

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 OVERRULE THE PETITIONER'S OBJECTION
TO THE UNTIMELY AND UNAUTHORIZED ALTERATION OF CERTIFIED
ELECTION RESULTS AND REQUEST FOR EMERGENCY PROVISIONAL
RELIEF FROM THE INDIANA RECOUNT COMMISSION**

Respondent Spencer R. Deery, by counsel, respectfully submits this Motion to Overrule the Petitioner's Objection to the Untimely and Unauthorized Alteration of Certified Election Results and Request for Emergency Provisional Relief from the Indiana Recount Commission concerning the final vote totals submitted to the state, by the Parke County Election Board, after the Republican Primary Election held on May 5, 2026.

Petitioner's objection should be overruled because it rests upon a mistaken characterization of the relevant events.

INTRODUCTION

The Parke County Election Board timely performed its canvassing function and approved the correct final vote total, as required by IC § 3-12-5-11, on May 13, 2026. Indiana Code requires the circuit court clerk to transmit a certified statement to the Indiana Election Division no later than the second (2nd) Monday after the primary election, specifying the number of votes received by each candidate for legislative office in the county. The Republican Primary Election was held on May 5, 2026 and the statutory deadline to submit the certified statement was May 18, 2026. During the Parke County Election Board meeting, and after a vote from the Parke County Election Board, one (1)

provisional ballot was counted for candidate Spencer R. Deery and thus the final vote total changed by one vote; Paula K. Copenhaver 1249 and Spencer R. Deery 1191. After the Parke County Election Board meeting on May 13, 2026, the new vote totals were uploaded into the Statewide Voter Registration System (“SVRS”). It was soon discovered that the SVRS system did not update properly and therefore the data had to be resubmitted to reflect the correct final vote totals. The data was resubmitted to the state through SVRS on May 21, 2026, three days after the original deadline. This subsequent action by the Parke County Clerk merely corrected the prior data transmission with the correct and final results of the 2026 Republican Primary Election.

ARGUMENT

A clerical, administrative, or transmission error does not change the underlying vote. Nor should such an error be transformed into a mechanism for excluding a lawful vote that the election records establish was cast and counted.

The entire purpose of a recount is to determine the accurate vote totals. Petitioner’s position would accomplish the opposite: it would require the Commission to knowingly preserve an inaccurately reported vote total merely because the *correction* of a ministerial discrepancy occurred after the ordinary reporting deadline.

Petitioner Conflates the Parke County Election Board’s Determination of the Election Result with the Later Transmission or Correction of That Result.

The relevant question is not simply when a particular number appeared in SVRS.

The Commission must determine:

- (1) what vote total the Parke County Election Board lawfully determined and approved during the canvass;
- (2) whether the underlying election records support that total; and
- (3) whether the later action changed the Board’s determination or merely caused the transmitted or reported record to conform to the result the Board had already approved.

Here, the Parke County Election Board timely met on May 13, 2026 at 10:00 a.m., canvassed the election returns, voted to count one (1) provisional ballot, and approved the updated vote total, as referenced in the meeting minutes of the Parke County Election Board (Exhibit B). The later discrepancy arose because the number transmitted or reflected

in the SVRS did not accurately correspond with the result approved through the Parke County Election Board's canvass.

Correcting that discrepancy did not constitute a new canvass. It did not involve the late discovery and counting of a previously unknown ballot. It did not involve a post-deadline exercise of discretion by the Parke County Clerk to change the winner of the election.

It was a correction *necessary* to make the transmitted record accurately reflect the result already determined through the statutory canvassing process and voted upon by the Parke County Election Board on May 13, 2026. In fact, IC § 3-12-5-14(b) requires a county election board or the Election Division to correct an error in the certification of the vote for a candidate if the error is discovered not later than the final date and hour for the filing of a recount or contest. The final date to for the filing of a recount or contest was for the 2026 Indiana Republican Primary was May 22, 2026 at 12:00 p.m., one day *after* the correction was submitted to the state.

Petitioner's characterization of that correction as an "untimely and unauthorized certification" is patently false.

The Underlying Election Records—Not A Transmission Error—Determine the Actual Vote.

An election result is not created by a data-entry field. The vote exists because a qualified voter lawfully cast a ballot and the ballot was counted in accordance with law. The canvass and certification processes officially ascertain and report that result; they do not transform an inaccurately transmitted number into an uncorrectable fact when the underlying election records establish otherwise.

Petitioner's position would require the Commission to treat an erroneously transmitted number as controlling even if the Commission knows, based upon the actual election records, that the number is inaccurate. That position is incompatible with the fundamental purpose of a recount.

The Commission's responsibility is to determine the correct vote under the Indiana Election Code. It should not knowingly perpetuate a clerical or transmission error merely because that error was corrected after a reporting deadline.

The Correction Did Not Constitute an Unauthorized Substantive Amendment of the Election Result.

There is an important legal and factual distinction between:

a substantive post-certification change in the election result based upon a new discretionary decision;

and

a ministerial correction necessary to make the reported election result conform to the result already determined and supported by the election records.

Petitioner improperly treats those circumstances as identical.

If a county election board were to reconvene after the expiration of its statutory authority, reconsider disputed ballots, count additional ballots, or make a new substantive determination affecting the result, different questions might arise. That is not what occurred here.

The later action did not create a new vote total through a new adjudicatory or canvassing decision. It corrected the reporting of the result already approved. A ministerial correction does not become an unlawful substantive recertification merely because the correction affects the numerical total appearing in a subsequent report.

Petitioner Cannot Convert an Administrative Error into the Disenfranchisement of a Lawful Voter.

Even assuming, for purposes of argument, that an election official should have corrected or transmitted the information sooner, the consequence of an official's delay should not be the exclusion of a lawful vote.

The voter did not control:

- the canvassing process;
- the preparation of the certification;
- the transmission of county election results;
- the operation of the state reporting system; or

- the timing of the correction of an administrative discrepancy.

A lawful voter should not lose the benefit of the ballot because an election official made a clerical, reporting, or transmission error. As demonstrated in Indiana Code, IC §§ 3-12-4-21 & 22, an election official's mistakes do not create a basis for disregarding the underlying lawful vote.

Petitioner's theory would impose the consequence of an official's alleged procedural error upon the voter whose ballot is at issue.

The Existence of the Recount Process Itself Undermines Petitioner's Claim That an Erroneous Certified Number Must Control.

A certified election result is not immune from examination or correction merely because it has been certified. If certification made every reported number legally immutable, the statutory recount process would serve little purpose. The Indiana General Assembly created the recount process precisely because the initially reported or certified total may not always reflect the correct vote.

A recount may reveal discrepancies arising from tabulation, reporting, or other errors. The Commission's task is to determine the result according to the ballots and election records governed by the Indiana Election Code. Additionally, IC § 3-12-11-23(a) requires the Indiana Election Division, during an election recount, determine whether the votes in the precincts shown by the *recount* certificate differ from the votes that were tabulated by the county election board. If the Indiana Election Division previously included in a tabulation the votes cast for the office as returned by the county election board, the Indiana Election Division *must* correct the tabulation in accordance with the recount certificate.

Accordingly, even if Petitioner disputes the procedure by which the county-level reporting discrepancy was corrected, the Commission is not required to ignore the underlying evidence establishing the correct vote, as is required under IC § 3-12-11. The Commission should determine the vote through the recount process rather than adopt a number known to have resulted from a reporting or transmission error.

CONCLUSION

Petitioner's objection rests upon an incorrect premise: that the subsequent correction of an inaccurate transmitted or reported total necessarily constituted a new, untimely, and unauthorized certification of the election.

The Parke County Election Board timely performed its canvassing function and approved the correct vote total. The subsequent action corrected a transmission discrepancy so that the official record reflected the result already determined and supported by the election records. The correction did not create a new ballot, conduct a new canvass, or make a new discretionary determination concerning the election result.

Respondent therefore respectfully requests that the Indiana Recount Commission:

- (1) overrule Petitioner's Objection to the alleged untimely and unauthorized certification of election results;
- (2) find that the correction of the reporting or transmission discrepancy did not constitute an unauthorized substantive recertification of the election;
- (3) find that an alleged administrative or ministerial error does not, without statutory authority, require the exclusion of an otherwise lawful vote;
- (4) determine the correct vote based upon the ballots and election records properly before the Commission in the recount;
- (5) alternatively, find that any alleged procedural defect in Parke County's correction does not preclude the Commission from independently determining and counting the lawful vote through the statutory recount process; and
- (6) grant all other just and proper relief.

Respectfully submitted,

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EXHIBIT B

Parke County Election Board

Meeting Minutes May 13, 2026

The Parke County Election Board met on Wednesday, May 13, 2026 at 10:00 AM in the Jury Room. In attendance was President Ken Taylor, Vice President Stacey Perrine, Clerk/Secretary Nicole Collings. Others in attendance were Bill Webster Parke GOP Chair and Sarah Pfister Watcher for Copenhaver.

The meeting was called to order by Ken Taylor. The Provisional Ballot was reviewed and found valid. The Board counted the votes and will add the numbers to the overall county count.

The next meeting will be Friday, May 15, 2026 at 2:00 PM in the Clerk's Office on the condition that the military ballot is returned to the Clerk's office by noon on that day. Otherwise, the meeting will be cancelled and the Election will be certified.

Meeting was adjourned at 10:09 AM by Ken Taylor.