Somewhere there's got to be a limit how long they can talk. You know, this is laboriously -- I don't think any of these exhibits are admitted. I've never heard anybody admit them into evidence. They're not legible. They're not certified. And I don't know what kind of records they are.

I don't accept them as exhibits and -- but Mr. Chairman, you set the rules of this hearing, and I'm asking you to follow them. Let's cut him off.

MR. BROOKS: I'm doing the same thing that you offered, Mr. Long.

VICE CHAIRMAN LONG: I'm not talking to you. I'll address --

MR. BROOKS: Well, I'll --

VICE CHAIRMAN LONG: I'll address you when I want to speak to you.

But I'm asking the chairman to impose your rules, or we'll just stop the whole hearing and you'll come back tomorrow.

MR. BROOKS: I'm happy to come back tomorrow if you want to come back tomorrow. If you want --

CHAIRMAN BENNETT: We're not coming back
MR. BROOKS: -- to take a break -- but I'm not wanting to leave until I've given you all the evidence that was offered.

CHAIRMAN BENNETT: How many more do you have?

MR. BROOKS: I've got a smallish number that are individual, and then I can submit a bunch that are all the same.

VICE CHAIRMAN LONG: I move we recess this hearing, and let's get these other people that have sat out here all day and listened to this, and get them in and out of here, and let them wait. If they're --

UNIDENTIFIED SPEAKER: Thank you.

(Unintelligible multi-voice discussion.)

CHAIRMAN BENNETT: I cannot do it tomorrow or the next two days after that.

So if we're going to recess, maybe we will recess for all purposes. But we've got --

VICE CHAIRMAN LONG: That's okay with me.

CHAIRMAN BENNETT: -- 10 more challenges on our agenda, and I don't think we're going to get that done unless we --

VICE CHAIRMAN LONG: I mean there's people
from all over the place here. This is just
terrible. We should have put this one on last,
and then they could come back.

I'm not being critical of --

CHAIRMAN BENNETT: Let's recess. We're not
going to talk as a committee, but I want to --

VICE CHAIRMAN LONG: Well, let's --

(Unintelligible multi-voice discussion.)

THE REPORTER: Are we still on the record,

Mr. Chairman?

CHAIRMAN BENNETT: We're still on the
record until we adjourn. I think we need to
recess.

Let's call a recess here for five minutes.

(A recess was taken from 6:41 p.m. to
6:51 p.m.)

CHAIRMAN BENNETT: This meeting of the
Indiana Election Commission is brought back to
order.

It's about 6:51 p.m., and we have come up
with a new timetable to try to get this done
tonight.

We're going to allow both the petitioners
and the candidate to have five minutes to put
into evidence whatever else that you have, and
summarize what your position is. And then we'll call for a vote.

   And then, after that, we're going to allow a maximum of 10 minutes for each challenge left. And we will hold to that 10-minute rule and get this thing done tonight.

   Thank you all for your patience.

   MR. BROOKS: Commissioners, what I've just handed you was documentation for two voters, both of whom have registration cards in there. They have their correct address on the registration card. There's a few numbers off on the registration, and they are registered. They were living at the address that they registered at, but there was a -- actually, a confusion of numbers by the registration people.

   Also, both of those voters, which were not certified on ours, were certified by the same voter registration people for the Stutzman campaign. And the Stutzman sheets are on there.

   MR. PATTON: Just for the record, I don't have a copy of those.

   MR. BROOKS: I'm trying to hurry. I've got most of them copied. There's a couple I don't.

   CHAIRMAN BENNETT: Put in all the evidence
you have, and give us a summary.

MR. BROOKS: Yeah, I'm going to give you this last one, and then I'm going to give you a whole batch, and then I'm done.

MR. SIMMONS: The last one was 44, so the next one will be 45.

(Exhibit 45-Young was marked for identification.)

MR. BROOKS: This is 45. This is another example of a registered voter that was registered in Lake, wasn't certified, but at the same address was certified for the Stutzman campaign.

So I have one batch of these. These are all the same circumstances. Every single one is registered in the county that they're -- that they signed the petition in, but had moved within the county. They were registered.

And only because the form asked for residence, not residence as shown on your record. So they're telling the truth because that's what the form asked them to do, but they're registered and should have been able to be certified.

I have copies of these -- well, they're all
together. I'd have to separate them out now.
So can we just --
CHAIRMAN BENNETT: Let's just put them into
evidence in the interest of time, and --
MR. BROOKS: And then can we, when we're
done, come up and take the copies? There's
multiple copies of each one.
So let's just call this -- what number are
we on?
MR. SIMMONS: Forty-six.
MR. BROOKS: Exhibit 46.
(Exhibit 46-Young was marked for
identification.)
CHAIRMAN BENNETT: Is that all of the
evidence?
MR. BROOKS: It is.
CHAIRMAN BENNETT: Now, do you want to give
us a summary of this?
MR. BROOKS: What I've shown here is,
regardless of the 498 -- so let's say we're at
498. All three of those -- or 497. Three of
them were -- clearly should have been certified.
They were registered voters. They signed the
petition. We disagreed about whether they were
certified, but most clearly, without any doubt,
they should have been certified.
Then you have the list of others. You have people who were registered people whose name was their name, and they said -- said no signature. There was a signature. I've given you the registration stuff for that.
There are people who had a legal name change, same address, same birthdate, same everything. So it will go on and on.
CHAIRMAN BENNETT: How many add-ins did you put into evidence?
MR. BROOKS: Twenty-five.
CHAIRMAN BENNETT: Twenty-five are in evidence now with the Election Commission?
MR. BROOKS: Yes.
CHAIRMAN BENNETT: Anything else?
MR. BROOKS: No.
CHAIRMAN BENNETT: Thank you.
Anything further, Mr. Patton?
MR. PATTON: We have deadlines and thresholds for a reason. They failed to meet the threshold, and they failed to meet it by the deadline.
It's very clear that in the last week to 10 days in a very hurried fashion, the Young
campaign has gathered information to try to rehabilitate some of these signatures, despite the fact that they failed to sign a CAN-1 and file it themselves, when they knew well before that deadline that they were being challenged on the fact that they didn't have 500 signatures.

If they had spent half of the time spent in the last 10 days trying to rehabilitate these signatures, we would all be having dinner right now. But they didn't. They failed to meet the threshold, and they failed to meet the threshold by the deadline.

These were their petitions. They knew what they had before they walked them into the Election Division office upstairs.

With regards to some of the issues, of the many issues raised, despite the fact that I don't think you have grounds to do so, because he didn't file -- the Young campaign did not file a CAN-1, I direct you to the petition or signature processing of the exhibit that was submitted, a document created by, essentially, this very body.

If an address is missing a ZIP code, directional location, town, city, name, or other
variation, the petitioner's signature is rejected.

The interpretation of variation is left for the voter registration official. And state law does offer guidance, 3-5-6-4 and 6-5, regarding minor and substantial variations, and how best to deal with that. Minor variation is if it's a number off on the street or doesn't have the directional information.

But he's wanting you to count signatures for people who weren't even registered to vote at the address that they put on the CAN-4. "Each of the undersigned" -- No. 1. It's the very first one. The individual resides at the address after the individual's signature. So these supposed voters are purporting a fraud that they live there, but they don't. So the clerks didn't certify the signature.

And Code 3-5-6-5, substantial variation in name or address. The signature is invalid and may not be certified.

With regards to signature, I believe there was one lady who was married and divorced, and whether it was her or not, that wasn't certified. 3-5-6-6, conformance with
registration records. "In determining whether a
signature substantially conforms with the
evoter's signature in the records of the county
voter registration office, the office must
certify the signature if the office determines
the lack of conformity may reasonably be
attributed to age, disability, impairment, or
impairment of the voter."

Now, I don't practice a lot of family law,
but I don't think getting married and divorced
is attributed to your age, disability, or your
impairment. She changed her name. She didn't
change her voter registration office. They
didn't certify her. And 3-5-6-6, they shouldn't
have.

What you have before you by this
Commission, by what they presented in the first
hearing, was -- were, at the very most, at 500.
And we've given you the one signature where the
young lady signed the CAN-4 when she wasn't
registered to vote. It was certified when she
wasn't registered to vote. And the signatures
are vastly different.

We ask you to sustain the challenge of
Mr. Zody under Cause No. 2016-13, and not place
Mr. Young on the ballot for the May primary.

Thank you.

CHAIRMAN BENNETT: Thank you.

Do we have a motion?

VICE CHAIRMAN LONG: I make a motion to sustain the challenge.

MR. BROOKS: Do I get a closing statement?

VICE CHAIRMAN LONG: You've got --

MR. BROOKS: I just did my evidence.

VICE CHAIRMAN LONG: You've got five minutes.

MR. BROOKS: That's fine. I'll do less than that.

VICE CHAIRMAN LONG: You've already --

MR. BROOKS: I want to --

VICE CHAIRMAN LONG: -- used it.

MR. BROOKS: You're using up five of it.

Let me finish. I'll be fast.

3-7-25 --

VICE CHAIRMAN LONG: I'm going to move that he's out of order. You set the rule here.

CHAIRMAN BENNETT: I think there was a misunderstanding.

VICE CHAIRMAN LONG: Well, I heard five minutes on either side. I thought that --
MR. BROOKS: I thought --

VICE CHAIRMAN LONG: -- with the Young campaign. I don't know.

MR. BROOKS: -- I had five minutes to present my evidence. I'm not going to take very much time. I could have been done by now.

CHAIRMAN BENNETT: That was my thought. I wasn't clear. Two minutes.

MR. BROOKS: That's fine. I want to draw your attention to 3-7-26.3, where we talked about the SVRS list.

In accordance with U.S. Code, "The computerized list serves as the single system for storing and managing the official list of voters throughout Indiana." It's the official voter registration list. It is the official entries of the voter registration groups onto an official list as a matter of statute.

Let me just say, three people that we -- clearly are eligible, get us up to 500. You've got -- some of them are a little different. But most of the first 10 are pretty straightforward. They have a different name, whatever.

You know, you've got to be able to change names. You're going to disenfranchise somebody
because they're legally separated when their address is the same, the signature is the same?
I don't think so.
But there's a fundamental misunderstanding,
I think, by the Democrats, about the argument on the -- the group that has a different address.
The argument's not that if you were just reading the statute. The argument is that the form misleads the voter. If they wouldn't put their registration address, which is all the state statute requires, it's your residence address as shown on the voter registration.
That doesn't say it has to still be your residence. It says, "As shown on the voter registration."
But the form says, "Where do you live now? Where is your residence?"
So people answer that question honestly, and they get rejected by the --

CHAIRMAN BENNETT: Ten seconds.
MR. BROOKS: -- voter registration people because it doesn't comply with statute. But the form doesn't ask them for what the statute is, and they shouldn't be penalized. They're all registered voters in the first district.
CHAIRMAN BENNETT: Two minutes. Thank you.

VICE CHAIRMAN LONG: Move to sustain the challenge.

CHAIRMAN BENNETT: Two minutes. Go ahead.

MR. PATTON: Mr. Brooks' client wants to be your U.S. Senator, but he doesn't want to take responsibility for anything. It's always someone else's fault.

You just heard Mr. Brooks say that this form, the form created by this -- and approved by this body misleads the voters. Now it's your fault or it's the clerk's fault or it's the voter's fault because they didn't sign it because there was a scribble on a line. That was in the first line. Why doesn't he just go down to the second line and fill that out? It's always someone else's fault.

They had the responsibility to meet the deadline, and they failed to meet it. How is he going to be a responsible United States Senator if he can't even do this?

CHAIRMAN BENNETT: Thank you.

VICE CHAIRMAN LONG: I move to sustain the challenges for the third time, and hopefully the final.
COMMISSION MEMBER OVERHOLT: Second.

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

VICE CHAIRMAN LONG: I'm going to take one minute and say we've been asked to certify a signature that's not in existence. That's a first. I've been on this Commission maybe 18 years, and I've never heard anybody in good faith look me in the eye and say, "You ought to certify this guy because there was something in the way of him signing on the line he was supposed to sign on, but he didn't sign anything, and he signed an affidavit he intended to sign." I'll be using that argument in a lot of criminal cases. "I didn't mean to do that, Judge. I intended to do the right thing."

We've been asked to certify a voter by the Young campaign that, in my opinion, is an obvious and blatant forgery. Somebody forged that girl's name on one of those two forms.

And for them to say, "Well, we can't tell which one it is," I agree with that. I don't know which one's the forgery, but I'm betting one of them is.

And to come in and ask us to certify voters
when they've not gone -- the last time I looked, the voter registration office had a Republican and a Democrat member. If the Democrats were told not to sign anything for you, then I believe that you could have maybe got the Republican member to sign one for you, and you've not done that.

You're asking us to certify based on your word and your records that an uncertified -- I don't accept them as exhibits, these things. I can't even read half of them.

And so that's why I vote this way. This is atrocious, to base your argument on a nonsignature and a forgery, to put a man on the ballot for a United States Senator. I'm embarrassed by it.

CHAIRMAN BENNETT: All right. I will say that I want to incorporate my previous thoughts about what the purpose of these laws are. And I think we've heard ample evidence to show that there is a significant issue in question about the number of qualified voters that have signed the petition, registered voters.

It is the burden of petitioners to demonstrate that there was not a sufficient
amount of signatures, and I don't believe that 
burden has been carried.

Anything else?

(No response.)

CHAIRMAN BENNETT: Call for the question.

All those in favor of the motion to sustain say 
aye.

VICE CHAIRMAN LONG: Aye.

COMMISSION MEMBER OVERHOLT: Aye.

CHAIRMAN BENNETT: All opposed say nay.

COMMISSION MEMBER KLUTZ: Nay.

CHAIRMAN BENNETT: Nay.

We have two opposed. We are split 2-2.

The motion is sustained. It did not carry.

I would like to ask for the opposite motion 
at this point, which I will make, that the 
petition be denied.

VICE CHAIRMAN LONG: The challenge be 
denied.

CHAIRMAN BENNETT: That the challenge be 
denied.

COMMISSION MEMBER KLUTZ: I'll second that.

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

(No response.)
CHAIRMAN BENNETT: All those in favor of the motion to deny the challenge say aye.

COMMISSION MEMBER KLUTZ: Aye.

CHAIRMAN BENNETT: Aye.

All opposed say nay.

VICE CHAIRMAN LONG: Nay.

COMMISSION MEMBER OVERHOLT: Nay.

CHAIRMAN BENNETT: We are split, 2-2.

IN THE MATTER OF

THE CHALLENGE TO JOHN MEYER

CHAIRMAN BENNETT: Let's proceed with the John Meyer challenge. As you heard, we are limiting the presentations to ten minutes total, five minutes per side.

I do not see anyone here representing Mr. Meyer, so I'll ask if anyone in the audience is Mr. Meyer or his representative, and if so, now is the time to come forward. If not, we will proceed in his absence.

MR. PATTON: Thank you, Mr. Commissioner.


Ms. Lopez filed a CAN-1 challenge against Mr. Meyer. He has filed to run in Congressional
District 1 as a Republican, indicating that, "The most recent primary election in Indiana in which I have voted was a primary held by the party with which I claim affiliation above." And again, he has filed as a Republican.

(Exhibit 1-Lopez was marked for identification.)

MR. PATTON: And if I may approach, I have Lopez Exhibit 1. Voting records show that he voted in the 2015 municipal election, but did not vote in the primary.

(Exhibit 2-Lopez was marked for identification.)

MR. PATTON: And the reason being that he did not vote in the primary, as is shown on Lopez Exhibit 2, is that he did not register to vote until July 10 of 2015.

Mr. Meyer is an attorney with offices in Chicago. He has an apartment in Chicago.

(Exhibit 3-Lopez was marked for identification.)

MR. PATTON: And on Lopez Exhibit 3 is the certified copy of the -- a certification of a BMV record regarding a John Albert Meyer, with the same date of birth as this candidate,
showing that he obtained an Indiana driver's license in July of 2015.

And as you will note, on the third page, the interim issue date of July 10 of '15, the reason, "New issued driver's license out of state," meaning he did not have a previous Indiana driver's license. He had an out-of-state driver's license. And I can only presume that it would have been an Illinois driver's license.

So he did not move, if he has ever moved to Indiana.

(Exhibit 4-Lopez was marked for identification.)

MR. PATTON: Under Lopez Exhibit 4 is a quitclaim deed for the property where he claims to have his voter registration. And it indicates that he and his wife deeded it to a trust in the summer of 2013. And it indicates that the tax bills for that property are to go to an apartment in downtown Chicago.

So the reason we're here is because he's never voted in a primary to be able to claim affiliation.

But at the same time, I think that he might
not even be a resident of Indiana. And we've

got some other issues.

But the crux of the challenge is the fact

that he claimed that, "The most recent primary
election in Indiana in which I voted was a
primary held by the party to which I claim
affiliation above." That would have been May of
2014, or perhaps the municipal election of 2015.

I can tell you that as a long-time resident
of Porter County and former attorney for the
Porter County Election Board, Ogden Dunes is a
small municipality on Lake Michigan. State
Senator Karen Tallian lives in Ogden Dunes.

They don't have primaries for municipal
elections. They don't even have political party
caucuses. They have what's called the
Ogden Dunes Party that has a caucus.

So even if he participated in a caucus
sometime after registering to vote in July of
2015, it would not have been a Republican caucus
because it doesn't exist.

So we would request that the Commission,
under the notice of the hearing, find that
Mr. Meyer is in default for not having
participated in these proceedings, and grant
the -- and sustain the candidacy challenge
brought by Ms. Lopez, and not place John Meyer
on the ballot for the first congressional
district.

CHAIRMAN BENNETT: Let me ask the
Commission. Do we have evidence of Mr. Meyer
being notified of this hearing?

MS. NUSSMEYER: We do, Mr. Chairman. I
have a printout from the UPS website, proof of
delivery to Mr. Meyer. And then you'll also
note in your packet, you'll see the address.

VICE CHAIRMAN LONG: That's at the
Ogden Dunes, whatever the name of it is?

MS. NUSSMEYER: Right. The address that I
show is 90 Shore Drive.

CHAIRMAN BENNETT: Let's put that in as
Exhibit 5.

(Exhibit 5-Lopez was marked for
identification.)

MR. PATTON: And Mr. Chairman, I also, when
I entered my appearance the other day, I sent a
letter to that Shore Drive address. But I also
scanned and emailed a copy of my letter and my
appearance to Mr. Meyer at his Chicago law firm,
and it did not bounce back. I heard no response
from him.

But I suspect that if my letter and the UPS was sent to Shore Drive, he probably hasn't seen it because he doesn't live there.

VICE CHAIRMAN LONG: Do you rest? Do you rest your case?

MR. PATTON: Yes, sir.

CHAIRMAN BENNETT: Do we have a motion?

VICE CHAIRMAN LONG: I'm going to try again. I move we sustain this challenge.

CHAIRMAN BENNETT: Is there a second?

COMMISSION MEMBER OVERHOLT: Second.

CHAIRMAN BENNETT: All in favor say aye.

THE COMMISSION: Aye.

CHAIRMAN BENNETT: All opposed say nay.

(No response. Motion carried.)

CHAIRMAN BENNETT: Challenge sustained.

IN THE MATTER OF

THE CHALLENGE TO TOBY LAMP

CHAIRMAN BENNETT: We now have the Toby Lamp Challenge, Cause No. 2016-10, filed In The Matter of the Challenge to Toby Lamp, R.N., Candidate for the Democratic Party Nomination for United States Representative, District 3.
Recognize the staff for a quick description of what we have in our binders.

MR. SIMMONS: Mr. Chairman, Members of the Commission, under the Toby Lamp tab we have placed a challenge filed by Carmen Darland, a copy of the declaration of Mr. Lamp, an appearance by Cody Kendall on behalf of Carmen Darland, and proof of service.

CHAIRMAN BENNETT: At this time, I would recognize attorney Cody Kendall, who has filed an appearance in this action, and ask you to present your case.

MR. KENDALL: Thank you --

VICE CHAIRMAN LONG: Is Mr. Lamp here?

Okay.


And this is a fairly straightforward challenge. Mr. Lamp's last primary that he voted in was the Republican primary. And I think that is in your packet.
But we also have a certified copy from the clerk's office showing the same information. You guys have a copy of that. And we also went ahead and got a letter. I don't believe you have it, but if I may approach? I don't have a copy, but it's a letter from the Kosciusko Democratic Party chairman who authorized -- or certified that he's somebody with the party.

Can we mark as Exhibit 1 the voter registration?

VICE CHAIRMAN LONG: Yeah. That's the voter's profile.

MS. DARLAND: Cody has the certified copy.

(Exhibit 1-Darland was marked for identification.)

MR. KENDALL: So Exhibit 1 is the voter registration record showing the last primary that Mr. Lamp voted in was a Republican primary. And as we know, under IC 3-8-2-7, one of the qualifications is party affiliation. And two ways to determine party affiliation is the last primary he voted in, or certification from the county chair in the county that you live in.

And based upon that, we don't think
Mr. Lamp has met the qualifications under that statute, and we'd ask that this challenge be sustained.

CHAIRMAN BENNETT: Has Mr. Lamp been properly notified of the proceeding?

MS. NUSSMEYER: Yes, Mr. Chairman, he has.

I have a receipt of delivery, again, from UPS to an address that is 307 Roland Avenue.

(Exhibit 2-Darland was marked for identification.)

MR. KENDALL: And Mr. Chairman, like in the last case --

VICE CHAIRMAN LONG: She's offering into evidence the exhibit.

CHAIRMAN BENNETT: Exhibit 2?

VICE CHAIRMAN LONG: Yeah.

MR. KENDALL: Yeah, I also served him certified mail and didn't receive anything back.

So I also notified him of this case.

CHAIRMAN BENNETT: Very well. Anything else?

VICE CHAIRMAN LONG: Did you also raise the RN designation?

MR. KENDALL: I have not, but I don't think it's --
VICE CHAIRMAN LONG: It's in the petition.

MR. KENDALL: We would forego that at this time.

VICE CHAIRMAN LONG: Okay.

CHAIRMAN BENNETT: Do we have a motion?

VICE CHAIRMAN LONG: I'll move to sustain the challenge.

COMMISSION MEMBER OVERHOLT: Second.

CHAIRMAN BENNETT: Motion and a second.

Any discussion?

(No response.)

CHAIRMAN BENNETT: All in favor of the motion to sustain the challenge say aye.

THE COMMISSION: Aye.

CHAIRMAN BENNETT: All opposed say nay.

(No response. Motion carried.)

CHAIRMAN BENNETT: The challenge is sustained.

MR. KENDALL: Thank you. I don't want to take up any more of your time. Thank you, Members of the Commission.

MS. DARLAND: Thank you.

IN THE MATTER OF

THE CHALLENGE TO KEVIN "SGT" HOWELL

CHAIRMAN BENNETT: Kevin Howell's challenge
is next, Cause No. 2016-11.

MR. SIMMONS: Mr. Chairman, Members of the Commission, under the Kevin Howell tab, we have placed the challenge filed by Jennifer Moyer, a copy of the declaration filed by Mr. Howell, and proof of notice.

CHAIRMAN BENNETT: Thank you. Is Mr. Howell here, or anyone representing Mr. Howell?

MR. HOWELL: I'm Mr. Howell, and I'm representing myself.

CHAIRMAN BENNETT: Okay. Is the challenger here? If there's anyone here to challenge Kevin Howell, come forward, please.

(No response.)

CHAIRMAN BENNETT: If not, let's hear from Mr. Howell.

MR. HOWELL: It's been an interesting session here. My name is Kevin Howell, and I am a United States Marine. I served 10 years, from 1983 to 1993.

And based upon the information I got from your office here, it challenges me because it says I am trying to use my title or degree as a designation, or a designation that implies a
title or degree.

CHAIRMAN BENNETT: Hang on one second.

(Discussion off the record.)

CHAIRMAN BENNETT: There are no challengers present here. And at this point, I think it might be best to call for a motion at this point.

VICE CHAIRMAN LONG: I would move we deny this challenge because there's been no evidence presented.

CHAIRMAN BENNETT: Is there a second to the motion?

VICE CHAIRMAN LONG: Unless you object.

MR. HOWELL: No. Very much obliged.

CHAIRMAN BENNETT: Is there a second to the motion?

COMMISSION MEMBER OVERHOLT: I'll second.

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

(No response.)

CHAIRMAN BENNETT: No discussion. All in favor of denying the challenge say aye.

THE COMMISSION: Aye.

CHAIRMAN BENNETT: All opposed say nay.

(No response. Motion carried.)
VICE CHAIRMAN LONG: I have a second motion. I move that we allow Mr. Howell to delete the term "SGT" in quotation marks from his declaration of candidacy. And I think that's in your best interest for statutory purposes. And if you just delete that, I think the issue goes away. And I make that motion. Do you want to amend it that way?

CHAIRMAN BENNETT: Or you can seek legal advice, or advice on that, if you like.

VICE CHAIRMAN LONG: The statute says that using designations that imply rank or title are not proper. Nicknames are fine. And the question is, when I saw it -- I bet they call you Sarge.

MR. HOWELL: Yes, they do.

VICE CHAIRMAN LONG: And the fact is that that could be in violation of the statute, and that you would have -- your declaration might be rejected.

And if you take that out of the petition, I think that issue goes away.

Or if you want to consult legal counsel and make a decision, it would be my motion that if he -- which I don't think we can amend his
filing. But if he files a request to file an
amendment to his declaration on that particular
issue, that we allow that to occur.

MR. HOWELL: I was ready for a fight.

Well, there's a lawyer who's also a friend of
mine. And most of the folks knows me as
Sergeant Howell because I'm so active in the
military affairs. American Legion, Marine Corps
League, and associate member of Vietnam Veterans
of America.

So that's the reason why I did it in the
first place.

CHAIRMAN BENNETT: What you might find is
if you don't amend your petition, you may find
yourself back here with another challenge.

But that's up to you. You can get some
advice, if you want.

VICE CHAIRMAN LONG: I'm sure our counsel
here, if you suggest something, how you want to
change it, they will give you some friendly
guidance. But not advice.

MR. HOWELL: I'll just leave it as Kevin
Howell, then.

VICE CHAIRMAN LONG: Pardon?

MR. HOWELL: I'll just leave it as Kevin
Howell.

VICE CHAIRMAN LONG: That's your request?
MR. HOWELL: Yeah, take the "SGT" out.
VICE CHAIRMAN LONG: Then my motion is to approve his request to amend to take that out.
CHAIRMAN BENNETT: Is there a second?
COMMISSION MEMBER KLUTZ: I'll second that.
CHAIRMAN BENNETT: We have a motion and a second. Assuming no discussion, all in favor say aye.

THE COMMISSION: Aye.
CHAIRMAN BENNETT: All opposed say nay.
(No response. Motion carried.)
CHAIRMAN BENNETT: Motion carried.
VICE CHAIRMAN LONG: Congratulations. See, you came down here and won.
MS. NUSSMEYER: Mr. Chairman, if I may, do you want the UPS record for the delivery for Jennifer Moyer?
CHAIRMAN BENNETT: Yes.
VICE CHAIRMAN LONG: Yes.
MS. NUSSMEYER: And I can confirm the address listed as 1535 Henry Street, which is on the CAN-1 form.
(Exhibit 1-Moyer was marked for identification.)

VICE CHAIRMAN LONG: Good luck to you, sir.

Sorry you had to wait so long today.

MR. HOWELL: It's been interesting.

CHAIRMAN BENNETT: The next one up is the Ryan E. Farrar challenge.

MR. SIMMONS: Mr. Chairman, is it the Commission's direction that we remove the "SGT" designation from --

CHAIRMAN BENNETT: Yes, that would be the direction.

IN THE MATTER OF

THE CHALLENGE TO RYAN E. FARRAR

CHAIRMAN BENNETT: We are continuing with the consideration of Ryan E. Farrar, Cause No. 2016-9.

And I would recognize the staff for a description of what is in our binders.

MR. SIMMONS: Mr. Chairman, Members of the Commission, under the Ryan Farrar tab, we have placed a challenge filed by Roxanna Hanford, a copy of a declaration filed by Mr. Farrar, and an appearance filed by Stephanie McGowan on
behalf of Roxanna Hanford, and proof of notice.

CHAIRMAN BENNETT: Thank you. I would recognize Stephanie McGowan, who has filed a written appearance for the challenger, Roxanna Hanford.

MS. MCgowan: Thank you, Mr. Chairperson. Stephanie McGowan, M-C-G-O-W-A-N. I'm an attorney who's representing Roxanna Hanford, who is the chairperson of the Newton County Democratic Party.

Roxanna Hanford, chairperson for the Newton County Democratic party, alleges that Ryan Farrar, who, on or about January 19 of 2016, filed his declaration of candidacy for primary nomination in the 2016 primary election, is ineligible to appear on the Democratic primary ballot, as Mr. Farrar voted in the 2012 Republican primary.

And Mr. Farrar did not request Ms. Hanford, who is the chairperson of the county in which Mr. Farrar resides, and Ms. Hanford did not certify that Mr. Farrar is a member of the Democratic Party.

As you're aware, Indiana Code 3-8-2-7 states that a declaration of an individual's
candidacy for office must obtain a statement of
the candidate's party affiliation.

A candidate is considered to be affiliated
with a political party only if the following
applies: The most recent primary election in
Indiana in which the candidate voted was a
primary election held by the party with which
the candidate claims affiliation, or the county
chairman of the political party which the
candidate claims affiliation, and the county of
which the candidate resides, certifies that the
candidate is a member of a political party.

As shown by Mr. Farrar's declaration of
candidacy for the primary nomination -- which
I'll admit as Hanford Exhibit 1. May I
approach?

CHAIRMAN BENNETT: Yes, please.

(Exhibit 1-Hanford was marked for
identification.)

MS. McGOWAN: As shown in Section 3 of the
CAN-2, Mr. Farrar, by having affiliation with
the Democratic Party, he understood that his
party affiliation determined the party he voted
for in the last primary election, and that if he
did not meet this requirement, Mr. Farrar
understood that he must file with the CAN-2 a certificate of the appropriate county chairperson, indicating that he is a member of a particular political party.

As a resident of Newton County, Mr. Farrar would have had to seek the approval from Ms. Hanford, as chairperson of the Newton County Democratic Party.

(Exhibits 2-Hanford and 3-Hanford were marked for identification.)

MS. McGOWAN: I submit into evidence as Exhibit 2 Mr. Farrar's challenge to the CAN-1 form. And also, at the same time, submit as Exhibit 3 Mr. Farrar's voting record.

VICE-CHAIRMAN LONG: This is 2?

MS. McGOWAN: Yes, 2.

VICE-CHAIRMAN LONG: Oh, you've already marked them. You're prepared.

MS. McGOWAN: And then this is Exhibit 3. As you can see in the CAN-1, with the challenge, Ms. Hanford stated that in Mr. Farrar's last voting record, he was opposite of his filing. As county chair, he had never come before her or the party.

If you wish to take testimony from
Ms. Hanford as to the facts, she is here, she was sworn in, and she's willing to testify that Mr. Farrar never appeared before her.

If you look at Exhibit 3, the last primary election Mr. Farrar voted in was the 2012 primary election, which was certified by the Newton County Superior Court clerk. And you can see that he voted as a Republican in the 2012 primary.

This is in violation of Indiana Code 3-8-2-7. Since, in that last primary, Mr. Farrar, therefore, was Republican, Mr. Farrar did not receive -- and Mr. Farrar did not receive authorization from the Newton County chairperson, Ms. Hanford, to appear on the ballot as a Democrat, Mr. Farrar is ineligible to appear on the 2016 Democratic primary ballot as a candidate for the U.S. House of Representatives. May I ask one quick question of Ms. Hanford?

VICE CHAIRMAN LONG: That's what I was getting ready to suggest.

CHAIRMAN BENNETT: We're all waiting to hear that.

MS. McGOWAN: Ms. Hanford, did Mr. Farrar
ever appear in front of you to request you -- to certify that he would -- did Mr. Farrar ever appear in front of you to appear eligible as a Democrat on the 2016 primary ballot?

MS. HANFORD: No.

MS. McGOWAN: And did you look at his voting record and realize that the last primary Mr. Farrar voted for was the Republican primary election?

MS. HANFORD: Yes, I did. Yes, it -- I had that certified. We also submitted the voting disk from the county.

CHAIRMAN BENNETT: Anything else?

MS. McGOWAN: We ask that you sustain Ms. Hanford's challenge and not allow Mr. Farrar's name to appear on the 2012 Democratic primary.

CHAIRMAN BENNETT: 2016?

MS. McGOWAN: Sorry. 2016. It's been a long day.

CHAIRMAN BENNETT: Is Mr. Farrar here?

MR. FARRAR: Yes.

CHAIRMAN BENNETT: You're represented by?

MR. FARRAR: Myself.

CHAIRMAN BENNETT: Would you like to
cross-examine?

MR. FARRAR: I don't think that's necessary.

CHAIRMAN BENNETT: Then proceed with your case.

MR. FARRAR: Okay. This case is actually really simple. It comes down to my voting record, which I have never seen before until I received notification of the challenge this past Monday. And to my utter shock, it is chock-full of inaccuracies.

To illustrate, I want to go back to the beginning when I started voting. The first time I ever voted was the year I turned 18. It was 1998. I took government that year, and our teacher instructed us to register to vote, and vote in that year's primary. I did that morning on my way to school.

Beyond that, I voted that fall in the general election. I also voted in the year 2000 in the primary.

But if you look at my record, you see no accounts of those three votes. Where they are, I don't know. But I think it's indicative that we have some poor recordkeeping, potentially, in
Newton County.

Furthermore, you will also see no record of voting in the 2002 primary, which I also did as a Democrat, every year as a Democrat.

Voting is something I take very seriously.

I know a lot of people have fought and died for the right to vote, and it's something that I always endeavor to do every primary, every poll.

You do see a slight stream of accuracy starting in the 2002 general election. They had me accurately voting as a Democrat in the 2004 primary, voting again in the 2004 general, accurately recording as a Democrat in the '06 primary, and again, in '06 in the fall.

An interesting and unique error in my record, you have here for the 2008 primary, you'll note they had me listed as voting on an unknown ballot. I can assure you that I voted for Barack Obama in what was a very exciting primary here in Indiana, where it actually mattered towards the nomination. And for whatever reason, there's a data entry error there.

Let's see. What's that? So that brings us to a total of five errors in 10 years on this
record.

And we see the same error again in 2010. I definitely did vote in that primary as a Democrat. I remember it vividly, actually, because I ran into an old friend of mine who was working the polls. Her husband was actually running on the Republican side. I hadn't seen her in about 10 years, and I haven't seen her since, so it's a -- I have a very vivid recollection of that.

Now, moving forward, yes, I did vote Republican in 2012. My reason? I was a lifelong Hoosier. I had a lot of respect for a great statesman, Senator Richard Lugar. And I personally didn't really care for the way he was being challenged by a Tea Partier from the right, and so I crossed the party lines one time in my life to vote for Senator Lugar.

I think many would contend that was actually a fairly progressive vote, even though it was on a Republican primary.

But then we come to a critical omission on my record. You will also not see a participation in the 2014 Democratic primary. If you had, this challenge would not be
happening right now.

So with that -- you know, I would also like
to take a little bit of time to assert my
credentials as a Democrat. Like I said, I've
been voting my whole life. In 2000 I voted for
Gore. In 2004 I voted for Kerry. I voted for
Barack Obama three times. You know, I'm a
supporter of Donnelly. I was a supporter of
Gregg.

My credentials as a Democrat, I believe,
should be unimpeachable.

So really, the whole reason for the
question on a CAN-2 is certifying party
affiliation. And I think there should be little
doubt that I'm a staunch Democrat, and I deserve
to be on the ballot.

And one last point. This actually kind of
goes back to the Todd Young case. We mentioned
giving people the right to vote. If I'm not
allowed to be on the ballot, the fourth district
congressional seat in the U.S. House of
Representatives will be uncontested.

So in my opinion, what's good for the goose
is good for the gander. I think we've
certified -- there's a lot of doubt in the
credibility of the document that is my voting
record, and I really think we should enfranchise
the electorate and allow them to vote for Ryan
Farrar. You know, it's what's good for
democracy.

And with that, I would just like to say
thank you for your bold services. This has been
a mentally exhausting day, even for me. And
I've just been watching up until now.

So thanks for listening. Thank you for
allowing me to present my case.

CHAIRMAN BENNETT: Thank you.

MR. FARRAR: That's all.

CHAIRMAN BENNETT: Any cross-examination?

MS. McGOWAN: Yes, Mr. Chairperson.

Mr. Farrar, is that your signature on the
back?

MR. FARRAR: Yes.

MS. McGOWAN: Let the record reflect that
the candidate indicated his signature on Page 2.

VICE CHAIRMAN LONG: Of?

MS. McGOWAN: Of the -- "Has certified that
the information in this declaration of candidacy
is true and complete, and that I meet the
specific requirements of this office."
VICE CHAIRMAN LONG: Exhibit 1?

MS. McGOWAN: Exhibit 1, yes. Sorry,

Mr. Vice Chairman.

And then can you please read the box that's
been checked on Section 3 of Exhibit 1?

MR. FARRAR: Certainly. "The most recent
primary election in Indiana in which I voted was
the primary held by the party with which I claim
affiliation."

MS. McGOWAN: And as you can see on
Exhibit 3, that was certified by the Newton
County clerk. It indicates that in the 2012
primary, he voted for the -- in the Republican
primary.

And as stated in your testimony earlier,
you admit that you had voted in the 2012
Republican primary?

MR. FARRAR: Yes.

MS. McGOWAN: And have you ever come before
Ms. Hanford and requested that she certify that
you are a member of the Democratic party?

MR. FARRAR: I have not.

MS. McGOWAN: No further questions.

CHAIRMAN BENNETT: Any questions by the
Commissioners?
VICE CHAIRMAN LONG: I just want to be clear, if I might, Mr. Farrar.

MR. FARRAR: Certainly.

VICE CHAIRMAN LONG: In '14, did you vote in the primary?

MR. FARRAR: Yes.

VICE CHAIRMAN LONG: And it's not been certified here?

MR. FARRAR: No, along with six other errors in my record.

VICE CHAIRMAN LONG: Did you contact the clerk's office to try to find this out?

MR. FARRAR: I didn't receive this document until this past Monday, honestly.

VICE CHAIRMAN LONG: Four days ago?

MR. FARRAR: Yeah. I was -- I didn't really know what to do. I mean I wish there was a database where I could just go and look at my own record. I would have looked it up before I even filed my CAN-2 just to make sure there wasn't an error like that. But I didn't have privy to that information. I didn't know that I did, anyway.

CHAIRMAN BENNETT: Anything else? Is there a motion?
VICE CHAIRMAN LONG: I'm going to move to sustain the challenge. But I say it with the caveat that we have certified records from the county here that says the last time you voted in the primary, you voted on the Republican ballot, which you admit that you voted in that primary.

And the statute -- actually, I've learned something here. I thought if you had no voting history, you didn't need a certification. I learned that I was wrong. That's been changed a few years ago.

But my motion is to sustain the challenge because the statute is pretty clear. If the last primary that we have evidence of your voting is in the opposite primary, and the county chairman will not certify you, then you're just not an eligible candidate.

If you vote in the Democratic primary this spring, you'll be back home.

CHAIRMAN BENNETT: Is there a second to the motion?

COMMISSION MEMBER KLUTZ: I would second it. And this, to me -- I appreciate your testimony, but it's hard for me to deviate from this voting record. You did have an option to
seek the consent of the party chair, and you did not.

MR. FARRAR: May I speak? Technically, I did not have that opportunity, because I didn't see the record until this last Monday.

Mrs. Hanford called me on February 7, which was after the deadline. And at that point I had no alternative but to show up here with my testimony.

My testimony is all I have. I affirm that I am telling the truth. You know, I swore in. If I'm not telling the truth about my record, then that means I've lied six times here today. I promise you I'm a college-educated man.

I would not do that to you. I have far too much respect.

CHAIRMAN BENNETT: Let me ask this.

Ms. Hanford, have you heard anything here today that would change your mind about certifying this candidate?

MS. HANFORD: No, I haven't. Mr. Farrar stated that I spoke to him on the 7th. At that time I had said to him that, you know, it was too late.

And I wish that he had come to me, because
there were things that we possibly could have
done. But I -- I'm five miles from his house.
I'm party chair. I'm very active. I'm very
vivid, you know, in the community. I wish he
had come to me.

MR. FARRAR: So don't you think I would
have if I thought I had to?

I mean I -- my memory, when I filled out my
CAN-2, the last primary I voted in was
Democratic. Because I had a half dozen times in
life, I didn't think it was a concern. I
honestly didn't want to bother you or take away
from your time.

MS. McGOWAN: Mr. Chairperson, that
information is not before this Commission right
now. We have a certified copy of his voting
record. It indicates that he voted in the 2012
primary election as a Republican. Mr. Farrar
admits this fact.

He has not offered any evidence here today
that he actually did vote in the 2014 Democratic
primary election, other than his word. And he
had the opportunity to go and get his certified
voting record prior to this hearing today, which
he did not do.
CHAIRMAN BENNETT: We have a motion and a second. I think it's time that we call the question.

All those in favor of sustaining the challenge pursuant to the motion say aye.

THE COMMISSION: Aye.

CHAIRMAN BENNETT: All those opposed say nay.

(No response. Motion carried.)

CHAIRMAN BENNETT: The challenge is sustained. Thank you.

MS. McGOWAN: Thank you. Thank you for your time.

VICE CHAIRMAN LONG: Thank you. Nice presentation.

IN THE MATTER OF

THE PRESENTATION TO JEFF EMBRY

CHAIRMAN BENNETT: The Jeff Embry challenge is our next proceeding, Cause No. 2016-7.

MR. SIMMONS: Mr. Chairman, Members of the Commission, under the Jeff Embry tab you will find the challenge filed by Michael Gerrish, a copy of the declaration filed by Jeff Embry, and a proof of notice.

In addition, I received just a few moments
ago an appearance for Mr. Gerrish filed by
Martin Shields.

CHAIRMAN BENNETT: Let me interject. My
apologies to Rachel Covington. I skipped over
her challenge. We'll do that next. Thank you
for your indulgence.

Okay. Back to the Embry challenge. We
would recognize challenger Michael Gerrish for
the presentation.

MR. SHIELDS: Mr. Chairperson, my name is
I enter my appearance on behalf of Michael E.
And our challenge is based upon the facts
and on the evidence set forth -- the statements
set forth in the CAN-1, which, in essence, is
that Mr. Gerrish is the county chairman of the
Henry County Republican Party; that Mr. Embry
did file a CAN-2 declaration of candidacy with
the Indiana Secretary of State's office; and
that on Question 3, he did state that he had
voted as a Republican in the last primary.

And those facts are contested by us. And
if I may approach, Mr. Chairperson, I have an
exhibit.
(Exhibit 1-Gerrish was marked for identification.)

CHAIRMAN BENNETT: Thank you.

MR. SHIELDS: This consists of a voter poll list of Henry County, Indiana, for 2008, our primary election, together with the certified two pages from the Statewide Voter Registration System, which shows Mr. Embry's voting history from 2008 general -- excuse me -- primary election, through the 2014 general election.

And it, like the county poll record for the 2000 primary, shows that he did vote only in one primary, and that was in person as a -- on the Democratic ballot.

And I have the challenge as Exhibit 1 for members of the Commission.

VICE CHAIRMAN LONG: Thank you.

MR. SHIELDS: Thank you. Mr. Gerrish, if called, would testify that he was contacted by Mr. Embry, he believes, before the filing, and that Mr. Embry did not request a waiver or letter from the county chairman, Mr. Gerrish. And Mr. Gerrish would not have provided one based upon his voting record.

So based upon the legal authority, which
was just cited before, and based upon the
contents of the petition and the evidence before
the Commission, we would ask that you approve
the challenge and find that he is not eligible
to run based upon his voting record.

And I would indicate that the signature on
the voter poll list, Exhibit 1, page 1, shows
that he did vote at a previous address as -- and
checked the Democrat ballot there, and did sign.

And there was also, to the extent it may be
relevant, another member of that household who
did vote in that primary and did also choose the
Democratic ballot.

VICE CHAIRMAN LONG: Are you going to ask
the chairman a question or two?

MR. SHIELDS: Yes, if I may.

Mr. Gerrish, you have been previously
sworn; is that correct?

MR. GERRISH: Yes.

MR. SHIELDS: Did you talk with Mr. Embry
sometime prior to his filing, do you believe?

MR. GERRISH: I believe I did.

MR. SHIELDS: You talked over the
telephone; is that correct?

MR. GERRISH: Yes.
MR. SHIELDS: You've never met him in person until here today?

MR. GERRISH: No.

MR. SHIELDS: And did he ask you for a waiver or a letter for permission to run in the Republican primary?

MR. GERRISH: No.

MR. SHIELDS: Would you have given one if he asked?

MR. GERRISH: I wouldn't have known without checking his record.

MR. SHIELDS: Had you checked his record, would you have given him one, based upon the facts and circumstances here today?

MR. GERRISH: Probably not.

MR. SHIELDS: Is the answer no?

MR. GERRISH: Yes.

CHAIRMAN BENNETT: Anything else?

MR. SHIELDS: No.

CHAIRMAN BENNETT: Thank you. Mr. Embry, do you want to ask any questions?

MR. EMBRY: Not ask any questions. My name is Jeff Embry, E-M-B-R-Y.

I do remember having our conversation over the phone, that's correct. I was trying to do a
little introduction of myself to him. And I was explaining to him in great detail that I am a Republican.

I've always been a Republican. I voted in the Republican Party for Ronald Reagan when I was on deployment in 1984, my first deployment when I was in the United States Navy. I voted for Ronald Reagan, George H. Bush. I voted even for Bob Dole, George W. Bush, and I voted for Mitt Romney.

And if my memory is correct, in 2012 I voted in the primary and the general election for Mitt Romney, Republican Party. And I even explained to him I would be voting in the May 3 primary for Donald Trump, because I'm a Donald Trump supporter.

And the other signature, that's my wife. That's my wife's signature. This is when we lived over in Riley School Precinct. We've moved since then, and we live in the Prairie No. 3 Precinct.

And I talked to my wife. I said, "I do not remember voting Democrat in the primary." I asked her, I said, "Did you vote Democrat?" She said, no, she had never voted Democrat. And I
have never voted Democrat. I don't know why
they are checked that, as a Democrat. So I'm a
little confused with that.

And also, in 2008 is the first year that I
voted here in the state of Indiana, because
before then, I was living in the state of
Kentucky. So this is my first time in 2008
voting, and it was a little different, compared
to what I was used to.

And like I said, on our conversation over
the phone with Mr. Gerrish, I explained to him
in great detail how I've been a lifelong
Republican. Started back when I was in the Navy
voting for Ronald Reagan. And I've never voted
other than Republican.

CHAIRMAN BENNETT: Did you ask him to allow
you to run as a Republican in the county?

MR. EMBRY: Well, when I was talking to him
about -- and also, I cannot remember the other
person's name. He's the chairman. I'm trying
to remember the other lady's name I talked to.

What I was trying to find out is who was
going to run for office. I did not want to step
on any political toes. I was new to the
process. I was just trying to get my name out
there and trying to get information from him who
was going to run for election or re-election.

And if my memory serves me correct, he
never did get with me, but the other lady that
works at the audit office -- I cannot remember
her name -- at the Henry County audit office,
that's where she works. She was the one who
finally returned my phone calls. And we were
texting back and forth, who was going to run for
election or re-election, so ...  
CHAIRMAN BENNETT: Did you do anything to
verify or challenge your voting record?

MR. EMBRY: Yesterday I was in Walt Disney
World with my little boy. We're foster parents,
me and my wife, and we're in the process of
adopting our son. We've had him for three
years. And so we've been spoiling him, because
like I said, it's been a three-year process.

We're in the process of adopting him.

And I got back last night at 11:30 p.m.
And I went and got my mail, and this was in the
mail. So I really haven't had time to do
anything.

CHAIRMAN BENNETT: Any other questions?

Anything else from either of the parties?
MR. EMBRY: The only thing else I'd like to interject is that I voted in 2012 in the primary, in the precinct -- in Prairie No. 3 Precinct. I'm pretty sure -- I'm pretty sure I voted in the primary and the general election. And I will be voting this May for Donald Trump, and, of course, myself.

CHAIRMAN BENNETT: Okay. Is there a motion?

VICE CHAIRMAN LONG: I would move to sustain the challenge because the statute has no wiggle room. We've got certified records here, and it's not contested, and I think they met their burden.

COMMISSION MEMBER KLUTZ: I will second.

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

THE COMMISSION: Aye.

CHAIRMAN BENNETT: All opposed say nay.

(No response. Motion carried.)

CHAIRMAN BENNETT: Challenge sustained.

Thank you, folks.
IN THE MATTER OF

THE CHALLENGE TO RACHEL COVINGTON

CHAIRMAN BENNETT: All right. Now, let's proceed with the Rachel Covington challenge, Cause No. 2016-1.

I'll recognize the staff for a description of what's in the binders.

MR. SIMMONS: Mr. Chairman, Members of the Commission, under the Rachel Covington tab, you'll find the challenge filed by Joshua A. Claybourn, an email from Gerard Magliocca which indicates he will be appearing for Rachel Covington, and a copy of the declaration of Rachel Covington, and proof of notice.

CHAIRMAN BENNETT: All right. Thank you. At this time I would recognize the challenger, Joshua Claybourn, or his representative for presentation.

MR. BROOKS: I know you're all delighted to see me again. It would probably be better penance for me if you put me last, which I understand.

But I'm here on behalf of the challenger. With me is Chris Creighton (phonetically), who's a third year law student who has been helping me
do some research on these things. And I may let him talk if we need to get into very much case law, just on the theory that you won't hold it against him, since I talked so long the first time.

So the root of the challenge is very simple. I will give you the voter registration of Ms. Covington, which indicates she was born on March 3 -- no -- March 28, 1992, which is Exhibit 1.

(Exhibit 1-Claybourn was marked for identification.)

MR. BROOKS: You'll be glad to know that's our only exhibit, and the purpose is just to show her birthdate.

Pursuant to 3-8-1-8, a candidate for the office of United States Representative must have the qualifications provided in Article I, Section 2, clause 2, of the Constitution of the United States, which, in turn, reads: "No person shall be a representative who shall not have attained the age of 25." And there's some other stuff, but that's the key.

And if you do the math, she will not be 25, if she was to be seated, so she couldn't be
sworn into office in January.

And we believe that because a candidate has
to have those qualifications pursuant to Indiana
law, she should not be placed on the ballot.

VICE CHAIRMAN LONG: This is an interesting
question. Is there any case law that has said
that you have to be 25 in order to file, or the
Constitution says there's some --

MR. BROOKS: Let me first --

VICE CHAIRMAN LONG: The question is, if
she were elected, could it be kicked out and she
wouldn't get sworn in for two months?

MR. BROOKS: One reading of the statute I
read says that the candidate must have the
qualifications.

I'm not arguing that she has to be 25 now,
which she's not. I'm simply saying that she
would not be 25 when she would be sworn in in

VICE CHAIRMAN LONG: So you're saying --
and it's an interesting academic question. If
she were going to be -- whenever they get sworn
in, the day before, if she would turn 25 --
she'd be 24, vote the election, then she would
be a qualified candidate, and as long as she
turned 25 before she was sworn in, that would be permissible under our code?

MR. BROOKS: I think you could have a harsher interpretation. I'm just not making that interpretation.

VICE CHAIRMAN LONG: Yeah.

MR. BROOKS: I think it's clear -- the question you pose, I think, is clearly true. She would have to be 25 on the day she was sworn in, and she won't be.

VICE CHAIRMAN LONG: And I read the statute, too, and it was an interesting question.

MR. BROOKS: I did not review any English common law on that question.

VICE CHAIRMAN LONG: Nor did I.

MR. BROOKS: I was very impressed while I was waiting that you had actually read some. And I was sitting there wondering when the last time I read it. And I was like, "Hmm, I'm not sure I remember."

CHAIRMAN BENNETT: Anything else?

MR. BROOKS: No, that's it.

CHAIRMAN BENNETT: Mr. Magliocca?

MR. MAGLIOCCA: It's Gerard Magliocca,

I have three points to make. I'll keep it brief. The first is that the House of Representatives is the exclusive judge of whether someone has met the age requirement laid out in Article I. It's not a justiciable question. It's never been found to be a justiciable question. So that's the first one.

The second point is that the practice of the House and the Senate has been that people who were elected under the eligible age could be sworn into office on the day that they reach the eligible age.

Now, I'll give you three examples. First, Vice President Biden was first elected to the Senate at the age of 29 in 1972. He turned 30 a couple of weeks after the election and was -- took his seat without any issue.

Rush Holt was elected to the Senate from West Virginia in 1934 at the age of 29. He turned 30 in June of 1935, and the Senate considered a challenge to his eligibility, and
concluded that he was eligible, just not until
the day he turned 30, when he was sworn in and
served his term.

And finally, John Young Brown of Kentucky
was elected to the House of Representatives --
not the infamous John Brown, but a different
John Brown -- was elected --

VICE CHAIRMAN LONG: His daddy?

MR. MAGLIOCCA: I don't think he's any
relation, but --

VICE CHAIRMAN LONG: I'll bet he is.

MR. MAGLIOCCA: -- he was elected to the
House in 1858 at the age of 23 --

VICE CHAIRMAN LONG: Granddaddy.

MR. MAGLIOCCA: -- and he turned 25 in June
1860, which meant the seat was vacant for a year
and a half. But when he turned 25, he was
sworn, and he took his seat.

So there is no example of the House or
Senate denying a seat to someone who had been
elected under the eligibility age, and then
turned -- reached the eligibility during that
Congress.

The final thing I'll note is that if you
read the textual provision -- and I'm going to
read the whole thing because I think it's important -- "No Person shall be a Representative who shall not have attained to the age of 25 years, and been 7 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen."

So in other words, the requirements of Article I make one point about what needs to be true when you're elected. You have to be an inhabitant of the state that you're going to represent.

The other requirements, age and citizenship, are not tied to when you're elected. They're tied to when you can serve. So for all of those reasons, I would submit that the challenge should be rejected.

I have just one other point. Of course, voters may well not want to vote for someone so young. Very few people have been elected who are so young, and they may not want to vote for someone who can't serve part of their term, because clearly, Ms. Covington could not begin serving, if elected, until March of 2017. But that's for the voters to decide.
VICE CHAIRMAN LONG: We don't want to
disenfranchise all those people in the eighth
district? Is that what you're saying?

MR. MAGLIOCCA: That is correct.

MR. BROOKS: My only comment on that is
while clearly there is some constitutional
authority for the House of Representatives to
seat its own members, et cetera, et cetera, that
is up to Congress.

I don't think this body should determine
whether the Constitution should be violated,
because if the Constitution gives Congress that
decision, then I suppose they can make it.

And with respect to other people being
elected, this is an on-the-ballot question.
It's whether you qualify to be on the ballot.

Indiana law has typically been, you know, you've
got to follow constitutional procedure.

But by and large, the State is allowed to
set the mechanics of elections and
qualifications. And so this is a ballot
placement question. And who knows what the
ballot placement rules were in those other
states?

But in Indiana, it's pretty clear. You
must have those qualifications. And those qualifications are that you have to be 25 to take office.

So I don't see how you can argue she meets the standard in the Indiana ballot placement section, or the qualification, 3-8-1-8.

COMMISSION MEMBER KLUTZ: So the only thing we're looking at is 3-8-1-8?

MR. BROOKS: Yes, and the Constitution.

VICE CHAIRMAN LONG: As referenced.

COMMISSION MEMBER KLUTZ: As referenced, but ... 

MR. BROOKS: Yes, that is the source of our challenge. She's not qualified to take office, so she can't be a candidate.

CHAIRMAN BENNETT: Professor, do you know if any of the other cases you cited had state law similar to Indiana?

MR. MAGLIOCCA: I do not know that.

However, I do know that the Supreme Court held in 1995 that states may not add to the qualifications in Article I.

And I would submit that by saying that someone who cannot take office on the first day of the Congress is ineligible to serve, that's
what you would be doing.

So I would submit that that's inconsistent
with U.S. --

VICE CHAIRMAN LONG: Well, let me ask you
an academic question. I haven't heard so much
constitutional law since law school.

What if Ms. Covington -- is that her
name -- were 18?

MR. MAGLIOCCA: Well, then she would be
ineligible, because she wouldn't turn 25 within
the term that --

VICE CHAIRMAN LONG: So that would be the
determinant in your mind? If she were 23, or as
long as she turns 25 during the two-year term of
office that she's running for, at some point
that would be permissible?

MR. MAGLIOCCA: That's correct.

VICE CHAIRMAN LONG: That would be your
interpretation?

MR. MAGLIOCCA: Correct.

MR. BROOKS: Real quick, the case -- I'm
going to let Chris talk about it briefly and
give you the synopsis -- that this statute,
3-8-1-8, doesn't add anything to the
Constitution.
VICE CHAIRMAN LONG: I agree with that.

MR. BROOKS: Those other cases that he described, those were actually adding something. We're not adding.

CHAIRMAN BENNETT: Okay. Let's --

COMMISSION MEMBER KLUTZ: I agree. I would make a motion that the challenge be sustained.

VICE CHAIRMAN LONG: I'll second.

CHAIRMAN BENNETT: We've got a motion and a second. All in favor of the motion to sustain say aye.

THE COMMISSION: Aye.

CHAIRMAN BENNETT: All opposed say nay.

(No response. Motion carried.)

CHAIRMAN BENNETT: Motion carries.

Challenge sustained.

VICE CHAIRMAN LONG: Thank you for coming in, Professor.

MR. MAGLIOCCA: Thank you.

VICE CHAIRMAN LONG: That was interesting.

(Discussion off the record.)

IN THE MATTER OF

THE CHALLENGE TO DANNY (DAN) BALL

CHAIRMAN BENNETT: We are at our last challenge. This is the proceeding involving
Danny Ball, Cause No. 2016-8.

And I would recognize the staff for a description of what is in our binders.

MR. SIMMONS: Mr. Chairman, Members of the Commission, you will find the challenge filed by Ginger Bradford, a copy of the candidate declaration filed by Danny Ball, and proof of service.

CHAIRMAN BENNETT: At this time I would recognize the challenger, Ginger Bradford, or her representative for presentation.

MS. BRADFORD: Yes. My name's Ginger Bradford, and I'm challenging this because in 2008 was the last time he voted in Ripley County. And I'm the county chairman. And he did not vote Republican. He voted Democrat. And he does not have a voting history after 2008.

CHAIRMAN BENNETT: Anything else?

VICE CHAIRMAN LONG: You submitted, did you not, your voter party list with your challenge?

MS. BRADFORD: Yes.

VICE CHAIRMAN LONG: Which we have a copy of. Are you asking that to be considered as evidence?
MS. BRADFORD: Yes, please.

CHAIRMAN BENNETT: We'll call that Exhibit 1.

(Exhibit 1-Bradford was marked for identification.)

CHAIRMAN BENNETT: Are you Mr. Ball?

MR. BALL: Yes, I am.

CHAIRMAN BENNETT: And would you like to ask any questions, or do you want to tell us your position?


And what Ginger has laid out there is accurate. And furthermore, I think she's done her job as a chair that she should do, because if I were in her shoes and I'd see what I would see, I would challenge as well the chair. So I think she's done what she was supposed to do there.

So what I come with is, we've lived in Indiana for our entire lives. In 2008, just as the outgoing lieutenant governor did, she voted Democrat in 2008. And then in 2010, when she ran for District 74, her candidacy was challenged for the same reason, that she voted
1 Democrat.
2 Her record was looked at by this Commission
3 in 2010, and she was allowed to remain on the
4 ballot, and went on to initially -- to
5 lieutenant governor.
6 And the same thing with me. I was a solid
7 Republican trooper. I went to vote in the
8 Democratic primary because the Republican
9 primary had wrapped up. John McCain had it, and
10 I wanted to have a voice in the presidential
11 election. So that's when I went and voted.
12 Now, the -- I spent a couple of days trying
13 to figure out how my record was wrong, because
14 when I first learned of it, I didn't hear it
15 through the challenge. I just heard it through
16 the grapevine. So I spent two or three days
17 trying to figure out how I was wrong.
18 And I called people and was talking to
19 them, and I said, "How do we get this
20 challenged?" And I checked with the clerk's
21 office, and they said you can't get it
22 challenged -- or you can't get it changed.
23 And I checked with other clerks' offices,
24 and they said, "You can't get it changed." I
25 went back and forth for several days on those