about your election, your experience. You've made your case.

MR. KERN: I understand.

CHAIRMAN BENNETT: I'll ask you to sit down and let the Commission do its work.

MR. KERN: Okay. Well, I want you to show me under the law where it says that a president has more rights than -- a presidential candidate has more rights than another federal candidate or any other candidate in the State of Indiana.

CHAIRMAN BENNETT: Mr. Kern, I'm asking you to sit down, please. Sit down.

MR. KERN: Thank you.

CHAIRMAN BENNETT: Is there a motion?
COMMISSION MEMBER KLUTZ: Thank you for the presentations.

After hearing the evidence, I do not think that either petitioner met their burden to show that Ted Cruz is not a natural-born citizen, and I move that both petitions be denied.

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

I'll second the motion for purposes of discussion.

Is there any discussion?

VICE CHAIRMAN LONG: Yes, sir. First of all, the exhibit of the birth certificate of the mother I wouldn't expect to have the name Cruz on it since she didn't become a Cruz until she married Rafael Cruz, the father. So her name you gave us, Eleanor -- and I can't pronounce the last name. The mother's given name is Eleanor, and on the birth certificate.

I'll tell you this is the most interesting case that I've had in all my years, and they've been several, on this Commission. It's markedly different than the Marco Rubio case.

I'm concerned, and what troubles me the most is that nobody addressed the fact that he
was -- I think he was born in Alberta. That's not disputed.

I'm not for sure what his father's citizenship was. I've tried my best to look into this. But from the evidence that we've had, nobody's established what -- and I'm going to call him -- he goes by the name Rafael. If I say Rafael from here on, it means Ted Cruz's dad. It's my understanding he was a Canadian citizen and had become such more than a year before Ted was born.

His mother appears to be a citizen of the United States by her birth. I don't think that's disputed.

But my trouble is, it's my understanding -- and I think we need to have some explanation of what Canadian law would have been. It's my understanding, and this is certainly not evidentiary, but at that point in time, Canada did not recognize dual citizenship. And if a person, foreign born, was married to a Canadian citizen for a year, they became Canadian citizens.

That being the case, I question as to whether or not Ted Cruz's mother was a citizen
of the United States.

It's also my understanding that expatriates, Americans living abroad, when they have children on foreign soil, there's some documentation that must be filed to declare that citizenship.

If all of that is true, and Senator Cruz has renounced his Canadian citizenship, I'm not for sure he's a citizen of the United States, period. But he's affirmed under penalties of perjury that he is. And that's not for us to decide at this juncture.

Mr. Will, you made a great presentation. I read your material. I think born on the soil is what it meant at the time the Constitution was written, because at the time they were forming the Constitution, we were forming the country of the United States. And so there wouldn't be any citizens until you form a country.

And then, once you form the country, the folks that were there then would set the test for citizenship.

And then we'll see some corollary when they look at the age requirement. We have a case coming up on that later.
But back at that time when they passed
this, nobody would have been a resident of the
United States for the requisite number of years
in order to qualify for this because the country
just came into existence.

I am really, really troubled. I mean I
would rather err on the side of ballot
placement, on ballot -- on being on it as much
as anybody. But it troubles me deeply that
nobody seems to have provided us evidence as to
what the facts of this case are that I think are
germene.

I think in English common law, if you are
on the service of the country of England outside
of there as a diplomat, or whatever, and their
children were born, they were natural-born
citizens. There wasn't any question that was a
common law. And everything I've read supports
that.

I think that fully addresses when Senator
McCain's folks were down in Panama. I think his
dad was in the military. But they were clearly
on the business of the United States, and
there's no question in my mind regarding him
being a natural-born citizen.
Under Indiana judicial authority, a person born here of foreign citizens, born on the soil here, can be accepted as a natural-born citizen. And I think we have to follow the law.

But we do not have any precedent that's been submitted that satisfies me that Senator Cruz -- his father, who I understood was a Canadian citizen, and he was married to the mother for more than a year, and that made her a Canadian citizen. And I read somewhere that she was a registered voter in that country. And that really is troublesome to me.

I wish that there was a way that we could transfer this directly to the Supreme Court and let them rule, because I don't think that it's going to be resolved until the Supreme Court addresses it.

And as I sit here right now -- and I'm filibustering, but I'm two minutes away from a vote, or less, and I'm not for sure how I'm going to vote, because I'm so troubled with the fact that I just have to say that I don't think either of the challengers nor the candidate has afforded me anything that would allow me to say that he is a citizen, or perhaps, maybe, that he
is not.

And that's where I am on it.

CHAIRMAN BENNETT: Thank you, Commissioner Long. I appreciate all of your very thoughtful and well-researched comments.

I think what we have here is insufficient evidence in the record which would indicate that Mr. Cruz is not eligible for the presidency, based on citizenship. As you pointed out, we do have an affirmation of citizenship, and a dearth of evidence that his mother was not a citizen of the United States when he was born.

It seems to me that the naturalization laws passed by Congress answered this question based on the facts we have before us, and that Senator Cruz is a natural-born citizen as it pertains to the laws of Indiana and the United States.

So with that, I would call for a vote. All in favor of the motion on the table to deny the challenge say aye.

COMMISSION MEMBER KLUTZ: Aye.

VICE CHAIRMAN LONG: Aye.

CHAIRMAN BENNETT: Aye.

All opposed say nay.

COMMISSION MEMBER OVERHOLT: Nay.
CHAIRMAN BENNETT: 3-1, the ayes have it.

The motion is denied, and the Election Division is directed to include the name of Mr. Cruz on the certified list of candidates, and on the ballot. Thank you all.

IN THE MATTER OF

THE CHALLENGE TO TODD YOUNG

CHAIRMAN BENNETT: Next up we have the Todd Young challenge. This next proceeding will be in consideration of Cause Nos. 2016-5, 2016-12, and 2016-13, which have been filed In the Matter of the Challenge to Todd Young, Candidate for the Republican Party Nomination for United States Senator.

I will take a moment and let everyone get settled before we proceed.

(Discussion off the record.)

CHAIRMAN BENNETT: If everybody is settled, we'll now talk about how we're going to proceed here.

As I mentioned at the outset, for this challenge there are multiple challenges and a good number of documents that have already been filed with the Commission. If we're going to be
asked to review this documentation and other
documentation here today, we may need additional
time.

I move that we give the challengers
10 minutes each to present their case, with
20 minutes to the candidate in response, and
that each side get 10 minutes combined in
rebuttal, which would be 5 minutes each for the
two challengers, and that each side get
10 minutes in surrebuttal, if necessary.

Is there a second to this motion?
VICE CHAIRMAN LONG: I'll second it.
CHAIRMAN BENNETT: We have a motion and a
second. Any discussion?
(No response.)
CHAIRMAN BENNETT: Hearing none, all in
favor of that motion, please say aye.
THE COMMISSION: Aye.
CHAIRMAN BENNETT: All opposed, say nay.
(No response. Motion carried.)
CHAIRMAN BENNETT: They ayes have it.

Motion carried.
The attorney for Todd Young has filed a
motion to consolidate these hearings under three
separate cause numbers with respect to these
challenges. I'd like to give both sides an opportunity to address this motion.

At this time, does the representative of Todd Young, the moving party, wish to speak to the issue of consolidation?

MR. BROOKS: Sure, Mr. Chairman. My name is David Brooks, of Brooks Koch & Sorg. And as you mentioned, I'm representing the Todd Young campaign.

The reason for the motion to consolidate is really, as scintillating as this will be, to keep you from hearing this -- the same evidence on multiple fronts.

I know that Mr. Bopp, on behalf of the Stutzman campaign, doesn't want to consolidate. But he didn't mention the fact that there are three separate cause numbers. 2016-5 is actually essentially the same complaint as the Stutzman campaign.

So from my point of view, I do agree with Mr. Bopp that we should figure out this situation about the certified signatures, and then worry about proceeding with any additions to the number that I might have, or the decertifications that the Democrat party appears
to be advocating.

And it would seem to me that -- I mean here's what I want to know. And we can try to simplify this. I need to know how they counted them, who they are, and what data they looked at, because as soon as I know that, I'm willing to proceed and tell you why there are others that were properly certified that they're not counting.

But right now, I don't have any idea. So I assume that they're going to provide a list of names so that we know who they counted, and move forward from there.

I will, however, just to let the Commission know, be requesting that the Commission dismiss or deny all three challenges based on some state law, which I can discuss later, some very consistent precedents from this body, the Commission, without having to get into that.

And it's basically -- there's only one number that's been certified by election officials, and that's 501. And in the past -- and again, I don't want to get too far ahead of myself here. Once that certified number is known, this Commission has consistently ruled
that the candidates don't have a responsibility
to go back and try to figure out whether the
voter registration people performed all their
functions well; that once that single
certification number is known, that is enough.
And since 501 is beyond 500, the challenges
should be dismissed straightaway.

So that's just a little preview of where
I'm going. And I want to do that before we get
into the other arguments about who's been
certified and who's not been certified.

CHAIRMAN BENNETT: Good. Thank you.

Mr. Bopp, I want to hear your arguments on
this consolidation issue, but I'll give you a
preview of my thoughts in advance.

It seems to me that one of your best points
is that we could somehow moot out part of this
argument here today and go home early if we took
the thing that you'd like to take first.

My concern about that is, we're going to
have to have a record for all of the challenges
anyway. And if this thing would go up on
appeal, then they would not have a record,
unless you hear their case here today.

So I'm not sure that what I see as your
strongest, most compelling argument is really a
good one.

But with that, I'll let you make your case.

MR. BOPP: Well, thank you for that. I've
found that preserving judicial economy is always
a great argument to make to a fact-finder.

But our challenge is, we think, based on
the law and the past practices of this
Commission in conformance with the law, which is
your -- your job is to examine whether or not,
when the declaration of candidacy was filed,
whether or not that declaration of candidacy met
the legal requirements.

The legal requirements are that there would
be petitions filed with 500 certified signatures
per each congressional district. And so it's a
simple matter of counting.

The petitions that have been filed with the
Commission before the deadline, it's a simple
matter of counting how many -- and in this case,
our challenge is to the first congressional
district -- and that that, under the law,
resolves the matter.

Now, the Democrats have added an additional
challenge, which is -- which would be to
challenge the certification made by the county
voter registration officials. We believe that
those certifications are final, and so we are
actually adverse to them on certain aspects of
this case.

    But I think -- I guess my final point would
be, I think the Commission should pursue this in
an orderly way so that each of these challenges,
as they should be, I think, under the law
presented, can be understood to be dealt with by
the Commission.

    So the first one would be ours, in my view,
which is -- and we are prepared to have somebody
testify who has examined the original petitions
and counted the petitions in terms of the number
of certified signatures.

    And then at that point, I would think it
would be -- sorry -- it would be the Young
campaign's responsibility to rebut that, or
whatever that case may be.

    Now, of course, our argument is also a
legal one there, is that they have not filed a
CAN-1 challenge to the failure of certification,
or whatever they may be wanting to present. So
I'm really not sure, under the law, whether or
not they can do that.

And I think only at that point, if

there's -- if there is over -- if there is 500

or more determined by this Commission to have

been filed with the candidacy, then we would go

to the Democrat's challenge, which we do not

join in, and actually think under the law is not

sustainable.

But in any event, they're entitled to their
day in court.

CHAIRMAN BENNETT: Thank you.

Mr. Brooks, any rebuttal?

MR. BROOKS: Well, the notion that somehow

we should have filed a challenge to our own 501

signatures is a little mysterious to me.

So that's all I have to say about that.

CHAIRMAN BENNETT: All right. Thank you.

MR. PATTON: I'm Clay Patton, C-L-A-Y,
P-A-T-T-O-N, here on behalf of John Zody,
Chairman of the Indiana Democratic Party.

With regard to the motion to consolidate,

we would agree that there are some overlapping
arguments presumably to be made by the Stutzman
campaign and by Mr. Zody. However, there are
separate arguments, as Mr. Bopp pointed out. So
we would oppose that motion.

I agree with the Chair that due to the very high possibilities that this would be taken up on appeal, that a record should be made of all arguments that all parties have.

We would also concur with Mr. Bopp's views with regards to the lack of a CAN-1 challenge by the CAN-1 -- or by the filing of a CAN-1 by the Young campaign.

And it says right in that Section 7 that if they're filing a challenge of the candidate,

"The following facts are known to me and lead me to believe that the denial of certification of my petition of nomination due to insufficient signatures or the county voter registration office's failure to certify qualified petitioners is not in accordance with law, and I therefore request a hearing on this matter."

When they presented the signatures, they either thought there was 501 signatures, or they thought there was less than that.

But they clearly could have argued, since they had these petitions by mid-January, that it should have been higher, and that the voter registration officials made some errors, and
some of the signatures that were not certified
should have been. They failed to do that.

So I think, at the very least, we have 497
or 498 -- and we can get into that later -- and
at the very most, it's 501 signatures. And they
certainly can't -- they can't resuscitate any of
these signatures that were not certified.

We have reason to believe that the
certified signatures are either in that 497 or
498 number, and further, we believe that number
should be less based on arguments presented in
Mr. Zody's CAN-1 filing.

CHAIRMAN BENNETT: Anything else on the
consolidation issue?

MR. BROOKS: I would just say,
Mr. Chairman, that I totally disagree, based on
precedent, that we would not be able to
supplement that number.

And I would call into the -- citation
the -- the Wallace petition matter, in which
case he was offered an opportunity to add -- and
I'm going to discuss this case a little bit
later. The discussion --

CHAIRMAN BENNETT: This is all about
consolidation?
MR. BROOKS: -- ability to add -- there has never been an ability to decertify or subtract from certifications.

CHAIRMAN BENNETT: Anything else about consolidation?

VICE CHAIRMAN LONG: Can I ask a question? I don't have cause numbers.

I know that Mr. Zody, Chairman Zody, filed a challenge. And that's No. 5?

MS. NUSSMEYER: Correct. It's the one on the top.

VICE CHAIRMAN LONG: And then we have -- is his supplement, is that the 13? Are there three? I've got three.

MR. SIMMONS: Mr. Chairman, I can review what's in the packet.

CHAIRMAN BENNETT: Okay.

VICE CHAIRMAN LONG: I'm asking for each one -- to identify what the issues in each one are so that I'm prepared to make a motion that sort of splits the --

CHAIRMAN BENNETT: I'd like to recognize staff at this point to give us a description of what's in the binders, and maybe that will answer your question.
MR. SIMMONS: Mr. Chairman, Members of the Commission, the first matter placed behind that binder is the challenge filed by John Zody on February 10. And that was placed under Cause No. 2016-5. It's based on the lack of numbers.

Mr. Zody then supplemented that filing with a filing on February 12 on the same grounds. And it's the next document there. But in that one, he had many attachments to it.

So in discussion with counsel and Co-Director Nussmeyer, we thought that should be under the same cause number. So we kept that under Cause No. 2016-5.

Now, all the attachments to that supplemental filing are in your binder, except for this separately bound document, which was also an attachment. We didn't think it would fit, and we thought it would be easier for the Commission to use that instead of flipping through a binder. And it is numbered. These are numbered petitions. So it might be easier for you to refer to those.

In addition to that, Ms. Nussmeyer and I brought down the original petitions. And we put them in the same order as this exhibit here, in
case the Commission wanted to look at the
original petitions.

So that covers those filings.

Then the document that's behind the blue
tab in your binder, still the same section, is a
separately filed challenge filed by Mr. Zody on
several grounds on February 12. And we placed
that under Cause No. 2016-13.

And I don't want to go into too much
characterizing of that challenge, but it does
raise other issues regarding some signatures
that should have not been certified, and some
petition carrier issues.

Then behind the green tab is a challenge
filed by Jodi Lohrman on February 12, which we
placed under Cause No. 2016-12. And again,
that's based on numbers. So it's similar to the
first challenge filed by Mr. Zody.

COMMISSION MEMBER OVERHOLT: I'm sorry.

Did you say that we're supposed to have three
challenges in our binders filed by Mr. Zody?

VICE CHAIRMAN LONG: Two.

COMMISSION MEMBER OVERHOLT: Oh, I thought
this was a third one.

MR. SIMMONS: One was a supplement with --
COMMISSION MEMBER OVERHOLT: But should we have two CAN-1s or three CAN-1s?

MR. SIMMONS: You should have three CAN-1s.

VICE CHAIRMAN LONG: No, for Mr. Zody.

COMMISSION MEMBER OVERHOLT: For Mr. Zody.

VICE CHAIRMAN LONG: Two for Mr. Zody.

MR. SIMMONS: Well, the CAN-1 with the exhibits attached, he did have a CAN-1 with exhibits attached. It should be second.

COMMISSION MEMBER OVERHOLT: So I've got -- I just want to make sure. The first one I've got is the one dated February 10?

VICE CHAIRMAN LONG: Yeah.

COMMISSION MEMBER OVERHOLT: And the second is the one dated February 12, followed by two pieces of paper.

MR. SIMMONS: Do you have a blue tab there?

COMMISSION MEMBER OVERHOLT: Right, yes.

MR. SIMMONS: Is there a third one?

COMMISSION MEMBER OVERHOLT: No. That's what I'm trying to point out. So I have two CAN-1s for Mr. Zody, and then we go straight to the CAN-1 that's followed by Jodi Lahrman. And then after that we have the appearances.

VICE CHAIRMAN LONG: That's what this -- I
made my own notebook from what I had at home, and I've got two by John Zody and one by Jodi Lahrman.

MR. SIMMONS: Does anybody have the blue tab?

COMMISSION MEMBER OVERHOLT: Yes, I have a blue tab. The blue tab is connected to the February 12 CAN-1 from Mr. Zody --

MR. SIMMONS: Yes.

COMMISSION MEMBER OVERHOLT: -- that you said was also part of 2016-5.

MR. SIMMONS: No, this is a new one. This one is -- I believe I said this was 2016-13.

COMMISSION MEMBER OVERHOLT: Well, I guess that's my original question. Are we supposed to have three sheets of paper for Mr. Zody that are CAN-1s, or are we supposed to have two? Because I have two.

CHAIRMAN BENNETT: I have two.

COMMISSION MEMBER OVERHOLT: And I thought you said we were supposed to have three. That's why I'm asking. I'm not trying to be a pain. I'm just trying to make sure.

MR. SIMMONS: I have one and two, and they're right behind each other, right at the
beginning of the tab.

VICE CHAIRMAN LONG: Yeah.

MS. NUSSMEYER: We have three challenges filed by Mr. Zody. The one on the 10th and the 12th are substantially similar, with respect to the count of 498.

And I think what you're missing is the one filed on the 12th.

VICE CHAIRMAN LONG: I've got that one.

MS. NUSSMEYER: Well, and he also filed a third challenge on the 12th, which is with respect to the -- not being the -- signatures not being compliant with IC 3-8-2-8.

COMMISSION MEMBER OVERHOLT: So we have that. That's the one we have, on the 12th.

MS. NUSSMEYER: Right.

CHAIRMAN BENNETT: Maybe the best way to break this down would be by the issues.

VICE CHAIRMAN LONG: I'm prepared to make a motion on the issues, and we'll figure out what the cause numbers are later.

CHAIRMAN BENNETT: Right.

VICE CHAIRMAN LONG: I would move that we grant the motion to consolidate as it relates to the issue of counts, 500 signatures, and
consolidate all of those issues to be heard at
one time, and that anything other than that be
held not consolidated, and they can be addressed
separately as the challengers of the candidates
may choose.

CHAIRMAN BENNETT: Thank you for your
motion.

Is there a second?

COMMISSION MEMBER KLUTZ: I'll second it.

CHAIRMAN BENNETT: We have a motion and a
second. Any discussion?

(No response.)

CHAIRMAN BENNETT: All in favor say aye.

THE COMMISSION: Aye.

CHAIRMAN BENNETT: All opposed say nay.

(No response. Motion carried.)

CHAIRMAN BENNETT: The ayes have it.

Motion carries. So we will consolidate all
proceedings with regard to the issue of the
number of signatures in the first portion of
this proceeding, and reserve other issues of
challenge to a second portion. Any questions on
that?

(No response.)

CHAIRMAN BENNETT: Very well. Let's
proceed then.

I would recognize Clay Patton, who has filed an appearance as attorney for challenger John Zody.

MR. PATTON: Thank you, Mr. Chairman.

With regards to the matter that was just discussed, for point of clarification, it was Cause No. 2016-5, which was Mr. Zody's first petition or first CAN-1 challenge. And that is the challenge with regard to the count.

As you see in the filings for Mr. Zody, he indicates that these petitions submitted by Mr. Young are not in accordance with state law, as counts show 498, not the minimum of 500 required in the first congressional district.

If you go through the actual petitions filed by the Young campaign and count line by line, and count on the back page, the certification, there's 498 signatures that have been certified.

There has been some discrepancy and some confusion, I think, in the media with the count. And that can be referenced to one CAN-4 petition that was filed in LaPorte County. And as you are aware, LaPorte County is made up of both the
first and second congressional district.

On that petition, there are eight signatures, four of which show that they are in the first congressional district, and four of which are in the second congressional district.

So four and four.

However, on the back page it shows the correct number of voters in the first district is five, and in the second district is three.

So it's the front, or the first and second page of this CAN-4 in LaPorte County that causes the confusion whether it's the 497 or 498.

Either way, it's less than 500.

In some fashion, some way, on this SVRS document that is prepared by combining information amongst the various clerks, there's 501 names on this document.

However, this is not the document that carries the day. It is the actual petitions that are submitted by the candidate. The candidate does not submit the SVRS form.

There's no reference to this SVRS document in state code with regard to the candidate submitting this document. It's the actual petitions that are filed with the Election
Division office that count, that matter, that
decide whether or not the 500 threshold was met.

So how did these three names or more get on
this document? We don't know. But there are at
least three names on this SVRS form that,
culling through all of these petitions that have
been filed by the Young campaign, the names are
on the SVRS, but there are not certified names
on the petitions. And those are the documents
that count.

And based on what they've submitted,
they've failed to meet the 500 threshold. And
we believe that Mr. Young should not be placed
on the ballot based on his failure to meet that
500 threshold.

CHAIRMAN BENNETT: Thank you.

Any questions by the Commissioners?
VICE CHAIRMAN LONG: You gave us these
today. Now, that was submitted by ...

MS. NUSSMEYER: Mr. Zody.
VICE CHAIRMAN LONG: Do we have one that
we've submitted in order where we can refer to
page numbers?

MS. NUSSMEYER: There are page numbers at
the top. It depends on how the page is flipped.
Go to Page 4.

VICE CHAIRMAN LONG: Let me take the cover off.

MS. NUSSMEYER: The first thing that you'll find is the declaration of candidacy.

VICE CHAIRMAN LONG: Oh, okay.

MS. NUSSMEYER: And then next is when the petitions began.

VICE CHAIRMAN LONG: And that number is a -- that's a sequential page number?

MS. NUSSMEYER: Correct. So you'll see on this first page it says LaPorte 1. That's the signature side. And then the second page for LaPorte 1 is the certification side.

VICE CHAIRMAN LONG: My question to Mr. Patton would be, for the sake of the record, you made reference to a LaPorte petition. What page is it on?

MR. PATTON: That would be LaPorte 3, Commissioner Long.

VICE CHAIRMAN LONG: LaPorte, Page 3?

MR. PATTON: LaPorte 3. I don't believe the pages are numbered. I believe each petition is numbered with the name of the county, and then numerical order, and then it starts again.
at 1 at the next county.
VICE CHAIRMAN LONG: LaPorte 3. So, okay,
the page labeled LaPorte 3 is the one you were
referencing on the 5-3 and the 4-4?
MR. PATTON: Yes, Commissioner Long. If
you'll note, there are eight signatures on that
page, all of which were certified. It notes
that four were in the first congressional
district and four were in the second
congressional district.
VICE CHAIRMAN LONG: Yes.
MR. PATTON: And when you turn the page and
see the certification, it shows that five voters
were certified in the first --
VICE CHAIRMAN LONG: And I see that.
MR. PATTON: -- and only three in the
second.
VICE CHAIRMAN LONG: Are you contending
that one of these is in error and one is
correct, or are they both in error?
MR. PATTON: Well, based on our review of
these actual voters, it's our belief that the
clerk made an error on the front page, and that
the individual who signed on Line 2 who lives in
Wanatah, Precinct 2, and it indicates the second