

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 OBJECTION TO PETITIONER'S REQUEST TO ISSUE
DEPOSITION AND DOCUMENT SUBPOENAS TO THE TIPPECANOE COUNTY
CLERK, ELECTION BOARD AND RELEVANT PERSONNEL**

Respondent, Spencer R. Deery, by counsel, respectfully objects to Petitioner's request that the Indiana Recount Commission issue subpoenas compelling the testimony of the Tippecanoe County Clerk and other “relevant personnel” and/or issue document subpoenas to the Tippecanoe County Clerk and Election Board members concerning a single absentee ballot that was delivered to a Tippecanoe County vote center on Election Day (May 5, 2026) and thereafter counted. In support of this objection, Respondent states as follows:

INTRODUCTION

Petitioner seeks extraordinary discovery in an effort to invalidate a lawfully cast ballot based not upon voter fraud, voter ineligibility, double voting, or any statutory defect in the ballot itself, but solely upon the manner in which election officials accepted and processed an absentee ballot after it was delivered to an official election location.

On the Republican Primary Election Day, May 5, 2026, an absentee ballot was delivered to a vote center in Tippecanoe County. The ballot was accepted and processed with the election materials upon the closing of the vote center. Petitioner has tendered subpoenas to the Indiana Recount Commission (“Commission”) to depose and obtain documents from Tippecanoe County public officials regarding the already-counted, valid ballot.

ARGUMENT

The Requested Discovery Is Inconsistent with the Limited and Expedited Nature of Indiana Recount Proceedings and Constitute an Impermissible Fishing Expedition. Public Officials Should Not Be Subjected to Unnecessary Discovery Absent a Particularized Showing

The Indiana Recount Commission should deny Petitioner's subpoena request because it is inconsistent with the limited, expedited, and statutory nature of election recount and contest proceedings. The purpose of a recount or contest is to determine the lawful outcome of the election efficiently and promptly, not to permit broad-ranging discovery into every administrative action taken by election officials.

Indiana appellate courts have repeatedly recognized that election contests are special statutory proceedings requiring strict adherence to the Election Code. See, e.g., **Pabey v. Pastrick**, 816 N.E.2d 1138 (Ind. 2004). The statutory framework reflects the Indiana General Assembly's intent that election disputes be resolved expeditiously while preserving the stability and finality of election results.

Petitioner's request exceeds those limited purposes. Rather than seeking evidence concerning voter eligibility, ballot authenticity, fraud, or another legally recognized basis for excluding a vote, Petitioner seeks to conduct multiple depositions regarding internal administrative actions of county election workers and officials after the ballot has already been timely delivered into official custody.

The requested subpoenas would require the Tippecanoe County Clerk and unknown “relevant personnel” to prepare for and attend depositions concerning matters that are documented in official election records and capable of proof through less intrusive means. Indiana courts have long recognized that discovery should not impose unnecessary burdens where the requested information is obtainable from documentary evidence or unlikely to affect the outcome of the proceeding. Those principles apply with even greater force in expedited election litigation, where election officials have significant statutory responsibilities and where unnecessary discovery delays the prompt resolution of election contests.

The Commission should therefore exercise its inherent authority to control its proceedings and deny Petitioner's subpoena requests for depositions and documents.

Petitioner Has Failed to Demonstrate Good Cause or Materiality

Before compelling public officials to submit to deposition in an expedited election contest, the Petitioner should be required to demonstrate that:

1. the proposed testimony is material to an issue the Commission is authorized to decide;
2. the information cannot reasonably be obtained through official election records or other less burdensome means;
3. the testimony is not cumulative of other available evidence; and
4. the anticipated evidence, if established, could affect the legal determination before the Commission.

Petitioner has made no such showing.

Instead, Petitioner's request rests upon speculation that additional testimony may reveal some procedural irregularity in the handling of the ballot. Even if such testimony were obtained, the Indiana Election Code does not provide that a qualified voter's ballot becomes void merely because election officials allegedly deviated from internal administrative procedures after accepting custody of the ballot.

Accordingly, the proposed depositions and document sought cannot reasonably lead to evidence that would justify excluding the ballot from the certified election results.

Indiana's Statutory Scheme Demonstrates the Legislature's Intent to Facilitate Absentee Voting at Official Election Facilities Rather Than Disenfranchise Qualified Voters

Petitioner improperly isolates IC § 3-11-10-24 while ignoring the Indiana Election Code's integrated statutory framework governing absentee voting in vote center counties. IC § 3-11-10-26 provides that, as an alternative to voting by mail, a voter is entitled to cast an absentee ballot before an absentee voter board at the office of the county election board or at a satellite office established under IC § 3-11-10-26.3. The statute establishes that satellite offices are official absentee voting locations operated by election officials and supervised by absentee voter boards.

Petitioner completely ignores IC 3-11-18.1-11. The Indiana General Assembly expressly provides that, "[n]otwithstanding any other law," voters residing in vote center counties are entitled to cast absentee ballots at vote centers located at satellite offices. This language demonstrates the Legislature's intent that vote centers may lawfully function as absentee voting locations. It further confirms that the Indiana Election Code does not rigidly distinguish between absentee voting sites and vote centers in vote center counties.

The Indiana Election Code contains numerous provisions prescribing duties of election officers. Those duties exist to ensure orderly administration of elections, not to disenfranchise qualified voters for errors beyond their control. Nothing within IC § 3-11-10 expressly provides that a ballot timely delivered to election officials on Election Day becomes void merely because an election worker accepted the ballot at a vote center rather than directing the voter elsewhere.

Had the Indiana General Assembly intended such an extraordinary result, it easily could have expressly required rejection of such ballots. It did not.

CONCLUSION

Indiana election law has long recognized that qualified electors should not lose their right to vote because of ministerial mistakes committed by election officials after the voter has done everything reasonably required.

Because the proposed testimony and documents cannot establish any statutory basis to reject the ballot, the requested subpoenas are immaterial, irrelevant, and outside the proper scope of these proceedings.

Respondent respectfully requests that the Indiana Recount Commission:

1. DENY Petitioner's request to issue subpoenas to the Tippecanoe County Clerk and "relevant" personnel;
2. DENY Petitioner's request to issue document subpoenas to the Tippecanoe County Clerk, Election Board members or other "relevant" personnel;

3. FIND that the absentee ballot at issue was timely received by election officials and properly included in the canvass absent proof of fraud or statutory grounds for rejection;
4. DECLINE to disenfranchise a qualified voter; and
5. Grant all other just and proper relief.

Respectfully submitted,

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