

STATE OF INDIANA

INDIANA RECOUNT COMMISSION

IN THE MATTER OF THE PRIMARY ELECTION
FOR INDIANA STATE SENATE DISTRICT 23

PAULA K. COPENHAVER,
Petitioner,

v.

SPENCER R. DEERY,
Respondent.

**RESPONDENT'S MOTION TO DISMISS THE ELECTION CONTEST PORTION OF
THE VERIFIED PETITION FOR RECOUNT AND CONTEST**

Respondent, Spencer R. Deery, by counsel, respectfully moves that the Indiana Recount Commission dismiss the election contest portion of Petitioner's Verified Petition for Recount and Contest of Republican Primary Nomination for Indiana State Senator in Senate District 23 ("Petition"), because the Petition fails to allege the sufficient and required facts to challenge a legally cognizable election contest under Indiana law. In support thereof, Respondent states as follows:

INTRODUCTION

Petitioner's pleading seeks extraordinary statutory relief by requesting an election contest based upon generalized allegations, speculation, hearsay, social media commentary, and newspaper reporting. However, the Petition does **not** allege specific, non-conclusory facts demonstrating that any provision of Indiana election law was violated. Nor does the Petition allege that any irregularity affected the outcome of the election, making it impossible to determine the winner. An election contest is extraordinary because its remedy is a special election.

An election contest filed pursuant to IC § 3-12-11-3(b) asks the Indiana Recount Commission ("Commission") to determine whether an election irregularity occurred which makes it *impossible* to determine which candidate received the highest number of votes. Also required to be pled and identified within an election contest petition are the *specific* precincts in

which ballots were cast where a distribution or printing mistake occurred, where a mistake occurred in the programming of an electronic voting system, or where an electronic voting system malfunction occurred. (IC § 3-12-11-3 (c)). Likewise, if an election contest petition states that the Petitioner believes a deliberate act or series of acts occurred which make it impossible to determine the candidate who received the highest number of votes in the election, the Petitioner *must* identify each precinct or other location in which the act or series of acts occurred to the extent known to the Petitioner (IC§ 3-12-11-3(d)). Here, the Petitioner lists every statutory option as the basis for the contest and identifies the entire district, not specific precincts, where alleged issues occurred. The statute contemplates acts far more narrowly tailored to justify an election contest and subsequent special election.

Petitioner further alleges that “substantial evidence” of fraud, tampering, or misconduct affecting ballot integrity exists throughout the entirety of Senate District 23, making it impossible to determine the number of votes received by each candidate. Petitioner also affirms that “substantial evidence” exists that “invalid votes” were cast in the Senate District 23 election yet fails to mention specific precincts where unlawful activity, pursuant to Indiana Criminal Code or Indiana Election Code, occurred. The Petition further does not confirm identities of any human beings involved. Instead, the Petitioner enumerates, in multiple paragraphs, unnamed, presumptive human voters (listed A-N in the Petition) whose names are associated with comments made on social media or with comments made in response to a reporter regarding “crossover voting” in Senate District 23 made several days *after* the 2026 Republican Primary held on May 5, 2026. There is nothing in the Petition to prove these “people” exist, who they are, or confirmation if they are who they claim to be. Social media communications are not made under oath, are not verified, and in many cases are simply blatant lies or rhetoric in an attempt to incite online banter.

Indiana's election statutes require considerably more than suspicion or conjecture to sustain a valid request for an election contest and subsequent special election. Because the Petitioner fails to plead sufficient factual allegations establishing a legally cognizable contest, the contest portion of the Petition should be dismissed.

STANDARD

An election contest exists solely in statute, and the Indiana Recount Commission possesses *only* the authority granted to it by under IC § 3-12-10-5. IC § 3-12-11 governs recounts and contests for nominations and elections to federal, state and legislative office, including the state senate office at issue here. The statute further outlines the requisite facts and information that *must* be pled to validly contest an election result. The Petitioner is required to allege specific, non-conclusory facts, based upon *personal knowledge* or identified witnesses that, if true, would entitle her to relief. Without those facts being alleged, the Indiana Recount Commission lacks statutory authority to proceed.

ARGUMENT

The Petition Fails to Identify Specific Facts Constituting a Statutory Election Contest.

Rather than alleging concrete facts and specific precincts, which are required by statute, the Petitioner repeatedly states her concerns regarding alleged “invalid” votes and references to comments purportedly appearing in newspaper articles and social media, by individuals unknown to her.

The Petition fails to identify:

- Any actual or specific voters alleged to have voted unlawfully;
- Any actual or specific statutory provision violated;
- The specific and particular ballots that should be rejected;
- Any legitimate precinct where illegal voting allegedly occurred;
- Any election official who violated Indiana law;
- Any specific machine malfunction or ballot printing issue;
- Any specific machine programming issue or malfunction;
- Any specific or actual facts demonstrating that any challenged vote was unlawfully cast;
or
- Any actual facts demonstrating that any alleged irregularity affected the certified election results.

To the contrary, the Petitioner wants the Commission to conclude that the results of the election are impossible to determine, based completely upon unverified and unidentified social media accounts and comments made online. Petitioner is asking the Commission to accept third-party conjecture as the basis of her fraud and invalid voting claims and to throw out a valid election result and hold an entirely new election. There is nothing in Indiana Election Code that allows a losing candidate to suddenly challenge voters and the final election results solely based on public comments in support of the winning candidate.

Petitioner erroneously and incorrectly states that “a vote cast in violation of IC § 3-10-1-6 by a voter not entitled to vote in the Republican Primary is not a valid vote under Indiana law” yet fails to cite any statute or case that supports her affirmation. Nor does she know or have the ability to prove the identity of anyone accused of doing so. Because the Petitioner missed her opportunity to challenge voters as proscribed by IC § 3-10-1-9, she is now asking the Commission to challenge voters for her.

How does Petitioner suggest we identify these ballots? Should we invalidate entire precincts, townships, counties? Petitioner calling ballots invalid, based upon nothing more than social media posts, is dangerous, disingenuous and wholly insufficient to invoke the extraordinary statutory remedy of an election contest and subsequent special election.

The Petition is Predicated Upon Speculation Rather Than Well-Pleaded Facts.

Much of the Petition relies upon statements allegedly made by unidentified and unconfirmed third parties through social media or as repeated by a reporter. These allegations are not factual averments based upon *personal* knowledge but instead are purely speculation and secondhand reports. Verification of a petition does not transform hearsay, rumors, or social media commentary into competent factual allegations sufficient to state a statutory cause of action, let alone an election contest. A verified petition must still contain factual allegations—not suspicion or conjecture.

Petitioner’s own Motion to Hold in Abeyance three (3) separate subpoena requests prove exactly how little factual, confirmed or verified information the Petitioner had at the time of filing or has now. The Petitioner now asks the Commission to ignore requests for subpoenas for

individuals (B, C and M) because she now believes they do not even live in Senate District 23 even though she attested to the fact that they do and that they cast “invalid votes.” Petitioner relies upon comments made “in response to a social media post asking who crossed over to vote Republican for Candidate Deery:

“Voter B, a registered voter in District 23, responded that she thought hard about crossing over to vote for candidate Deery.” But, as it turns out, Voter B was not eligible to vote in District 23 and Petitioner provides no evidence that Voter B even attempted to vote in District 23 let alone actually voted in District 23. (Petition, p. 8, ¶ 36).

“Voter C a registered voter in Senate District 23, said she always votes straight D and took an R for the primary.” (Petition, p. 8, ¶ 37). Given that Voter C is not a registered voter in Senate District 23 and again, with no evidence that she actually voted in the District 23 race, Voter C’s comment goes to show how a keyboard warrior makes all kinds of statements for all kinds of reasons.

“Voter M, a registered voter in District 23 likewise responded to a social media post regarding crossover voting, stating that he crossed over and voted for Deery even though he was ‘liberal as hell.’” (Petition, p. 10, ¶ 45). Again, a keyboard warrior claiming he did something that he did not do because again, he did not reside in District 23, was not eligible to vote in the District 23 race and did not attempt or actually vote for Deery.

The Petitioner also outlines what she believes to be an issue in Tippecanoe County because the “unofficial election results” posted online the evening of May 5, 2026 (Election Night) changed by one (1) vote, overnight. Without providing anything further in her Petition, outside of her speculation that comments on social media translate into truth, the Petitioner wants the Commission to potentially void a legitimate vote or consider ordering a special election because an *unofficial* election result changed by one (1) vote overnight and prior to an official election board hearing. The Petitioner goes on further to call the votes in Tippecanoe County, conveniently the home-county of the Respondent, “illegal votes” and suggests that no votes in Tippecanoe County or any other county should count if they are “invalid”. Again, the Petitioner fails to specify anything concrete or factual in furtherance of her conspiracy. Further, the

Petitioner is asking the Commission to issue subpoenas for depositions in an effort to gather the evidence she needs. Petitioner has the process confused.

The Petition Seeks Discovery to Determine Whether a Contest Exists.

The Petition asks the Commission to authorize subpoenas and depositions in order to determine whether evidence supporting a contest may exist. This is in direct opposition to IC § 3-12-8-6, which mandates that Petitions must state the specific basis for challenging an election outcome and the specific precincts at issue.

Petitioner uses paragraphs 35-48 of her Petition to outline comments made by social media accounts she has identified and noted as “voters” A-N. Yet, Petitioner requests subpoenas to depose these unknown or unidentified “people” to obtain information that is the necessary basis of her own Petition.

Indiana law does not permit a party to initiate an election contest merely to conduct a fishing expedition. Rather, the petitioner must first allege facts sufficient to establish a legally cognizable contest before invoking compulsory discovery procedures. Demanding depositions of Indiana voters is an extraordinary and unheard-of measure that would subject non-parties to unbelievable harassment from a losing candidate. Hoosier voters are entitled to privacy regarding their ballots, voting choices and ability to vote freely, without fear of retaliation from the loser of an election. Permitting discovery based solely upon speculation would invite election contests whenever unsupported allegations circulate on social media or appear in newspaper articles.

Petitioner cannot satisfy the statutory requirements for an election contest merely by characterizing disputed conduct as “fraud.” Fraud is a conclusion, not a substitute for specific facts. A verified contest petition must identify the conduct alleged to constitute the statutory ground for contest with sufficient specificity to place the opposing candidate and the Commission on notice of the claim to be adjudicated. A generalized allegation of fraud cannot serve as a jurisdictional placeholder permitting Petitioner to conduct post-election discovery in the hope of later discovering facts that might support the accusation.

The Petition Fails to Allege Facts Demonstrating Materiality.

Even assuming every factual allegation contained in the Petition were accepted as true, the Petition fails to allege facts demonstrating that any alleged irregularity would change or place in doubt the certified election result or make it “impossible to determine” the number of votes for each candidate.

The Petition contains no *factual* allegations identifying:

- how many votes were allegedly illegal or invalid;
- whether those votes exceeded the certified margin;
- whether any voter was legally disqualified;
- whether any ballot was improperly counted; or
- how the alleged conduct would alter the election outcome.

Absent such allegations, the Petition fails to state a claim upon which election contest relief may be granted.

Election Contests Cannot Be Based Upon Mere Suspicion.

Election contests are extraordinary statutory proceedings intended to resolve actual legal disputes supported by specific facts—not generalized suspicions. Accepting Petitioner's theory would permit virtually every election to become subject to litigation whenever social media users or members of the press speculate about voter eligibility.

Indiana law requires more.

CONCLUSION

Because Petitioner's Petition fails to plead sufficient factual allegations supporting a statutory election contest, relies upon rumors and speculation rather than specific facts, and fails to allege any facts demonstrating that the certified election results are legally unreliable or impossible to determine, Respondent respectfully requests that the Commission:

1. Dismiss the election contest portion of the Petition with prejudice;

2. Deny Petitioner's requests for subpoenas, depositions, or additional discovery related to the contest allegations;
3. Limit these proceedings to any properly pleaded recount issues authorized by Indiana law; and
4. Award all other just and proper relief.

Respectfully submitted,

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