

Indiana Election Commission
Minutes
September 2, 2010

Members Present: Daniel A. Dumezich, Chairman of the Indiana Election Commission (“Commission”); S. Anthony Long, Vice Chairman of the Commission; Jonathan J. Myers, member of the Commission; Karen Celestino-Horseman (proxy for Sarah Steele Riordan); Kip Tew (proxy for S. Anthony Long).

Members Absent: Sarah Steele Riordan.

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Pam Potesta, Co-Director of the Election Division; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Abbey Taylor, Campaign Finance Election Division staff; Michelle Thompson, Campaign Finance Election Division staff.

Also Attending: Mr. Terry White; Mr. David M. Brooks; Mr. Rod Acchiardo; Mr. Jeff Arnold; Mr. Robert Thompson; Mr. Steven Rothberg; Mr. Rick Runestad; Mr. William Fine; Mr. James Ammeen; Mr. Cordell Funk; Mr. Michael Beck; Mr. Joe Hero; Ms. Cynthia Meyer Ziemke; Dr. Joseph Losco, Ball State University; Dr. Raymond Scheele, Ball State University; Ms. Jennifer Ping.

1. Call to Order

The Chair called the September 2, 2010 meeting of the Commission to order at 1:07 p.m. in the Indiana Government Center South Conference Center, Conference Room 14, at 402 West Washington Street, Indianapolis, Indiana.

The Chair noted that proper notice of the meeting had been given, as required by state law. A copy of the meeting notice, agenda, and designations of proxy are incorporated by reference in these minutes. *[Copies of all documents incorporated by reference are available for public inspection and copying at the Election Division Office.]*

2. Transaction of Business

The Commission transacted the business set forth in the Transcript of Proceedings prepared by Ms. Rhonda J. Hobbs, RPR, of Connor Reporting, Inc. A copy of this document is incorporated by reference in these minutes.

The following corrections of scrivener’s errors in this document are approved by the Commission:

Page 6, line 19, replace “and” with “can”.

Page 15, line 7, replace “?” with “.”.

Page 17, line 22, replace “saline” with “salient”.

Page 18, line 8, replace “saline” with “salient”.

Page 23, line 22, replace “spacious” with “specious”.

Page 24, line 2, replace “saline” with “salient”.

Page 32, line 16, replace “board,s” with “board’s”.

Page 36, line 25, replace “gave” with “engaged in”.

Page 40, line 25, replace “resident’s” with “residence”.

Page 42, line 1, replace “resident’s” with “residence”.

Page 55, line 12, replace “awe” with “ah”.

Page 63, line 9, replace “THE COMMISSION” with “MS. CELESTINO-HORSEMAN”.

Page 68, line 10, replace “?” with “.”.

Page 83, line 18, replace “whom” with “of whom”.

Page 86, line 14, replace “grant it” with “granted”.

Page 86, line 18, replace “father” with “farther”.

Page 107, line 8, replace “Whorten (Phonetic)” with “Worden”.

Page 121, line 4, replace “and” with “versus”.

Page 122, line 21, replace “3.2” with “3-2”.

Page 139, line 14, replace “;” with “,”.

Page 140, line 17, delete “(Phonetic)”.

Page 140, line 19, delete “(Phonetic)”.

Page 150, line 19, replace “Booneville” with “Boonville”.

Page 155, line 1, replace “Booneville” with “Boonville”.

Page 155, line 25, replace “?” with “.”

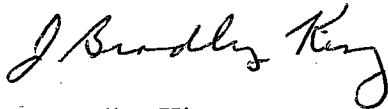
Page 164, line 13, replace “Plead” with “Please”.

Page 166, line 16, replace “V-Stop” with “VSTOP”.

3. Adjournment

There being no further items on the Commission’s agenda, the Chair entertained a motion to adjourn. Mr. Myers moved, seconded by Ms. Celestino-Horseman, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting “aye” (Mr. Dumezich, Mr. Long, Mr. Myers, and Ms. Celestino-Horseman, and no Commission member voting “no,” the motion was adopted. The Commission then adjourned at 5:15 p.m.

Respectfully submitted,

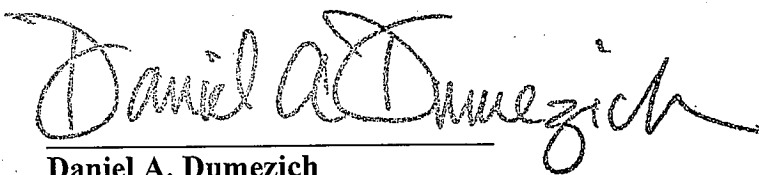


J. Bradley King
Co-Director



Pamela Potesta
Co-Director

APPROVED:



Daniel A. Dumezich
Chairman

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INDIANA ELECTION COMMISSION
PUBLIC SESSION NOTICE

Date: September 2, 2010

At: Indiana Government Center South
402 West Washington Street
Conference Room 14
Indianapolis, Indiana 46204

A STENOGRAPHIC RECORD BY:
Rhonda J. Hobbs, RPR
Notary Public
Stenographic Reporter

Connor + Associates, Inc.
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Indianapolis, IN 46282
(317) 236-6022

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INDIANA ELECTION COMMISSION

Mr. Daniel A. Dumezich (Chairman)
Mr. S. Anthony Long, (Vice Chairman)
Mr. Jon Myers - (Commission Member)
Ms. Karen Celestino-Horseman (Proxy for Sarah
Steele Riordan, Commission Member)
Mr. Kip Tew - (Proxy for Vice Chairman Anthony Long)

INDIANA ELECTION DIVISION

Mr. Dale Simmons - Co-General Counsel
Ms. Leslie Barnes - Co-General Counsel
Ms. Pamela Potesta - Co-Director
Mr. Brad King - Co-Director
Ms. Michelle Thompson
Ms. Abbey Taylor

1 CHAIRMAN D. DUMEZICH: This is the meeting
2 of the Indiana Election Commission called to
3 order. I'm the chairman, Dan Dumezich.

4 VICE CHAIR A. LONG: My name is Anthony
5 Long. I'm Vice Chair.

6 COMMISSIONER J. MYERS: I'm Jon Myers,
7 Member of the Commission.

8 CHAIRMAN D. DUMEZICH: It's my impression
9 that Sarah Rirodan is not present today?

10 VICE CHAIR A. LONG: No, she's not.

11 MS. K. CELESTINO-HORSEMAN: And I am Karen
12 Celestino-Horseman, serving for Sarah by proxy.

13 CHAIRMAN D. DUMEZICH: Also present is
14 Indiana Election staff, Co-Directors, Brad King
15 and Pam Potesta. Co-general Counsel, Leslie
16 Barnes and Dale Simmons; deputy finance staff,
17 Abbey Taylor and Michelle Thompson; and the
18 court reporter is Rhonda Hobbs, and you are from
19 Connor & Associates.

20 I would remind everyone that is going to
21 speak today to please identify themselves when
22 they begin to speak. Spell your name, when you
23 identify yourselves and speak clearly, and
24 please do not speak when someone else is
25 speaking. It is very hard for the court

1 reporter to take down what is being said.

2 With that, I turn to Mr. King and Miss
3 Potesta to confirm that the commission meeting
4 has been properly noticed as required by the
5 Indiana Open Door Law.

6 MR. B. KING: Mr. Chairman, and Members of
7 the Commission, yes, proper notice was given
8 under the Indiana Open Door Law for the meeting
9 of the Commission today.

10 CHAIRMAN D. DUMEZICH: And the time is 1:07
11 on September 2nd, eastern time. The first thing
12 on the agenda is approval of the minutes, prior
13 minutes.

14 VICE CHAIR A. LONG: Mr. Chairman, I would
15 move that the minutes submitted on September
16 18th, November 16th, and December 1 of 2009,
17 together with the minutes of January 19th of
18 2010 be approved.

19 CHAIRMAN D. DUMEZICH: Is there a second?

20 COMMISSIONER J. MYERS: Second.

21 CHAIRMAN D. DUMEZICH: Any discussion?

22 (No response.)

23 CHAIRMAN D. DUMEZICH: Hearing none, all in
24 favor say aye?

25 THE COMMISSION: Aye.

1 CHAIRMAN D. DUMEZICH: All opposed, please
2 say nay?

3 (No response.)

4 CHAIRMAN D. DUMEZICH: Let the record
5 reflect it was a 4-0 vote. I would now
6 recognize Mr. King and Miss Potesta for Order
7 No. 2010-1, for approval of election forms.

8 MR. B. KING: Thank you. Mr. Chairman and
9 Members of the Commission, you'll find Order No.
10 2010-1 behind the second tab. This concerns the
11 implementation of the federal Military and
12 Overseas Voter Empowerment Act called MOVE,
13 along with some Indiana legislation adopted
14 earlier this year, with regard to the absentee
15 voting process.

16 In brief, the federal legislation, as
17 implemented in Indiana, allows under certain
18 circumstances, absentee applications and
19 absentee ballots to be transmitted to military
20 and overseas voters, by e-mail, by fax, or
21 through regular U.S. mail, at the option of that
22 military voter.

23 The law also provides now beginning on
24 July 1st, 2010, that the application, when
25 filed, is ongoing for one calendar year, and so,

1 for example, an application submitted now would
2 be valid for that military overseas voter not
3 only in November but in the May primary if they
4 happen to live in a city or a town conducting
5 one in May of next year.

6 The actual form is found four pages in, and
7 it describes the various options available and
8 who the military overseas voters are. The order
9 also proposes to designate as obsolete an
10 ABS-12, as we refer to it, which was an
11 application formerly approved and used by
12 military and overseas voters before the adoption
13 of MOVE and the Indiana law.

14 If approved, the order would provide that
15 the ABS-15 could be used effective immediately.

16 We have had calls from counties who are
17 preparing to send absentee ballots overseas by
18 the September 18th deadline to start, but also
19 provides the previous version of the ABS-15 and
20 continued to be used through the end of this
21 month. That's the time necessary for it to be
22 properly integrated in the statewide voter
23 registration system. I'll be happy to answer
24 any questions.

25 CHAIRMAN D. DUMEZICH: Miss Potesta, do you

1 have anything to add?

2 MS. P. POTESTA: No.

3 VICE CHAIR A. LONG: I have a question.

4 Does 12.2 stay active until -- through this
5 cycle, in case we've got some in the field to
6 get used or are we going to...

7 MR. B. KING: Mr. Vice Chair, under the
8 order that is drafted, it would become obsolete
9 effective immediately. There would be some
10 potential use of form -- the ABS-12, if it's
11 already been distributed and out there to
12 someone. I think the only disadvantage would be
13 that continuing the ABS-12 for this cycle is
14 that there's only one version that can be in the
15 statewide voter system at one time.

16 VICE CHAIR A. LONG: So do we have
17 sufficient quantities in the hands of the clerks
18 now, the ABS-15, so we don't run into any
19 problems if they're not going to have forms
20 available to them?

21 MR. B. KING: Yes, we provided the ABS-15
22 to the clerks in its existing form back in
23 December on disk and they can print as many as
24 they need, and we will, if the order is
25 approved, immediately send copies of the

1 revision out to the clerks.

2 VICE CHAIR A. LONG: So they can be ready
3 to go immediately?

4 MR. B. KING: Yes, sir.

5 VICE CHAIR A. LONG: That's all the
6 questions I have.

7 CHAIRMAN D. DUMEZICH: Is there a motion to
8 approve the order as presented?

9 VICE CHAIR A. LONG: So moved.

10 CHAIRMAN D. DUMEZICH: Second.

11 MS. K. CELESTINO-HORSEMAN: Second.

12 CHAIRMAN D. DUMEZICH: Any further
13 discussion?

14 (No response.)

15 CHAIRMAN D. DUMEZICH: Hearing none, all in
16 favor say aye?

17 THE COMMISSION: Aye.

18 CHAIRMAN D. DUMEZICH: All opposed, say
19 nay?

20 (No response.)

21 CHAIRMAN D. DUMEZICH: The ayes have it 4-0
22 and the motion is adopted, amended as adopted. I
23 would ask everyone present that plans to testify
24 in any matter coming before the commission
25 today, including candidate challenges, campaign

1 finance, or any voting system matter to please
2 stand for the administration of the oath. Dale,
3 would you please administer the oath?

4 MR. D. SIMMONS: Mr. Chairman. Please
5 stand and raise your right hand and say I do
6 after the administration of the oath.

7 (Participants complied.)

8 MR. D. SIMMONS: Do you solemnly swear or
9 affirm under the penalties of perjury that the
10 testimony you are about to give the commission
11 at today's meeting is the truth, the whole
12 truth, and nothing but the truth, say I do?

13 THE PARTICIPANTS: I do.

14 MR. D. SIMMONS: Thank you.

15 CHAIRMAN D. DUMEZICH: Thank you for being
16 present at the commission today. The main
17 business of the commission's meeting today is to
18 hear challenges brought against candidates who
19 wish to appear on the general election ballot.
20 At past meetings the commission has followed
21 certain procedures for conducting candidate
22 challenge hearings and we will be using those
23 procedures today.

24 First, when each candidate challenge is
25 called, a hearing will begin with recognizing

1 election division staff to provide information
2 about the documents and the matter provided to
3 the commission members and the notice given to
4 the parties; 2) unless there's an objection, the
5 documents provided to the commission by the
6 election division are to be entered into the
7 record of this meeting at that time; the person
8 filing -- 3) the person filing the candidate
9 challenge or their representative will be
10 recognized first and they may present their case
11 for no more than ten minutes.

12 The candidate who has been challenged will
13 then be recognized and may present their case
14 for no more than 10 minutes. The challenger
15 will have 2 minutes for rebuttal. The candidate
16 will have 2 minutes for surrebuttal. The
17 commission members may ask questions during the
18 presentation but the time spent answering these
19 questions will not be counted against the
20 presenter's time. The election division may
21 signal the chair when the presenter's time is
22 up, and they have been instructed to do so.

23 If the presenter offers additional
24 documents or other physical evidence not
25 previously received by the commission, then the

1 original must be provided to the election
2 division, and please provide that to Dale to be
3 preserved for the record.

4 Are there any questions or objections from
5 commission members or any challengers or
6 candidates?

7 (No response.)

8 CHAIRMAN D. DUMEZICH: If none, the
9 commission will proceed to consider the first
10 challenge. The first challenge is in the matter
11 of the challenge to the Candidate Ron, and I'm
12 going to butcher this person's name, and I
13 apologize -- mine's been butchered enough as
14 well, but it's Acchiardo?

15 MR. R. ACCHIARDO: Acchiardo.

16 CHAIRMAN D. DUMEZICH: Acchiardo -- I'll
17 probably get it wrong later when we talk. He is
18 the Republican candidate for Perry County
19 Prosecuting Attorney. It is Cause No. 2010-09,
20 and it is filed by Christopher J. Coyle on July
21 20th, 2010.

22 VICE CHAIR A. LONG: Mr. Chairman?

23 CHAIRMAN D. DUMEZICH: Yes.

24 VICE CHAIR A. LONG: On this challenge and
25 this hearing, I have deemed that I have a

1 potential or appearance of a conflict and I
2 would ask for a proxy to sit in to hear this
3 hearing in my stead, and I appoint Mr. Tew, and
4 I think his appointment has been filed to serve
5 in that capacity.

6 CHAIRMAN D. DUMEZICH: Great. I didn't see
7 Kip.

8 VICE CHAIR A. LONG: He's back there now.

9 CHAIRMAN D. DUMEZICH: This is the closest
10 we've ever been together. I don't know if I'll
11 be able to keep my hands off of him. I now --
12 we'll accept you as co-proxy for Co-Chairman
13 Long. It's nice to see you, sir.

14 MR. K. TEW: Nice to see you.

15 CHAIRMAN D. DUMEZICH: The hearing on Cause
16 No. 2010-09 is now open and I now turn to the
17 election staff to provide the information about
18 the documents and notice given in this cause.

19 MS. P. POTESA: Mr. Chairman, Members of
20 the Commission, Mr. Rod Acchiardo filed his
21 certificate of candidate selection to fill an
22 early ballot vacancy for a local office;
23 specifically, Perry County Prosecutor, on June
24 29th, 2010. On July 20th, 2010, we received a
25 CAN-1, a candidate filing challenge from

1 Christopher James Coyle, and we have an
2 appearance to represent Mr. Acchiardo from Mr.
3 David Brooks, as well as an appearance for Mr.
4 Coyle -- I believe his name is Terry White?

5 MR. T. WHITE: That's right.

6 MS. P. POTESTA: And these documents are
7 contained under the tab Acchiardo.

8 MR. B. KING: And Mr. Chairman, let me add
9 that the final document under that tab is a
10 motion that was filed by Mr. Brooks on September
11 1st, 2010, captioned, "Motion to Dismiss."

12 CHAIRMAN D. DUMEZICH: I'd like to
13 recognize the motion to dismiss first. I would
14 like to recognize the challenger or his
15 representative for presentation and I would
16 direct that the motion to dismiss be addressed
17 first by him.

18 MR. D. BROOKS: Mr. Chairman, can we move
19 up?

20 CHAIRMAN D. DUMEZICH: Sure.

21 MR. D. BROOKS: Sorry guys.

22 CHAIRMAN D. DUMEZICH: Challenger or your
23 representative, just identify yourself first?

24 MR. T. WHITE: Thank you, Mr. Chairman. My
25 name is Terry White and I do in fact represent

1 Chris Coyle relative to our challenge of Mr.
2 Acchiardo in serving as the candidate for
3 prosecuting attorney, Republican candidate for
4 prosecuting attorney in Perry County.

5 We believe that the motion to dismiss which
6 was filed which we received yesterday is in fact
7 inappropriate and not well taken simply because
8 there are a number of issues relative to whether
9 or not Mr. Acchiardo was properly registered to
10 begin with, and that is -- if you want me to
11 address each one of the issues that they
12 presented, I can do that first, but to be honest
13 with you, it interrelates with the rest of my
14 argument as far as my challenge, our challenge
15 of his residency, and I'm not quite sure how you
16 want me to approach it.

17 CHAIRMAN D. DUMEZICH: You can structure
18 your argument any way you like, but the motion
19 to dismiss is going to be the first thing that
20 we'll end up hearing.

21 MR. T. WHITE: Okay. Let me start with the
22 proposition that -- of course, as we all well
23 know that people who run for prosecuting
24 attorney actually do not run in a county
25 officers, they run as a district office just

1 like any judicial district under Article 7,
2 Section 16.

3 Secondly, Mr. Acchiardo has challenged this
4 particular board's authority to make a
5 determination relative to this case. I believe
6 that the challenge is not well taken, and here's
7 why? Under Indiana Code 3-6-4.1-14, it relates
8 to the powers and duties of this board. The
9 board is, of course, is charged with the
10 responsibility to administer Indiana election
11 laws, and Indiana election laws, which we
12 believe has been violated by Mr. Acchiardo in
13 applying for his registration to vote and his
14 ultimate candidacy for prosecutor.

15 We believe that you do in fact have
16 jurisdiction as an opposition for a motion to
17 dismiss, and specifically, under Section C(4)
18 you have the responsibility to advise and
19 exercise supervision under local election and
20 registration office, and so in this particular
21 case, I think it's well taken that this board be
22 the direct appealing forum, provide the direct
23 appealing forum as it relates to judicial
24 districts, the prosecuting attorney's office.

25 In addition to that, the candidates' book,

1 if I'm reading it correctly, says if you're
2 challenging the prosecuting attorney, you're
3 supposed to take that directly to the Indiana
4 Election Board and not to the local election
5 board. So we simply believe that counsel has
6 misread the law relative to that.

7 Secondly, counsel's motion to dismiss
8 addresses the fact, and this is the gist of the
9 motion, that all it requires in order to be
10 eligible to be a candidate for prosecuting
11 attorney is that you just have to register to
12 vote.

13 However, under Indiana Code 3-7-13-1, it
14 requires that you make a proper application to
15 register to vote, and the proper application in
16 my opinion, in our opinion, requires something
17 more than what can be a disingenuous
18 self-serving statement that I intend to live in
19 the county within 30 days prior to the time of
20 the election.

21 In fact, it requires -- if you make
22 reference to some of the documentation that we
23 provided you earlier, under Indiana 3-8-1-1,
24 that a person is not qualified to run for a
25 local office unless the person is registered to

1 vote in the election district the person seeks
2 to represent not later the deadline for filing
3 the declaration of petition of candidacy or
4 certificate of nomination.

5 And we're asserting that Mr. Acchiardo
6 didn't live and still doesn't live in Perry
7 County, has a home in Warrick County has been
8 registered to vote there since 2005, as well as
9 his wife and oldest son are registered to vote
10 there and has lived in that house since 2001,
11 and only rented a house on a one-month lease in
12 June which did didn't have utilities at the
13 time.

14 He applied for utilities on June the 14th,
15 I think it is, and the house was vacant, and now
16 has filed for his application to be a
17 prosecuting attorney alleging that he has lived
18 in there since that time.

19 I guess our point is there's nothing in the
20 statute that says as long as it's good enough,
21 you qualify to register, especially when all the
22 saline facts show his residence is in Warrick
23 County. And the -- you know, obviously, the
24 case that's still around is the Evan Bayh case,
25 and it simply says that residency requires a

1 definite intention and evidence of acts
2 undertaken in furtherance of the requisite
3 intent, which makes the intent manifest and
4 believable, and what we simply saying you're
5 just alleging alone that you intend to live
6 there in 30 days prior to the time of the
7 election isn't good enough, that there have to
8 be other saline facts that say otherwise. So in
9 relation to the motion to dismiss --

10 CHAIRMAN D. DUMEZICH: When you say
11 acquisition to lease, is that leasing the
12 property?

13 MR. T. WHITE: Leasing the property, that's
14 right, but leasing a property that's vacant that
15 has no utilities at the time prior to the time
16 you have to file your declaration of candidacy
17 is not enough to make it credible for one to
18 allege his residency, and I think that's
19 probably part of my point.

20 I think their motion to dismiss says filing
21 it alone alleging that you intend to is good
22 enough and I don't think that was what the
23 intent of the legislature was, especially, when
24 you take a look at the other statutes, and the
25 other statutes which gives a presumption are

1 these. First of all, if you take a look at
2 Indiana Code -- let me get them up here.

3 CHAIRMAN D. DUMEZICH: I do have a question
4 for you. You made the comment that the intent
5 of the Indiana legislature is probably
6 different. Having served in that body, I'd like
7 to know how you're determining the intent of the
8 Indiana legislature? It's something that we can
9 talk about after the hearing. After being here
10 for four years, I have no idea what they
11 intended.

12 MR. T. WHITE: I would agree that they are
13 a moving target so I really don't know, but the
14 real question is how can we in this particular
15 situation address the issue and do what we think
16 the legislature meant, assuming that it meant
17 something that we thought it might.

18 I will say this, one thing the legislature
19 was clear about was there was supposed to be a
20 set of standards to establish residency, and
21 here's the standards -- you can see it's under
22 Section 3-5-5-1, and it says -- 3-5-5-11 says
23 the place where a person's immediate family
24 resides is the person's residence, unless the
25 family's residence is a temporary location for

1 the person's immediate family or for transient
2 purposes.

3 And what I am here to present to you as at
4 least to registrations, since 2001 and 2005, in
5 a home in Ohio 19, in Warrick County, Indiana
6 where Mr. Acchiardo's family lives. We've
7 searched the records. I don't think there's any
8 divorce pending. I don't think there's any --
9 there's not been a change that we're aware of
10 that says that his family is living elsewhere,
11 and I guess our point is if there's a
12 presumption which is created by the statute,
13 then he has to overcome that presumption.

14 3-5-5-12 says that except as provided in
15 Section 13 a person's immediate family resides
16 in one place -- if a person's family resides in
17 one place and the person does business in
18 another place, the residence of the immediate
19 family is the person's residence.

20 What we understand here is Mr. Acchiardo
21 actually practices law in Perry County, but he's
22 not lived there, and he's lived in this
23 residence that's big enough to accommodate his
24 family as opposed to a two-bedroom residence
25 that's very small and wasn't occupied at the

1 time.

2 I think if you take their motion to
3 dismiss -- in fact, our records only show that
4 he's only stayed overnight in that house in
5 Perry County once, according to a newspaper
6 article, and Mr. Coyle's here willing to testify
7 that he's he stopped by that house several times
8 as he goes back and forth to work and sees
9 nobody there, now -- and he may have something
10 different, I don't know at this point in time.

11 I guess if you have it their way, all
12 you've got to do is say you intend to live there
13 30 days and have nothing else to back it up,
14 generally speaking, especially, if the
15 presumption is not in your favor, and you can do
16 that in all 92 counties and file your
17 declaration for candidacy in all 92 counties all
18 at one time and say you're not subject to be
19 challenged, and that's why we think the motion
20 to dismiss is wrong.

21 The other thing I think is important, and
22 I'm addressing the motion to dismiss again, is
23 the fact there's a reference to the National
24 Voters Registration Act. Of course, the Voters
25 Registration Act says that you're not supposed

1 to remove a registration unless it's in
2 violation or it's according to state law.

3 I think they've misread the statute as
4 well. The statute basically says you provide --
5 the name of the registrant may not be removed
6 from the official list of eligible voters at the
7 request of the registrant, as provided by state
8 law, by reason of criminal conviction or mental
9 incapacity or as provided under section --
10 Paragraph 4, and I think counsel misreads it and
11 thinks that by reason of criminal conviction or
12 incapacity essentially is complementary to you
13 as provided by state law.

14 We think it's sequential as provided by
15 state law. If you aren't really a resident
16 according to presumptions and you just declare
17 that you're a resident, I think you can remove
18 the registration because it's provided by state
19 law because he didn't qualify to begin with.

20 So I guess my argument essentially is that
21 this is not a violation of the Voter
22 Registration Act. It simply augments what your
23 responsibilities are.

24 MS. K. CELESTINO-HORSEMAN: May I ask a
25 question?

1 MR. T. WHITE: Sure.

2 MS. K. CELESTINO-HORSEMAN: You have not
3 requested that he be removed from voter
4 registration list. Do we -- we don't have to
5 make a decision on this, do we? The only thing
6 we're looking at here today is to determine if
7 he was properly registered so that he could be a
8 candidate?

9 MR. T. WHITE: That would be right. Our
10 allegation is that he's not properly registered
11 and that he should not have been registered at
12 that point as a resident of Perry County, and if
13 he's not properly registered -- then, he wasn't
14 registered at -- prior to the time he filed his
15 declaration of candidacy.

16 CHAIRMAN D. DUMEZICH: Go ahead.

17 MR. K. TEW: Are you intimating or are you
18 saying that the candidate here has committed
19 voter registration fraud?

20 MR. T. WHITE: Essentially, yes. What I'm
21 saying is I believe his registration is
22 disingenuous, that it's basically spacious, and
23 to a great degree, it's deceptively attractive
24 because he said I'm registered and you should
25 allow me to run.

1 And what I'm saying is if you take a look
2 at all of the saline facts and you take the
3 presumptions -- he's not rebutted that
4 presumption, and this is a question -- as you
5 see in the Evan Bayh case, it's a matter of
6 believability and credibility.

7 MR. K. TEW: So if I can lead you in a
8 question, you're alleging voter registration
9 fraud and because he committed fraud in the
10 voter registration process, this body has the
11 jurisdiction then to throw him off the ballot
12 based upon his fraudulent behavior in
13 registering to vote?

14 MR. T. WHITE: Bottom line, that's yes,
15 that's a yes.

16 CHAIRMAN D. DUMEZICH: And if I also
17 understand your argument, if he has in fact met
18 the burden of going forward with the evidence
19 that he's presented, that that was his intent
20 and we feel that is sufficient to comply with
21 the statute, you would agree then that the
22 motion to dismiss should be granted?

23 MR. T. WHITE: I don't know if the motion
24 to dismiss should be granted because it's based
25 on other factors. My point is --

1 CHAIRMAN D. DUMEZICH: No, I'm saying if
2 he's met the burden of going forward, because
3 you made that comment earlier, you said if he
4 presents evidence and that that evidence is
5 sufficient -- you don't believe that it is
6 sufficient, but if it is, in fact, sufficient,
7 then the motion to dismiss should be granted?

8 MR. T. WHITE: Or you would have to deny
9 our challenge. The effect is either way.

10 CHAIRMAN D. DUMEZICH: I think there's a
11 difference because the motion to dismiss has
12 passed the initial hurdle that was set in the
13 Bayh case. You said the Bayh case is sufficient
14 for him to be -- to register to vote and
15 therefore it's sufficient for him to be on the
16 ballot, the way I understand it, and we would
17 have to hear the substance of it, if I were to
18 determine the Bayh case in that matter.

19 MR. T. WHITE: I mean, Evan Bayh filed a
20 declaratory motion basically to have them
21 determined that he was in fact a resident. I
22 guess my point is he's moving to dismiss, to say
23 essentially that we have somehow fell short of
24 our ability to file the challenge to begin with,
25 and I don't think that's the case, and I think

1 their argument as well is that since he's
2 registered, and since he's registered, game
3 over, and I'm saying if he's not saying he's not
4 properly registered, and we can argue that, then
5 their motion is not well taken.

6 MS. K. CELESTINO-HORSEMAN: Isn't their
7 motion to dismiss, and we'll get to hear from
8 Mr. Brooks, but doesn't their motion to dismiss
9 really go to not -- the merits just saying this
10 board, this commission, in general, cannot make
11 any kind of ruling as to what's a proper
12 registration -- I mean, that to me is what the
13 motion to dismiss is.

14 MR. T. WHITE: That was the first part, and
15 yes, I agree, that that was the point, and my
16 argument is that's not -- I don't think that's
17 true. I think under the powers and duties of
18 this election commission, they have the
19 responsibility to exercise supervision over
20 local election and registration officers and to
21 administer the Indiana election laws which
22 include whether or not the proper residency that
23 allow someone to be properly registered to vote
24 which then, in turn, affects his ability to be a
25 candidate.

1 CHAIRMAN D. DUMEZICH: Where do we stand on
2 the time?

3 MR. B. KING: I've got three minutes.

4 MR. T. WHITE: I've got three minutes --
5 gosh, I thought I'd talk a lot longer than that.

6 CHAIRMAN D. DUMEZICH: The first question
7 was interrupted.

8 MR. T. WHITE: The first question I'd like
9 to know is it part of the record, all those
10 documents that Mr. Coyle had submitted to this
11 board?

12 CHAIRMAN D. DUMEZICH: Yes.

13 MR. T. WHITE: The other thing that I would
14 like to present to you --

15 MR. D. BROOKS: Terry, I don't mean to
16 interrupt, but Mr. Chairman, it would seem to me
17 that the issues are going to take longer than
18 ten minutes. We're going to have, for example,
19 a variety of documents that we have to go
20 through, introduce, and some testimony, and I
21 don't want to cut Mr. White short on what he
22 wants to present, but a residency case, which is
23 fact sensitive, assuming we get to that point,
24 after we discuss the motion to dismiss, it would
25 seem to me that we perhaps ought to not have a

1 ten-minute limit because I don't think either
2 side is going to be able to get through all
3 their documents and evidence in ten minutes.

4 CHAIRMAN D. DUMEZICH: Let's try and do it
5 and we'll take it from there.

6 MR. D. BROOKS: Okay.

7 MR. T. WHITE: I guess my approach is this,
8 and I'm sorry for the way that you've done this,
9 but the motion to dismiss -- of course, this was
10 just filed yesterday and we just saw it for the
11 first time, but my arguments that I'm giving to
12 you, I believe, are backed up by the facts we
13 have in front of us, essentially, are going to
14 be the same as my argument relative to just the
15 merits of being a resident to begin with.

16 What I'd like to present, if I can, if I
17 have this, No. 1 -- do you want the originals,
18 you say -- these are copies of registration to
19 vote, and without going through each of one of
20 them individually, basically they are certified
21 copies of the registrations of the Acchiardo
22 family. Lisa has been registered to vote in
23 Ohio Township at Winddrift Court in Ohio since
24 2001 -- 4/27 of 2001; Joseph, their son, I'm
25 assuming, June 24, 2008, registered to vote in

1 Newburgh, Indiana, and the rest deals with Mr.
2 Acchiardo himself having voted since -- let's
3 see page -- August 18th of 2005, he was
4 registered to vote at the same address.

5 So I -- those sort of back up the
6 proposition that that's where his family lives,
7 that's where he continues to live, and that, you
8 know, even if he moves into this rental house,
9 it's only for the purpose of trying to get on
10 the ballot and it's only temporary and therefore
11 he still lives in Warrick County.

12 CHAIRMAN D. DUMEZICH: Do you have any
13 objection to what he submitted?

14 MR. D. BROOKS: No.

15 MS. K. CELESTINO-HORSEMAN: Mr. Chairman,
16 let me ask a question.

17 CHAIRMAN D. DUMEZICH: Sure.

18 MS. K. CELESTINO-HORSEMAN: Your challenge
19 is not whether he is a registered voter, but
20 encompassing that challenge, you're challenging
21 the declaration of candidacy of his residency
22 information?

23 MR. T. WHITE: That's correct.

24 MS. K. CELESTINO-HORSEMAN: And that's
25 something that this commission can review, the

1 declaration of candidacy?

2 MR. T. WHITE: I think they could,
3 especially, since it's a district office, and it
4 should be within the confines of the powers and
5 duties under Section 14 which says you have the
6 right to administer Indiana election laws. We
7 simply do not believe that he is a resident of
8 this county and therefore should not have been
9 registered to begin with and therefore is not
10 qualified for the office that he seeks.

11 CHAIRMAN D. DUMEZICH: All right. Please
12 identify yourself.

13 MR. D. BROOKS: I'm David Brooks from the
14 law firm of Brooks Koch & Sorg, on behalf of Mr.
15 Acchiardo. Mr. Chairman, and Board Members, the
16 motion to dismiss should be considered quickly
17 because we shouldn't be having a hearing on
18 this. There's only one residency requirement.
19 There is no residency requirement, per say, for
20 a prosecuting attorney, unlike governor, for
21 example, you have to have five years' residency,
22 it's constitutional. There is no such thing for
23 the prosecutor.

24 The only thing you have to do is satisfy
25 the statute that says you've got to be

1 registered in your district prior to filing the
2 various candidate paperwork. That has clearly
3 happened -- I mean, there is no question. The
4 documents that Mr. Coyle's presented clearly
5 show that he is registered, was registered
6 before the paperwork was done. So he meets the
7 only statutory requirement that there is, that
8 in my opinion this commission should be ruling
9 on.

10 The issue of the voter registration is not
11 an issue, contrary to Mr. White's argument, that
12 this board has jurisdiction over. The statute
13 that he referred to, he conveniently leaves out,
14 being the except part which files -- it's in the
15 motion to dismiss, and it concerns the powers of
16 local election officials in Section 3-5-6 or
17 whichever one it is, which specifically governs
18 the national.

19 MR. K. TEW: Can you cite it real quick?

20 MR. D. BROOKS: I can. It's in here. It's
21 3-6-4.1-14(b) is the exception to the
22 commission's powers, and then 3-6-5-14(a)(1),
23 which is within the exceptions, talk about the
24 jurisdiction over the national --

25 MR. K. TEW: Can I go ahead and interrupt

1 you?

2 MR. D. BROOKS: Yes.

3 MR. K. TEW: 3-6-4.1-14, powers and duties.

4 In addition to those duties prescribed by law,

5 the commission shall do the following: (1)

6 administer Indiana election laws. Are you

7 maintaining that the laws regarding voter

8 registration is not part of the election laws?

9 MR. D. BROOKS: No. What I'm maintaining,

10 if you read the rest of the section, that

11 there's no limitation on the powers of local

12 boards who have specific authority over the

13 National Voter Registration Act, and

14 furthermore, the clerk --

15 MR. K. TEW: So you interpret 14 to be a

16 limit on this board's on this commission's

17 power, is that what you're saying?

18 MR. D. BROOKS: No, Section 14 generally

19 provides broad powers but they're not broad over

20 everything. For example, voter registration in

21 Perry County by statute is handled by the county

22 clerk. That is a specific grant of authority.

23 MR. K. TEW: And if there is a dispute

24 about whether someone is properly registered or

25 legally registered to vote and the local

1 election board made a decision or failed to make
2 a decision, do we have jurisdiction or not have
3 jurisdiction?

4 MR. D. BROOKS: In my judgment, you'd have
5 jurisdiction. The local board makes a decision,
6 which hasn't happened, then I -- I would have to
7 read the statute for sure to see, but you're
8 missing a step in there. The -- I'm thinking
9 you might be able to look at a local board's
10 decision but we're not there. There's not been
11 any action taken by the sole statutory authority
12 to register people, that's the county clerk.
13 There's been no dispute, no filing, no local
14 board opinion --

15 MR. K. TEW: Okay. So, for example, if a
16 national organization were to come in and do a
17 massive voter registration drive, let's say -- I
18 don't know, Acorn, and the national Republicans
19 or state Republicans are very concerned about
20 whether or not there were voter registration
21 fraud occurring and they wanted to bring an
22 action before this commission because it was
23 happening in Lake County or several counties,
24 you would say that we don't have jurisdiction
25 over that?

1 MR. D. BROOKS: I don't think you have any
2 jurisdiction over an individual registration.
3 That's what the point is. They are suggesting
4 that Mr. Acchiardo should -- that you guys
5 should somehow unregister him, and -- and
6 there's multiple arguments here, and I don't
7 want to -- I'll be happy to continue to talk
8 about it, but there is nothing that -- except
9 the clerk's office that handles -- specifically,
10 delegated by the legislature, voter
11 registrations, and let me, if I could, because
12 I'm sure you have other questions, and those are
13 good questions, but let me finish out a few
14 other things about this commission -- I mean,
15 this commission to my knowledge, and I -- but
16 having asked around quite a bit, has never -- it
17 would be unprecedented for this commission to
18 suddenly take up an individual voter
19 registration.

20 Now furthermore, there is no residency
21 requirement to register to vote. If you will
22 look at the statute, it just -- the
23 Constitution, Mr. Coyle cites an Indiana statute
24 in the Constitution, which he misquotes in his
25 memorandum, but if you look at Article 2 Section

1 2, that's a residency requirement for voting,
2 not for voter registration.

3 And the section that he cites in 3-7-13-1
4 is -- indeed covers registration, but if you
5 look at what that section says, it says resides
6 in a precinct before a general, municipal, or
7 special election for at least 30 days. It
8 doesn't say this -- just like the form that this
9 board has already approved which is promulgated
10 as an interpretation of the statute, the
11 application which this board in interpreting
12 this statute says -- what you have to affirm is
13 that I will have lived in my precinct for at
14 least 30 days before the next election.

15 There is no statutory requirement to be a
16 resident for any particular period of time until
17 it's time to vote. Registration is merely a
18 tool to get yourself ready to vote. Now if he
19 had voted and they made this argument, then
20 there would be a residency requirement, and I
21 think -- and that's where -- and the other issue
22 is the National Voter Registration Act. I don't
23 know how Mr. White reads that, but this is very
24 plain English -- when you're registered, you can
25 only unregister someone for a specific reason,

1 and this ain't one of them -- I mean, it's all
2 in here.

3 You have to be either approved -- I can
4 read it to you, but at the request of the
5 registrant, that's not what happened, and in
6 each of these -- it's on page 7, in each of
7 these the issues are all singly stated: 1) at
8 the request of the registrant; 2) as provided by
9 state law, by reason of criminal conviction.

10 If he wants to read that as two different
11 things, even though they're in the same, it's
12 certainly not the way you read normal English,
13 but if that's the case, then tell me where it is
14 that you can remove somebody?

15 MR. K. TEW: So subsequently, your
16 argument -- setting aside your client at this
17 moment, if someone is engaged in voter
18 registration fraud and the county clerk's office
19 in that county did not uncover it and that
20 person filed for elective office, we would never
21 have jurisdiction in that case to knock the
22 person off the ballot?

23 MR. D. BROOKS: Well, people who vote --

24 MR. K. TEW: I'm asking a specific
25 question. If, indeed, somebody gave voter

1 registration fraud, registered in a county for
2 whatever reason that they shouldn't have and
3 then they filed to run for election, we should
4 not have jurisdiction to be able to say whether
5 they ought to be on the ballot or not, that's
6 the substance of your argument?

7 MR. D. BROOKS: You have to have -- in this
8 case -- I don't want to comment on other races.
9 In this race you've got only one -- that's
10 relevant, you have to be registered to vote.

11 MR. K. TEW: Right.

12 MR. D. BROOKS: He is registered to vote,
13 that's fact, so the question on the motion to
14 dismiss is how do you undue that? He clearly
15 satisfies the statute right now. If you want to
16 undue that, then somebody has to provide a way
17 that statutorily you can unregister him without
18 violating the National Voter Registration Act
19 because it is prohibited law, so that's the gist
20 of that argument. I'd like to address the
21 merits as well.

22 MS. K. CELESTINO-HORSEMAN: I'd like to ask
23 a question. You keep referencing unregistered.
24 He hasn't asked that he be unregistered. All he
25 asked -- he filed the declaration of candidacy

1 affirming that he met certain qualifications and
2 such -- it's been alleged that he didn't
3 actually meet that and we've been asked to look
4 into that. No one has said anything about
5 taking him off the voter registration so where
6 are you getting that from?

7 MR. D. BROOKS: I'm getting that because
8 unless got deposit a qualification -- I'm
9 getting it from the statute. The statute tells
10 you you've got to do X and Y to be eligible to
11 run, and the one we're talking about is to be
12 registered to vote. So if he's registered to
13 vote, by everybody's agreement, which he is
14 right now, he's qualified to be on the ballot.

15 MR. K. TEW: Even if it's fraud, that's the
16 question I'm asking?

17 MR. D. BROOKS: If he's still registered to
18 vote, somebody has to -- do you think --

19 MR. K. TEW: Who gets to make the
20 determination -- in your judgment, what body
21 make the determination if it was a fraudulent
22 registration or not?

23 MR. D. BROOKS: Well, I think the clerk's
24 office certainly would have the ability to do
25 that because they're, specifically, charged with

1 voter registration in an individual act, but let
2 me -- if I can have a few moments on the merits.

3 CHAIRMAN D. DUMEZICH: Rather than dealing
4 with the hypothetical for an instant, can you
5 just tell me what he affirmed, the basic
6 statement that he affirmed which will qualify
7 him to be registered to vote?

8 MR. D. BROOKS: Okay. I'll run through --
9 we have documents for all of this.

10 CHAIRMAN D. DUMEZICH: Just what he
11 signed -- David, just what he signed. Just read
12 what he signed, your client.

13 MR. D. BROOKS: The voter registration?

14 CHAIRMAN D. DUMEZICH: Yeah, exactly.

15 MR. D. BROOKS: What he signed says I
16 authorize my voter registration at any other
17 address to be cancelled. I swear or affirm that
18 I am a citizen of the United States. I will be
19 at least 18 years of age at the next general or
20 municipal election. I will have lived in my
21 precinct for at least 30 days before the next
22 election. I am not currently in prison after
23 being convicted of a crime. All of the above
24 information and all other statements on this
25 form are true. I understand that if I sign this

1 statement, knowing that it is not true, I am
2 committing perjury and can be fined up to
3 \$10,000. So there can't be any -- this board
4 has already interpreted the statute. It says
5 you only have to say you're going to be a
6 resident 30 days before the election.

7 CHAIRMAN D. DUMEZICH: I just want him to
8 say that right now on the record.

9 MR. D. BROOKS: Will you?

10 MR. R. ACCHIARDO: Yeah.

11 MS. K. CELESTINO-HORSEMAN: I disagree with
12 you because you keep talking about there's no
13 requirement for registration, which really
14 intrigued me, so I went back and looked at the
15 statutes, and actually, they kind of back door
16 it.

17 What they do is -- and you had a
18 constitution under Article 3, Section 14 gives
19 the legislature the power to create a system of
20 voter registration. Legislature has passed
21 various statutes, one of which says that --
22 provides what's supposed to be in the content of
23 the forms, and the forms are supposed to provide
24 for the resident's address and the mailing
25 address, and then the forms define resident's

1 address as the place where you are supposed
2 to -- where you are living.

3 It doesn't say -- I agree with you. The
4 registration is separate from the actual voting,
5 and to vote, you have to resided in there for 30
6 days, but for voter registration and what they
7 have done is they have said is you have to
8 attest to your residency, and as you just
9 stated, he affirmed under penalties of perjury
10 as an officer of the court that this was true.
11 So how can -- that is the whole question, I
12 think, that it comes down to.

13 MR. D. BROOKS: The flip of that is if I
14 buy -- if I buy a house in the summer and I move
15 again in September, then you would say I cannot
16 register until I move in, even though -- but
17 that's not what the form which this commission
18 promulgates -- it's not the statute, although
19 the statute is very similar -- there is nowhere,
20 and think of it this way, if I'm affirming that
21 I will be in a precinct, at an address 30 days
22 before the election, you've got to tell them the
23 address. What did you want him to do, leave a
24 blank form?

25 MS. K. CELESTINO-HORSEMAN: They say

1 resident's address, and they define it as a
2 place where you live. We have other provisions
3 in the statute that cover that. If you move in
4 a precinct from another precinct, we have
5 special provisions that allow you to vote in
6 other precincts. If you come in here and move
7 from out of state and it's a federal election or
8 moving within congressional districts, we make
9 sure that you can vote that way.

10 I don't think it's -- you know, for
11 purposes, and the statutes make it clear for the
12 purpose of voter registration that they have to
13 have a way of being able to track you. So what
14 you're saying is that anybody can come in and
15 claim to live anywhere and they can register in
16 our system?

17 MR. D. BROOKS: The voter registration, the
18 voter registration local offices, such as the
19 Perry County Circuit Court Clerk, requested -- I
20 think he provided a lease and he provided an
21 electric bill which shows that he's got some
22 interest in the property and that's prescreened
23 properly by the circuit court clerk.

24 He presented that evidence in order to get
25 to that point, and I -- so it's not as though he

1 picked a vacant lot. He has a lease to the
2 place and provided the proof that the circuit
3 court clerk required which was proof that he had
4 utilities in his name, so he's got a lease and
5 the utilities, and that is not a lie.

6 MR. K. TEW: David, where I'm stuck is I
7 don't know the jurisprudential, how you --
8 decisions that are made on this commission going
9 back in time -- obviously, I'm only a proxy for
10 the day, but what concerns me is the precedent
11 you might be setting by saying if a person
12 registers to vote and the county clerk doesn't
13 do anything else, then that person can file to
14 run for office.

15 It seems to me that this board, and I'm
16 only addressing your motion to dismiss, but it
17 seems to me that this commission ought to be
18 allowed and statutes seem to give us the ability
19 to administer the Indiana election laws if for
20 example -- I brought it up earlier, if, for
21 example, someone fraudulently registered to vote
22 but didn't get caught by the clerk's office but
23 somebody else, the citizens can say that guy is
24 fraudulently registered to vote.

25 MR. D. BROOKS: There are procedures to

1 challenge all of those things, none of which
2 involve this commission, and it's plain clear to
3 me that no matter -- I don't think I could
4 explain it any better than I already have -- I
5 understand your concerns but I wish you would
6 consider the flip concern about this commission
7 saying that a person is not properly registered
8 when the circuit court clerk got a copy of the
9 lease and a copy of their electric bill.

10 You would -- this commission should go
11 crazy if you found out that clerks were just not
12 allowing people to register or if it's a vacant
13 lot -- I mean, the corollary, he's done what the
14 clerk asked him to do and so I'm...

15 MR. K. TEW: I understand that, but I'm not
16 following, however, that when an allegation is
17 brought, that if the person that did that was
18 fraudulent that we shouldn't handle it.

19 MR. D. BROOKS: If you think that the
20 commission has jurisdiction, which there's been
21 plenty of issues regarding voter fraud over the
22 years, this commission, to the best of my
23 knowledge, has never taken jurisdiction over
24 those issues, has never tried to question an
25 individual voter registration, so I mean, you

1 can ask people who have been here longer than me
2 but...

3 CHAIRMAN D. DUMEZICH: I don't ever believe
4 that we as a case of first impression have dealt
5 with a voter, individual voter records.

6 MR. K. TEW: Understood, but the question
7 is that because of that registration he is a
8 valid or invalid candidate for office, because
9 one of the -- one of the -- and as David says,
10 the only qualifications is that he's a
11 registered voter.

12 MR. D. BROOKS: Fair enough. There are
13 others but that's one at issue here.

14 COMMISSIONER J. MYERS: It's the new guy
15 here. I've got a question. Aren't you really
16 saying -- I mean, we don't even get to that
17 issue, that the appropriate place to challenge
18 this, if the issue were simply a matter of
19 registering to vote, would have been to file a
20 challenge at the local county election board?

21 MR. D. BROOKS: That's exactly what I'm
22 saying.

23 COMMISSIONER J. MYERS: Okay.

24 MR. D. BROOKS: Let me run through -- I
25 know we're running out of time -- I've spent a

1 lot of time on the motion to dismiss, but the
2 substance that he's not a resident is there is
3 no substance to it. Let me just -- in the
4 interest of time, I've got these documents that
5 I can get them all submitted, but let me just
6 give you a rundown.

7 In May -- by the way, can I ask whether or
8 not -- can I see the original complaint because
9 the copy I got, some of these things are cut
10 off? Let me -- let me run through a couple of
11 quick things. One is the things that Mr.
12 Acchiardo...

13 CHAIRMAN D. DUMEZICH: Can you give us...

14 MR. D. BROOKS: Yeah. Perhaps in the
15 interest of time, I'll allow you to ask
16 questions. He's got a lease. He's made lease
17 payments. He registered to vote. He's got a
18 voter registration acknowledgment. He's got the
19 electric and water in his name contrary to what
20 Mr. Coyle who has said -- he had water and
21 electric even before he did that, although he
22 had the water and electric bill switched to his
23 name before the filing of the candidacy.
24 He's filed all of his committee filings,
25 his finance reports showing that address. He

1 has changed his driver's license to that
2 address. He has filed a change of address with
3 the post office. He receives all of his mail
4 there. He has cable TV, contrary to what Mr.
5 Coyle has said and whatever magic investigative
6 see through the walls issues there are.

7 He's got furniture. You've got pictures of
8 all his furniture, and he had furniture long
9 before Mr. Coyle made his allegations under
10 oath. He did not -- about the only thing in
11 here that Mr. Coyle has that may be relevant or
12 not misstated is he didn't turn the gas on until
13 mid August. He didn't need the gas because it
14 was pretty hot, as far as I know, in June, July
15 and August.

16 CHAIRMAN D. DUMEZICH: Did he have an
17 electric water heater?

18 MR. D. BROOKS: He did not have an electric
19 water heater, but the answer is -- the answer to
20 your question is because it was so hot, the
21 water was -- it was never really cold for
22 purposes of a shower. Mr. Acchiardo will be
23 able to tell you that he was there at the
24 premises starting in mid June because he had a
25 vacation the first two weeks of June until --

1 and from that point on, he was there virtually
2 every single day.

3 Now he did not sleep every single day there
4 but he was there every day, ate lunch there,
5 sometimes did some work, slept over at least
6 once a week for the first couple of weeks and
7 gradually has gotten continued times where he
8 sleeps over.

9 He's been sleeping four to five nights a
10 week there for quite some time over a month, and
11 he's got it fully furnished, and if we go back
12 through -- you know, if we're trying to figure
13 out, and I'll happy to have you ask Mr.
14 Acchiardo some questions, but if you look
15 through here, Mr. Coyle under oath is telling
16 you that Mr. Acchiardo's children attend Reitz
17 Memorial High School, but really...

18 CHAIRMAN D. DUMEZICH: You're out of time.

19 MR. D. BROOKS: Okay.

20 CHAIRMAN D. DUMEZICH: Well...

21 MR. D. BROOKS: Can I submit my exhibits?

22 CHAIRMAN D. DUMEZICH: Absolutely. Do you
23 have copies for opposing counsel?

24 MR. D. BROOKS: I do.

25 CHAIRMAN D. DUMEZICH: Let's give him an

1 opportunity to review them and see if he has any
2 objection to the documents.

3 MR. D. BROOKS: Sure. And I would -- this
4 is a lease. Do you guys just want one copy,
5 Dale?

6 MR. D. SIMMONS: We need originals.

7 MR. B. KING: We need originals.

8 MR. D. BROOKS: Not all of these are
9 copies. That's as original as it gets. Do you
10 want that Exhibit A -- do you want me to mark
11 them?

12 MR. D. SIMMONS: Yeah, if you can mark
13 them. You can keep track of them.

14 MR. D. BROOKS: This is Exhibit A, and at
15 this point this is the lease agreement. The
16 copy that I got and the copy in your binder is
17 conveniently cut off at the bottom -- Mr. Coyle
18 didn't bother to put that there, that makes this
19 allegation that this is a one-month lease
20 because it says one month here.

21 There's clearly a holdover clause that says
22 that past this period, it goes month-to-month,
23 so it's not a one-month lease, it's a
24 month-to-month lease and he's been there ever
25 since. This is copies of lease payments, two

1 are checks, and one, I believe, is a receipt
2 showing that he started in June and is current.

3 MR. T. WHITE: Is this supposed to be cut
4 off?

5 MR. D. BROOKS: Yeah, that's one check and
6 the other is on the other page. I don't know
7 why they did it that way actually.

8 MR. T. WHITE: I've got you.

9 MR. D. BROOKS: This is Exhibit C. These
10 are the hook-up dates for the electric and the
11 electric bills which he's paid. Voter
12 registration is attached to the complaint. This
13 is the official acknowledgement of the
14 registration from the local election officials.
15 Here's a copy of the water bill in his name.

16 I have the candidate filings which I was
17 going to put that show that it was timely filed,
18 the CAN-29, 31, and so on, and those are
19 technically part of your files; do you need that
20 or...

21 CHAIRMAN D. DUMEZICH: No.

22 MR. D. BROOKS: Here's a copy of Mr.
23 Acchiardo's driver's license being changed to
24 his new residence address. In addition to the
25 bills that you've seen that are already at his

1 residence, here's copies of magazines which have
2 the change of address for his personal
3 magazines. Here's a copy of the cable he
4 recently turned on. Very few transient people
5 hook up cable television.

6 Here are pictures of his home, including
7 the interior showing that there are furnishings.
8 Mr. Acchiardo will tell you that all of this
9 furniture was in place prior to Mr. Coyle's
10 filing of his challenge.

11 CHAIRMAN D. DUMEZICH: There will be no
12 critiquing of his interior decorations.

13 MR. D. BROOKS: Yeah, we talked about that.

14 CHAIRMAN D. DUMEZICH: That isn't the
15 issue.

16 MR. D. BROOKS: And importantly, what we
17 have last is an affidavit from -- an affidavit
18 from an 80-year-old neighbor who lives in this
19 neighborhood that could not be here today
20 because she's 80 years old, and if you look at
21 it -- I'm just going to read to you because it's
22 important, but on or about June 15th, I first
23 met Rod Acchiardo while out in the yard between
24 my home, blah, blah, blah, he introduced himself
25 as my new neighbor -- this is mid June.

1 CHAIRMAN D. DUMEZICH: Why don't you
2 introduce that? The motion to dismiss pretty
3 much speaks to that. Your time's up. Just put
4 it in and we can speak to it later.

5 MR. D. BROOKS: Okay. And in that case
6 I've labeled -- unless you have an objection,
7 Terry, --

8 MR. T. WHITE: To your exhibits?

9 MR. D. BROOKS: -- to submit those?

10 MR. T. WHITE: I don't have an objection to
11 your exhibits.

12 CHAIRMAN D. DUMEZICH: What I'd like to do
13 is at this point in time is for the election
14 commission counsel to give their thoughts with
15 respect to the facts as they've been presented
16 on the motion to dismiss. Leslie, would you
17 like to go first?

18 MS. L. BARNES: Thank you, Mr. Chairman,
19 Members of the Commission. While Mr. Brooks has
20 framed the issue over whether or not the
21 commission has jurisdiction to rule on a voter
22 registration form, there is also another form
23 that's been challenged that's before this
24 commission that the commission very clearly has
25 jurisdiction over, and that's the candidate's

1 declaration form.

2 3-8-1-2 sub B says the commission has
3 jurisdiction to act under this section, which is
4 the challenge section, with regard to any filing
5 that was made with the election division.

6 Prosecutor candidates file with the election
7 division, then if you look in Subsection F of
8 that section, 3-8-1-2, it says upon the filing
9 of a sworn statement, the commission shall
10 determine the validity of the questioned:
11 declaration of candidacy. On the declaration of
12 candidacy as required by state law, 3-8-2-7, a
13 candidate must state their residence.

14 This commission has jurisdiction over this
15 challenge based upon the candidate's residency
16 simply based upon the fact that the declaration
17 has also been filed with the election division.

18 I don't think even think that the commission
19 needs to rule on whether or not they have
20 authority to de-register somebody or take
21 somebody off the rolls of registered voters. I
22 think the declaration form is also properly
23 challenged and the commission has jurisdiction
24 to rule on the declaration form as well.

25 CHAIRMAN D. DUMEZICH: So your position

1 would be, although we don't have direct ability
2 to rule on whether or not he's a registered
3 voter, vicariously, through this subsequent
4 form, we would have the ability to sift through
5 it and include that in the qualifications of the
6 declaration of candidacy?

7 MS. L. BARNES: I don't think the
8 commission even needs to get to the question on
9 whether or not they need to rule on a voter
10 registration form. I think the commission
11 members may be divided on that, but what the
12 commission does have jurisdiction over is a
13 candidate's declaration form, and by state law,
14 a candidate must state their residence on the
15 declaration form.

16 MR. K. TEW: So the fact that the
17 declaration candidacy form includes an oath, and
18 if what you said is truthful and requires that
19 you put your residence on there, that gives us
20 the ability to decide, since we have a challenge
21 here, whether or not that declaration is correct
22 or truthful?

23 MS. L. BARNES: Yes, correct.

24 CHAIRMAN D. DUMEZICH: Mr. Simmons.

25 MR. D. SIMMONS: Mr. Chairman, Members of

1 the Commission, I certainly agree that the
2 commission has jurisdiction over candidate
3 challenges, but I thought the whole point of the
4 motion to dismiss was look, here's the
5 challenge. Here's what he's saying. He's
6 saying the challenge is based on the fact that
7 the candidate doesn't comply with 3-8-1-1, in
8 that he's not registered to vote by the
9 deadline, and everybody, even the challenger
10 agrees that it's true that he's registered.

11 Now it sounds like the challenger wants to
12 say awe, yes, but the commission has the
13 authority to look behind that under 3-6-4.1-14
14 because they administer election laws -- maybe I
15 read that differently. I don't see that as a
16 grant to the commission to repeal the laws, to
17 overrule the laws, to change the laws.

18 The legislature establishes laws and the
19 laws give the authority and it's always been the
20 practice that registrations are determined, the
21 validity of registrations are determined by the
22 circuit court clerk, or in the case of a board
23 of registration, board of registration.

24 And so I put that together with 3-8-1-1
25 that simply says that the qualifications is hey,

1 you've got be a registered voter with the fact
2 that he's a registered voter, and it seems like
3 to me everybody agrees with those facts, and
4 based on that, the motion to dismiss should be
5 sustained.

6 I certainly am sensitive, though, to the
7 concern of some commission members that, you
8 know, what about election fraud, can the
9 commission do that, and there's a separate
10 section -- not the challenge section, but there
11 is a separate section in 3-6-4.1-20 or 21, and
12 specifically, I understand the concern with
13 Acorn, that -- that was raised in 2008, of
14 course, and I think those kind of things -- I
15 think there were complaints made but I don't
16 think the commission ever exercised
17 jurisdiction.

18 But I certainly think if fraudulent voting
19 or whatever -- people could bring those
20 complaints to the commission and the commission
21 decides under this section to exercise
22 jurisdiction, that perhaps they could act under
23 it. So I think -- yeah, there's a separate
24 section that deals with that concern, but that's
25 not the section that we have before us today, so

1 my view would be that the motion to dismiss
2 should be granted.

3 CHAIRMAN D. DUMEZICH: What we're going to
4 do is give each two minutes of rebuttal and
5 we'll vote on the motion to dismiss.

6 MR. T. WHITE: On the motion to dismiss
7 only?

8 CHAIRMAN D. DUMEZICH: Yes, and we will
9 decide how much time from there, if we need it,
10 to continue.

11 MR. T. WHITE: Thank you. If not you, then
12 who? I think this candidate wants his cake and
13 eat it, too. I think he wants to basically say
14 since I'm alleging that I'm a candidate and I've
15 signed this registration, that that
16 automatically takes it outside of your
17 jurisdiction.

18 But I refer back again to two things,
19 3-8-1-1, section 1 says you can't be a candidate
20 unless you're registered to vote in the election
21 prior to the time of the filing of your
22 declaration of candidacy. When he registered,
23 the question is did he legally register, or was
24 it subjected by deceitfulness? The question is
25 is he legally registered or is he legally a

1 candidate based upon his allegation that his
2 residence is in Perry County.

3 You still under the powers and duties have
4 the responsibility under Section C(4) -- I'm
5 sorry, E -- Section 4 to exercise supervision
6 over local election and registration officers.
7 I think the statute clearly contemplates,
8 especially when it comes to district offices
9 like the prosecuting attorney, you have this
10 original jurisdiction to determine whether or
11 not this candidacy is valid.

12 CHAIRMAN D. DUMEZICH: Mr. Brooks.

13 MR. D. BROOKS: The arguments have been so
14 mixed up between the motion to dismiss elements
15 and substance, that it's now very difficult to
16 sort out. Let's start with the fact that my
17 client filled out the form promulgated by this
18 commission affirming one thing, which is I will
19 do something in a -- at a future point.

20 He provided proof of a lease. He provided
21 his electric bill. He's met the standard that
22 was set by this commission in its form and the
23 standard set by the county clerk, but at this
24 point we already know that Mr. Acchiardo -- he's
25 got the electric in his name. He got the water

1 in his name. He's now got his driver's license.
2 He's got furniture. He's done everything. If
3 we look at these cases, whether it's the Bayh
4 case, and I know -- I don't remember if Kip was
5 involved in that case or not, I'd remember it
6 if...

7 MR. K. TEW: I was too young.

8 MR. D. BROOKS: Yeah, that's it. That's
9 the ticket. But if you look at all of the
10 elements of this case, Mr. Acchiardo is so far
11 past what you have to do to be a resident
12 compared to Evan Bayh, or compared, in
13 particular, because they seem to enjoy this kind
14 of thing in Perry County, in the matter of David
15 E. Evrard, who's a judicial candidate -- this is
16 333 N.E.2d 765, that here's a guy who lived in
17 with his family in Virginia. His wife was going
18 to school there. His cars, his driver's
19 license, everything was in Virginia, he
20 registered to vote and voted claiming that he
21 was living at his parents -- in his parents'
22 basement, and what the court says is that the
23 fact -- let's see.

24 CHAIRMAN D. DUMEZICH: Ten seconds.

25 MR. D. BROOKS: Okay. We're so far beyond

1 what's required to show residence -- you know, I
2 guess I don't even care about the motion to
3 dismiss so much anymore. He ought to be
4 acknowledged as having done way more than is
5 legally required to be a resident.

6 MS. K. CELESTINO-HORSEMAN: Are you
7 withdrawing the motion to dismiss?

8 MR. D. BROOKS: No, I think -- I made the
9 motion because I believe in it and I think it's
10 a matter that the commission perhaps ought to
11 rule on. It's your form and you're setting
12 precedent, I think, for the wrong reasons, if
13 you don't grant it, but since we've already got
14 to the substance, the whole idea of the motion
15 to dismiss was to have that decided without a
16 lot of substance -- we're past that. I'm not
17 withdrawing it.

18 CHAIRMAN D. DUMEZICH: Do you have a
19 question?

20 MR. K. TEW: No.

21 CHAIRMAN D. DUMEZICH: Is there a motion?

22 MR. K. TEW: I move that the motion to
23 dismiss is not well taken or be denied.

24 CHAIRMAN D. DUMEZICH: Is there a second.

25 MS. K. CELESTINO-HORSEMAN: Second.

1 CHAIRMAN D. DUMEZICH: Any discussion?

2 (No response.)

3 MR. K. TEW: Sure. Yes, I was persuaded by
4 Leslie Barnes' argument. It seems to me -- I
5 understand Counselor Brooks' argument with
6 respect to we shouldn't get -- this commission
7 shouldn't be handling whether an individual
8 voter is registered to vote or not, but I do
9 believe that this commission should continue to
10 maintain jurisdiction on whether the candidates
11 should serve on a ballot or not, and the
12 essential question is if this candidate should
13 be able to serve on this ballot because of how
14 he registered to vote, and not talk -- talk
15 about that, talk about whether he is valid or
16 not.

17 CHAIRMAN D. DUMEZICH: Further discussion.

18 MS. K. CELESTINO-HORSEMAN: Thank you. I'm
19 also concerned about his declaration of
20 candidacy. If he was less than forthright on
21 his completion of residence, which is required
22 by statute, then I do have a concern, and I
23 don't think that such an action -- I think the
24 commission needs to examine those things to make
25 those determinations.

1 COMMISSIONER J. MYERS: Mr. Chairman, you
2 know, I'm still having a problem, and going back
3 to the question I asked before, I think we're
4 just opening a huge can of worms by not allowing
5 or at least requiring if folks are going to make
6 a challenge to someone's voter registration,
7 that they make that challenge at the county
8 level and that's addressed by the local election
9 board.

10 Certainly, you know, if things seem
11 inappropriate and people want to challenge that
12 at the local level and bring it on up, I don't
13 think we would turn folks away, but again, I'm
14 just -- I'm having a hard time getting why we
15 would address that without the local election
16 board having considered the question first.

17 CHAIRMAN D. DUMEZICH: Yeah, my analysis of
18 this as to the motion to deny is there is a
19 form. The form calls for very specific things
20 to be affirmed. This candidate did that. If
21 there was a problem with that, it should have
22 been brought up with the local board and it was
23 not and therefore he met his initial threshold.

24 I think he's also met his threshold with
25 respect to the evidentiary point Mr. White made

1 earlier coming forward with the evidence so I
2 would -- I'll just call for the motion. There
3 is a motion on the floor now to deny the motion
4 to dismiss of this candidate's -- this challenge
5 to this candidate. The motion to dismiss --
6 there's a motion on the floor to deny the motion
7 to dismiss the candidate's challenge. All in
8 favor?

9 THE COMMISSION: Aye.

10 MR. K. TEW: Aye.

11 CHAIRMAN D. DUMEZICH: All opposed? Nay.

12 COMMISSIONER J. MYERS: Nay.

13 CHAIRMAN D. DUMEZICH: Let the record
14 reflect the board is split on the motion to
15 deny. Is there a second motion to...

16 COMMISSIONER J. MYERS: Yeah, Mr. Chairman,
17 I will move that the challenge presented by the
18 challenger, you know, be denied.

19 CHAIRMAN D. DUMEZICH: The challenge or the
20 motion to dismiss?

21 COMMISSIONER J. MYERS: Oh, we're still on
22 the...

23 CHAIRMAN D. DUMEZICH: Motion to dismiss.

24 COMMISSIONER J. MYERS: Got you, then yeah,
25 I would make a motion that...

1 CHAIRMAN D. DUMEZICH: There's a motion on
2 the floor that the motion to dismiss brought by
3 the candidate be affirmed. All in favor, say
4 aye?

5 MR. K. TEW: Can I ask a question; is that
6 open to discussion, your motion?

7 CHAIRMAN D. DUMEZICH: Yeah.

8 MS. K. CELESTINO-HORSEMAN: Is there a
9 second to that motion.

10 CHAIRMAN D. DUMEZICH: I'll second it.

11 MR. D. BROOKS: I just don't -- well, I'm
12 confused. Let me make sure on the closing or
13 the summary statement on the substance.

14 CHAIRMAN D. DUMEZICH: Oh, no, this is not
15 the substance. This is just on the motion to
16 dismiss.

17 MR. K. TEW: Because it was a 2-2 vote, the
18 vote to deny the motion to dismiss fails.

19 CHAIRMAN D. DUMEZICH: Fails, and we have
20 to procedurally make sure that we are all in the
21 same place.

22 MR. K. TEW: That's all I have.

23 MS. K. CELESTINO-HORSEMAN: Second.

24 CHAIRMAN D. DUMEZICH: Second it. All in
25 favor say aye?

1 COMMISSIONER J. MYERS: Aye.

2 CHAIRMAN D. DUMEZICH: Aye. All opposed?

3 MS. K. CELESTINO-HORSEMAN: Aye.

4 MR. K. TEW: Aye.

5 CHAIRMAN D. DUMEZICH: Let the record
6 reflect that the motion to dismiss has -- to
7 grant or deny it has failed as well. Now let's
8 go to the merits on the case. What we're doing
9 to do is five minutes each and one-minute
10 rebuttal. We'll start off with Mr. White.

11 MR. T. WHITE: Thank you, Mr. Chairman. I
12 couldn't disagree with Mr. Brooks anymore
13 strenuously. 3-5-5-11 and 3-5-5-12, which Mr.
14 Acchiardo is not denying, provides that the
15 place where a person's immediate family resides
16 is the person's residence, unless the family's
17 residence is: 1) A temporary location for the
18 person's immediate family; or 2) for transient
19 purpose, except as provided in Section 13 of
20 this chapter, a person's immediate family
21 resides in one place and does business in
22 another place, the resident's immediate family
23 is the person's residence.

24 We have a 3,000 square foot house in
25 Warrick County where his family resides.

1 There's been no statement, I understand, that
2 there's been a split in the family. This
3 basically says this is where his residence is,
4 and whatever he did after the fact, after
5 June 30th, I would submit is simply self-serving
6 at this point in time. The resident showed a
7 lease agreement --

8 MR. K. TEW: Terry, do you have any case
9 law that defines in part Section 12?

10 MR. T. WHITE: I couldn't find any.

11 MR. K. TEW: So...

12 MR. T. WHITE: To be honest with you,
13 there's not a lot of case law out here in trying
14 to put a handle on it, but if I read the plain
15 language in the statute...

16 MR. K. TEW: You would be happy to
17 stipulate where families separate and don't do a
18 legal separation, things short of divorce, would
19 you say that in those instances a person's
20 immediate family -- I guess the question is --
21 let me back up.

22 Let's say there is a separation, and I'm
23 not saying that's the case in this situation,
24 but if someone were separated from his immediate
25 family because the two spouses happened to not

1 be getting along, they don't want to get a
2 divorce, they want a cooling off period or
3 whatever the case maybe, if that person decides
4 to take up in another county and move there
5 temporarily, they may not be allowed to register
6 to vote in that county?

7 MR. T. WHITE: I don't think so. If you
8 read the statute, a change of domicile
9 requires -- I'm sorry, case law, actual moving
10 with an intent to go to a given place and remain
11 there requires a definite intention and evidence
12 of acts undertaken in furtherance of the
13 requisite intent.

14 You have to manifest itself and actions
15 that indicate that you intend to remain there
16 permanently and away from your family
17 permanently, and what I'm saying is this has a
18 presumption -- it's presumption that he has to
19 rebut and I don't think he has.

20 MR. K. TEW: Did you answer my specific
21 question, that if I got separated from my wife
22 and I want a cooling off period and I move into
23 a different house and there's an election coming
24 up and I want to register to vote in that
25 county, are you saying that this statute would

1 prohibit me from doing that?

2 MR. T. WHITE: I would have to say you have
3 to stay there indefinitely.

4 CHAIRMAN D. DUMEZICH: Could you tell me
5 why 3-5-5-14 doesn't apply?

6 MR. T. WHITE: A married person who does
7 not live in a household with the person's spouse
8 may establish a separate residence from the
9 residence of the person's spouse. The question
10 is whether he lives in that house?

11 CHAIRMAN D. DUMEZICH: Okay.

12 MR. T. WHITE: I guess you've got to put it
13 in conjunction --

14 MR. K. TEW: Does that answer the question
15 on what I asked?

16 MR. T. WHITE: It may establish a separate
17 residence, the residence of a person's house.

18 CHAIRMAN D. DUMEZICH: So it would seem
19 like the Indiana General Assembly contemplated
20 the fact that.

21 MR. T. WHITE: That he may be able to live
22 somewhere else.

23 CHAIRMAN D. DUMEZICH: For the record, I
24 practice tax law, and I have many many clients,
25 and I have one wife living in one state and the

1 husband living in another, and that doesn't
2 affect their ability to vote.

3 MR. T. WHITE: I think you have to read
4 Section 11, and 11 says, if that's where your
5 immediate family resides and it's presumed
6 that's your residence, then you're going to have
7 to rebut it.

8 MR. K. TEW: It's a rebuttal presumption?

9 MR. T. WHITE: Yes, then you've got to look
10 at Section 12, and is he moving in here for
11 business purposes -- I don't know -- that's the
12 question. It's hard to put them all together,
13 to be honest with you, but the thought -- my
14 question is and what I think the evidence shows
15 is that prior to the time he filed his
16 declaration for candidacy, he certainly was not
17 properly registered and certainly was not a
18 candidate -- I'm sorry, a resident of Perry
19 County.

20 CHAIRMAN D. DUMEZICH: Okay. With that,
21 Mr. Brooks.

22 MR. D. BROOKS: Yeah, could I just get a
23 little live testimony from Mr. Acchiardo?

24 CHAIRMAN D. DUMEZICH: Sure.

25 MR. D. BROOKS: He's already sworn in;

1 right?

2 CHAIRMAN D. DUMEZICH: Yeah.

3 MR. D. BROOKS: Mr. Acchiardo, are you
4 familiar with all of the exhibits that we
5 submitted earlier?

6 MR. R. ACCHIARDO: Yeah.

7 MR. D. BROOKS: And those are true and
8 accurate copies of what all they purport to be?

9 MR. R. ACCHIARDO: Yeah.

10 MR. D. BROOKS: In Exhibit I, your
11 neighbor, who says that she has noticed that
12 your silver Toyota vehicle parked in its
13 driveway at 306 Ridgeway on a daily basis since
14 early June and then leaving the house in the
15 morning and returning in the afternoon
16 throughout the week; is that a true and accurate
17 statement?

18 MR. R. ACCHIARDO: That's a true statement.

19 MR. D. BROOKS: And in fact, were you at
20 the residence on a virtual daily basis from
21 middle to June on?

22 MR. R. ACCHIARDO: Yes. My office, my law
23 office has been in Tell City for eight and a
24 half years. I go there every single day. I
25 practice law in Perry County and 95 percent of

1 my work is in Perry County so I'm there all the
2 time and I'm at this house every single day in
3 one capacity or another.

4 MR. D. BROOKS: And let me ask you just
5 straight forward, was it your intent to change
6 your residence to the place that you're
7 registered to vote at in early June?

8 MR. R. ACCHIARDO: Yes, it was. My wife,
9 her parents live in Perry County. They've lived
10 in Perry County their entire life. My
11 brother-in-law, two of my brother in-laws live
12 there. We've got close family ties there.
13 We're there a lot on the weekends a lot of time
14 anyway. My wife's been wanting to move there
15 for quite some time so it's a legitimate
16 situation for us.

17 MR. D. BROOKS: Okay. And to finish out
18 the time -- I was going to quote you to this
19 case, but this is a case in 333 N.E. 2nd 765 in
20 the matter of Judge Evrard who was charged with
21 not registering but voting at a place that he
22 didn't live while running for judge, and what
23 the court says here, and this is -- you have to
24 read the facts, but the family, the cars, they
25 were living in Virginia. He claimed a residence

1 with his parents, and here's what the court
2 said, well, one is probably limited to having a
3 single residence for voting purposes at any
4 given time, but the fact that he has one more
5 residence or place of abode in which he has
6 substantial investment, social commitment and
7 interest and which is useful for any number of
8 purposes is a relevant act along with others.

9 If you compare the facts of the Evan Bayh
10 case to how much time the senator was spending
11 here or in this Evrard where they actually lived
12 in Virginia the whole time, the math here is --

13 MR. K. TEW: I didn't read that case. What
14 was the court's disposition of that case?

15 MR. D. BROOKS: Pardon?

16 MR. K. TEW: What was the court's
17 disposition of that case?

18 MR. D. BROOKS: That he was a resident.

19 CHAIRMAN D. DUMEZICH: And what court was
20 that?

21 MR. D. BROOKS: Supreme Court of Indiana,
22 just like the Bayh case, it is largely based on
23 intent, and there's a good reason for that -- I
24 mean, the Supreme Court in Evan Bayh's case
25 tells us the constitutional provision for

1 eligibility for office must be interpreted in
2 light of its Democratic purpose.

3 Our system of government favors an informed
4 electorate choosing from a range of qualified
5 candidates. It works best on the basis on
6 maximum rather than minimum participation in
7 democracy.

8 What's Mr. Coyle doing here? He's trying
9 to eliminate the Republican candidates so that
10 there's no choices. We've got a gentleman who's
11 followed all the directions to register. He's
12 done far more than that, and all these
13 exhibits -- it is really so beyond what you need
14 to do under the case law that this challenge
15 should be dismissed for what it is, a political
16 effort in trying to defeat --

17 CHAIRMAN D. DUMEZICH: Time.

18 MR. D. BROOKS: -- the Democratic process.

19 CHAIRMAN D. DUMEZICH: One minute.

20 MR. T. WHITE: What Mr. Coyle is trying to
21 do is uphold the integrity of the system and
22 that's why we've come to you to help us try to
23 do that. The fact of the matter the person
24 who's averting the system is Mr. Acchiardo, who
25 didn't file -- who didn't become a resident

1 until June 14th or thereabouts when he turned
2 the electricity on or signed up to have the
3 electricity in his name and then filed for
4 office, I think, on June 29.

5 He didn't even pay his rent until June
6 30th, after the fact, when he was supposed to
7 obtain the lease from his brother-in-law. I
8 guess the point is do we uphold the integrity of
9 the process? Is the Democratic process going to
10 be allowed so that anybody can file their intent
11 to have a residency in all 92 counties and is
12 all the self-serving stuff after the fact, and
13 does it beg the question as to whether or not he
14 was a resident and whether or not he properly
15 filed as a resident at the time he filed this
16 declaration of candidacy under the statute?

17 CHAIRMAN D. DUMEZICH: Time, one minute,
18 you're done.

19 MR. D. BROOKS: No -- I mean, he lived
20 there then. The neighbor says he's there daily.
21 He says he's there daily. He's done everything
22 that you would do if you wanted to change your
23 residence. The law only requires intent and
24 some indicia of that.

25 CHAIRMAN D. DUMEZICH: Okay.

1 MR. D. BROOKS: The intent is clear, unless
2 Mr. Coyle's a mind reader, too, but he's told
3 you that he intended to make that his residence
4 and he's done everything a normal person would
5 to be a resident.

6 CHAIRMAN D. DUMEZICH: And all he has to do
7 is be a resident for 30 days before the
8 election; correct?

9 MR. D. BROOKS: For purposes of the
10 statutory arguments we've had, that's correct.

11 CHAIRMAN D. DUMEZICH: So it's 32 days from
12 there or 31 days from there?

13 MR. D. BROOKS: But he has been a resident
14 there since the middle of June.

15 MR. K. TEW: Except the statute does
16 contemplate and our forms contemplate that when
17 you file your statement, the declaration of
18 candidacy that you put on there what your
19 residence is, so it's a little gray.

20 CHAIRMAN D. DUMEZICH: Sure.

21 MR. D. BROOKS: That was his residence and
22 has been his residence then.

23 MR. K. TEW: I was talking -- I wasn't
24 making a factual argument one way or the other,
25 but Dan said one thing, just to make sure I

1 understood, the commission forms do contemplate
2 that you file the declaration of candidacy, and
3 on that declaration of candidacy there is a line
4 that asks for your residence. David, if someone
5 lied about that, what would be a person's
6 remedy?

7 MR. D. BROOKS: Whose person, what person?

8 CHAIRMAN D. DUMEZICH: What's filed on the
9 form -- you said what the person files on the
10 form?

11 MR. K. TEW: No, let's say a candidate
12 lies.

13 MR. D. BROOKS: At the end of the day,
14 we've now because we've got a lot of things out
15 of order, focused on a lot of hypotheticals,
16 none of which exists.

17 Mr. Acchiardo was a resident. He did more
18 than was required even if -- even if you had to
19 be a resident at that moment, he did everything.
20 He was staying there. He had his electric.
21 He's got a lease. He's making his payments.
22 He's got furniture.

23 MR. K. TEW: I've heard all that evidence.
24 I've heard you say that repeatedly.

25 MR. D. BROOKS: So I don't know what the --

1 I guess I'm going to decline your hypothetical
2 question because it doesn't apply here.

3 MS. K. CELESTINO-HORSEMAN: May I ask a
4 question?

5 CHAIRMAN D. DUMEZICH: Yes. Any more
6 questions of counsel before we close the record?

7 (No response.)

8 MS. K. CELESTINO-HORSEMAN: May I ask the
9 question of Mr. Acchiardo?

10 CHAIRMAN D. DUMEZICH: Sure.

11 MS. K. CELESTINO-HORSEMAN: Mr. Acchiardo,
12 were you living at 306 Ridgeview Street on June
13 17, 2010?

14 MR. R. ACCHIARDO: Was I living at that
15 address?

16 MS. K. CELESTINO-HORSEMAN: On June 17th?

17 MR. R. ACCHIARDO: That was my intention,
18 yes.

19 MS. K. CELESTINO-HORSEMAN: Were you living
20 there?

21 MR. R. ACCHIARDO: I would say I was living
22 there, yes.

23 MS. K. CELESTINO-HORSEMAN: And you spent
24 nights there?

25 MR. R. ACCHIARDO: I did spend nights

1 there, yes. Now let me just say this, this has
2 become more -- it's become more and more -- I've
3 been staying there more and more as time goes
4 on. Initially, I stayed there maybe once a
5 week, twice a week. This past month in August
6 I've probably been there four or five nights a
7 week so it's been progressively more and more.
8 For me, that's where I was living and that was
9 my residence and that was my intent and I tried
10 to take all actions to effectuate that intent.

11 MR. K. TEW: Since you opened that up, you
12 said that you have been practicing law in the
13 county about eight years?

14 MR. R. ACCHIARDO: Eight and a half.

15 MR. K. TEW: And only recently, you've been
16 spending four or five days, or four or five
17 nights there, can you tell us why it is that
18 suddenly after eight years of working in that
19 county, you're suddenly spending four or five
20 nights staying in that house?

21 THE WITNESS: That's a good question. I've
22 got three kids. Two of them I just -- my oldest
23 one is a sophomore in college. He lives in an
24 apartment outside the college. The other one
25 goes to the University of Evansville. He lives

1 in the dorms. My daughter is now a senior in
2 high school. The kids are getting out of the
3 house. It's time -- my wife wants to be -- her
4 parents are in their 80s and she wants to be
5 very close to them to help them, so after
6 commuting so many years, because it's a pretty
7 good commute for me, we decided to try to move
8 closer to them.

9 CHAIRMAN D. DUMEZICH: Okay, with that, I
10 declare the hearing on Cause 2010-09 closed.
11 Does anyone have any more discussion in this
12 matter?

13 MS. K. CELESTINO-HORSEMAN: I think --
14 sorry.

15 CHAIRMAN D. DUMEZICH: Go ahead, please.

16 MS. K. CELESTINO-HORSEMAN: I think this is
17 a very difficult decision in this case, seeing
18 that what we basically have is a candidate who
19 came over to this county for the sole purposes
20 of trying to establish qualifications to be able
21 to run for office, and I think that there was
22 some things, like perhaps some of the
23 affirmations and such that were made.

24 Having said that, unfortunately, the burden
25 does fall on the challenger to rebut -- I mean,

1 to show that this person doesn't live there, and
2 a month's lease does not necessarily mean that
3 he doesn't live there and utilities and such so
4 it's a hard case to make. Counsel has done a
5 great job of it, so that is where I stand.

6 CHAIRMAN D. DUMEZICH: Mr. Kip.

7 MR. K. TEW: I don't think the challenger
8 has met the burden to establish the fact that
9 the candidate is not a resident of the county.
10 Although I am concerned as to potential reasons
11 why he has come over, but I'm not sure that he's
12 entirely truthful, but I can't get inside his
13 brain, but I'm assuming that one of the reasons
14 he's over in Perry County four or five nights a
15 week is that he's running for prosecutor in that
16 county. Having said that, I'm not persuaded
17 that he should not be able to run for
18 prosecutor.

19 CHAIRMAN D. DUMEZICH: Mr. Myers.

20 COMMISSIONER J. MYERS: Well, based on
21 everything I've heard, regardless of the intent,
22 I think like Mr. Acchiardo has presented plenty
23 of evidence indicating that he's met the
24 residency requirements, so I guess that's how I
25 feel about it.

1 CHAIRMAN D. DUMEZICH: After hearing the
2 evidence in this case, I think that the forms
3 that were filled out were filled out with entire
4 truthfulness. I think his representations to be
5 truthful, and I don't see any disconnect what he
6 did on those forms and the position he's taking
7 here today, and I think once he has registered
8 to vote, he's met the strict requirements of the
9 statute and that statute should mean that he is,
10 in fact, a candidate. So with that in mind,
11 that's my position, but I will now ask if
12 there's a motion on the floor?

13 COMMISSIONER J. MYERS: Mr. Chairman, I'd
14 like to move that the challenge be denied based
15 on the fact that Mr. Acchiardo meets the
16 residency requirements.

17 CHAIRMAN D. DUMEZICH: Do I hear a
18 second -- second it. Any further discussions
19 from the members?

20 (No response.)

21 CHAIRMAN D. DUMEZICH: All in favor for the
22 motion, say aye?

23 THE COMMISSION: Aye.

24 CHAIRMAN D. DUMEZICH: All opposed, say
25 nay?

1 (No response.)

2 CHAIRMAN D. DUMEZICH: The eyes have it.
3 You're a candidate in this fall's general
4 election, sir.

5 MR. R. ACCHIARDO: Thank you.

6 CHAIRMAN D. DUMEZICH: Let's take a
7 five-minute break.

8 (A recess was taken.)

9 CHAIRMAN D. DUMEZICH: We now have Cause
10 2010-10 in the matter of the challenge to
11 candidate Kenneth R. Scheibenberger.

12 MR. K. SCHEIBENBERGER: Scheibenberger.

13 CHAIRMAN D. DUMEZICH: I did it again,
14 Scheibenberger.

15 VICE CHAIR A. LONG: You're not good with
16 names.

17 CHAIRMAN D. DUMEZICH: It's nonpartisan
18 candidate for Allen County Superior Court Judge,
19 and it is, again, 2010-10, and it was received
20 from Richard L. Runestad, et al. on October 4th,
21 2010, so I declare the hearing on Cause
22 2010-10 open, and recognize the election staff
23 to provide information about the documents and
24 the notice given in this cause.

25 MS. P. POTEESTA: Mr. Chairman and

1 Commissioners, Kenneth R. Scheibenberger filled
2 out his CAN-41 for superior court judge of Allen
3 County, his declaration of candidacy on January
4 20th, 2010. We received a candidate challenge
5 on -- I'm sorry, mine is not showing the date,
6 but I believe it was August.

7 CHAIRMAN D. DUMEZICH: August 4th.

8 MS. P. POTESTA: August 4th or 11th?

9 CHAIRMAN D. DUMEZICH: We have August 4th,
10 2010.

11 MS. P. POTESTA: Okay, by Mr. Richard
12 Runestad, and there are documents in his tab
13 about his challenger to explain, and Brad has a
14 comment as well.

15 MR. B. KING: Mr. Chairman, Members of the
16 Commission, just to add, as the Chair noted,
17 this challenge has been filed by a group of
18 individuals whom Mr. Runestad is the first.
19 They're identified by name in the document. I
20 will very quickly read and try not to butcher
21 those names -- David C. Ferro, Larry E. Arnold,
22 Jeffrey A. Brumm, Leonard O. Engquist, Carole J.
23 Engquist, Jack Benjamin, Carl Jackson, Andrea
24 Jackson, Katherine E. Brumm, Randy Holum and
25 Cheryl Holum.

1 The other comment to add is that unlike the
2 challenges in the previous matter and in the
3 next matter on the agenda, this document was not
4 accepted for filing at the election division for
5 reasons that cogeneral counsel, Dale Simmons can
6 address, if the commission wishes, because the
7 codirectors were not certain that the filing was
8 presented before applicable deadlines to do so.

9 VICE CHAIR A. LONG: Would you say that
10 again? I want to make sure I fully -- the
11 challenge wasn't filed or wasn't docketed
12 because of the time limits' question or the
13 declaration was not, which was it?

14 MR. B. KING: The challenge.

15 VICE CHAIR A. LONG: I'm sorry, the
16 challenge. I was sorting my papers here to
17 bring it up.

18 CHAIRMAN D. DUMEZICH: Mr. Simmons, could
19 you please discuss the rationale?

20 MR. D. SIMMONS: Mr. Chairman, Members of
21 the Commission, there were two issues that the
22 codirectors were wrestling with when this was
23 tendered for filing. One was, you know, we
24 looked for the -- how does this fit in the
25 election code as far as a challenge, so for that

1 we go to 3-8-1-2 to see -- and Subsection B,
2 specifically, to see what the jurisdiction is of
3 the commission as far as entertaining
4 challenges, and in their -- this particular
5 candidate type, Allen County and Vanderburgh run
6 the same way.

7 They don't run in the primary, they run
8 with primary candidates, and they run without
9 regard to party designation, and so they aren't
10 described in the challenge statute 3-8-1-2, so
11 they wrestled with that issue. And then if you
12 get beyond that -- I mean, the closest thing in
13 3-8-1-2 was a reference to declarations in the
14 primary because these are filed at the same time
15 as declarations in the primary, and the statute
16 that governs filing these do refer to a chapter
17 under Code 3-8-2 that governs declaration in a
18 primary.

19 Well, if it is a declaration in a primary,
20 according to putting those two things together,
21 33 -- Title 33 Section and 3-8-2 which deals
22 with the declarations in a primary, then there's
23 a deadline to file a challenge to candidates in
24 a primary provided by 3-8-2-14, but that would
25 have been pre-primary -- actually, noon

1 January 26 -- I mean, the candidate filed in
2 that period which is roughly between January and
3 mid February, mid January and mid February -- I
4 think they filed early, like January -- maybe
5 the first day, January 20.

6 So typically those candidates who file for
7 the primary have to be challenged by noon
8 February 26th, but I mean, after discussion
9 among the co-directors, and I'm not sure I was
10 privy to that, but was advised that they decided
11 to defer this question, whether it should be
12 acceptable to the commission for a couple of
13 reasons: 1) there is some ambiguity in statute
14 here so it's a difficult question, grant it; and
15 2) it really doesn't benefit either side to sort
16 of split up issues of filing and issues of
17 merits because it may require the parties, if
18 they intend to take this father into the Court
19 of Appeals, to split up their appeals into two
20 separate appeals.

21 For instance, suing the codirectors to
22 require them to accept a filing, and then if the
23 judge says you should take the filing, then deal
24 with the other merits issue, so they've deferred
25 this question to the commission.

1 CHAIRMAN D. DUMEZICH: Leslie.

2 MS. L. BARNES: No, I agree with Mr.
3 Simmons, that the statute does not
4 provide -- that this challenge should be
5 rejected, that there's no statutory authority
6 for the codirectors to reject this filing as
7 being late.

8 MR. B. KING: Mr. Chairman and Members of
9 the Commission, I just want to add one further
10 piece of information to what Mr. Simmons said.
11 Ordinarily, election officials at the state and
12 local level do not have discretion with regard
13 to acceptance of filings, but in two particular
14 cases, that being presenting the filing on the
15 incorrect form or under 3-5-4-1.9, if the
16 document is presented after the deadline for
17 filing, the election official may not receive
18 it.

19 CHAIRMAN D. DUMEZICH: Are there any --
20 Miss Potesta, do you have anything to say,
21 nothing to add?

22 MS. P. POTESA: No, sir.

23 VICE CHAIR A. LONG: I'm prepared to
24 address the issue if you want.

25 CHAIRMAN D. DUMEZICH: For discussion or a

1 motion?

2 VICE CHAIR A. LONG: I'll make a motion.

3 It's my belief that -- preface the motion, it's

4 my belief that this body, IEC, has the

5 responsibility to adjudicate the issue and that

6 we should exercise that in all responsible

7 sense, so with that understanding, I'm prepared

8 to make a motion -- I'm not for sure what the

9 right word is, that we receive this challenge or

10 that we docket the challenge, but in any event

11 that we accept the challenge as being properly

12 filed for this the commission and received a

13 hearing in determination of the merits.

14 CHAIRMAN D. DUMEZICH: Do I have a second?

15 MS. K. CELESTINO-HORSEMAN: Second.

16 CHAIRMAN D. DUMEZICH: There's a motion on

17 the floor to docket the challenge to the

18 candidacy of Kenneth R. --

19 MR. B. KING: Scheibenberger.

20 CHAIRMAN D. DUMEZICH: -- Scheibenberger.

21 Anyone in favor of the motion, please say aye?

22 VICE CHAIR A. LONG: Aye.

23 MS. K. CELESTINO-HORSEMAN: Aye.

24 CHAIRMAN D. DUMEZICH: Anyone opposed to

25 the motion?

1 COMMISSIONER J. MYERS: Nay.

2 CHAIRMAN D. DUMEZICH: Nay, 2-2. With two
3 ayes and two nays, the motion fails. Any
4 further motions?

5 VICE CHAIR A. LONG: Let me ask a question
6 of counsel. The question is -- I assume they
7 both weigh in where are we procedurally?

8 MR. R. THOMPSON: Mr. Chairman, we came to
9 deal with the challenge on the merits today.

10 CHAIRMAN D. DUMEZICH: Are you waiving the
11 procedural vote that's just been taken?

12 MR. R. THOMPSON: Yes.

13 CHAIRMAN D. DUMEZICH: Okay, we'll proceed
14 with the merits. Challenger, please identify
15 yourself or your challenger's counsel and begin
16 your presentation. I'll remind you that you'll
17 have ten minutes, at which point, the candidate
18 will have their opportunity to speak for ten
19 minutes as well.

20 MR. J. ARNOLD: I'm Jeff Arnold, and I'm
21 here representing the Petitioners, and I will
22 come under my time -- I can guarantee you that.
23 As I was driving down here, I was struck by the
24 two-tiered nature of what we're doing here
25 today. To the Petitioners, including Mr.

1 Runestad and the original Petitioners, what
2 we're doing here is very clear, and the reason
3 for filing the challenge is very clear.

4 What we have in Indiana in I.C. 33-33-2-10
5 is a statute which essentially sets out the
6 qualifications for candidate for judge, and it
7 says very clearly, to qualify as a candidate for
8 Allen superior court judge, a person must be a
9 citizen of the United States domiciled in Allen
10 County, must have at least five years active
11 practice of law, and then the one that we're
12 here for today and the one we think is relevant,
13 may not previously have had any disciplinary
14 sanction imposed upon a person by the supreme
15 court disciplinary commission of Indiana or any
16 similar body in another state.

17 And that, as you read the petition that's
18 been filed, is the crux of the argument that
19 we're here talking about today, and that is --
20 to the Petitioners, we have a candidate for
21 superior court judge, we have a candidate for
22 Allen Superior court judge governed by
23 33-33-2-10, and Section (a)(3) indicates that
24 that candidate in order to continue and be a
25 candidate on the ballot in the fall must not

1 have disciplinary sanction imposed by the
2 supreme court disciplinary commission.

3 We take a look then, the Petitioners take a
4 look at this candidate, Judge Scheibenberger.
5 Judge Scheibenberger on December 17th, 2002 was
6 admonished by the supreme court for altering --
7 I probably should read it: In March 2001, Judge
8 Scheibenberger's son was charged in the Allen
9 Superior Court with a misdemeanor. He was to
10 appear in court before a magistrate on April 26,
11 2001 for a determination, whether he was
12 eligible for a pretrial diversion program.

13 Later, he advised his father, Judge
14 Scheibenberger, that he needed additional time
15 to prepare for the upcoming hearing. Therefore,
16 on April 24th, 2001, Judge Scheibenberger
17 obtained his son's court -- excuse me, changed
18 his son's court file from an employee of the
19 clerk's office and made an entry indicating the
20 case was continued at defendant's request.

21 The commission concluded when Judge
22 Scheibenberger took judicial action in his son's
23 case, he violated Canons 1 and 2 of the Code of
24 Judicial Conduct which requires judges to uphold
25 the integrity and independence of the judiciary,

1 and Canon 3, which prohibits judges from acting
2 in cases involving close relatives. The
3 commission concluded further that Judge
4 Scheibenberger committed conduct prejudicial to
5 the administration of justice.

6 MS. K. CELESTINO-HORSEMAN: Excuse me, I
7 don't think we have a copy of it.

8 MR. J. ARNOLD: I'm going to provide you a
9 copy. I just had to read it first.

10 MS. K. CELESTINO-HORSEMAN: Is that the
11 judicial qualifications commission?

12 MR. J. ARNOLD: It's issued by the supreme
13 court.

14 MS. K. CELESTINO-HORSEMAN: The supreme
15 court. Was it initiated by an action by the
16 judicial qualifications committee?

17 MR. R. THOMPSON: It was, Commissioner.

18 MS. K. CELESTINO-HORSEMAN: Okay.

19 MR. J. ARNOLD: It was, and that would
20 be...

21 MS. K. CELESTINO-HORSEMAN: The --
22 33-33-2-10 says that you can't have had any
23 disciplinary sanction imposed by the supreme
24 court disciplinary commission, and that is not
25 the same thing as the judicial qualifications

1 commission.

2 MR. J. ARNOLD: And that's correct, but I
3 think the attorney -- I don't know your
4 background, ma'am, so I apologize, but I now
5 know your background and I --

6 VICE CHAIR A. LONG: We're all lawyers.

7 MR. J. ARNOLD: Okay. Then I would direct
8 you to the statute and I would direct you to the
9 effect of the statute, and the effect of the
10 statute says -- well, the statute says may not
11 previously have had any disciplinary sanction
12 imposed upon a person of the supreme court. As
13 all of you know then --

14 MS. K. CELESTINO-HORSEMAN: By the supreme
15 court disciplinary commission.

16 MR. J. ARNOLD: Supreme court disciplinary
17 commission. As all of you know the supreme
18 court disciplinary commission cannot impose a
19 sanction on any of you, only the supreme court
20 can do that.

21 So what I would say is -- to tighten that
22 down and say that Judge Scheibenberger could
23 only have had some type of sanction raised
24 against him by the supreme court disciplinary
25 commission which governs the four of you, deals

1 with the four of you and not him, would be to
2 render that statute, essentially, ineffective,
3 because the supreme court disciplinary
4 commission cannot do that.

5 So I would say and I would argue that the
6 intent of the statute is if an attorney or a
7 judge has been sanctioned by the supreme court,
8 then they're ineligible; does that answer your
9 question?

10 MS. K. CELESTINO-HORSEMAN: Well...

11 MR. J. ARNOLD: I understand the argument,
12 and that's their argument, and that's very
13 clearly the argument, and the words are there.
14 I'm not going to say that the words are not
15 there. It says supreme court disciplinary
16 commission.

17 And I'm glad that they think it's a
18 humorous thing that is in there, but it's not.
19 It's serious -- it is extremely serious, and I
20 am certain if either the four of you or me or
21 they were brought before the supreme court to
22 deal with this situation and in fact were
23 sanction -- were admonished once and sanctioned
24 once, we would all take that very seriously.

25 But I think that all of you understand also

1 that neither the commission on judicial
2 qualifications nor the supreme court
3 disciplinary commission has the power to do what
4 they're going to say needed to have been done,
5 and so that would tighten that statute, the
6 interpretation of that statute down so far that
7 it would have no meaning.

8 It would essentially say that a judge can
9 do whatever he wants while he's on the bench.
10 He can be sanctioned, he can be suspended,
11 anything, and he would still be qualified. It
12 would also say if I were to run for judge and I
13 would be sanctioned, suspended, disbarred for a
14 period, then I would still be qualified because
15 the supreme court disciplinary commission cannot
16 sanction me, and if you want to tighten it down
17 that tightly, that anyone's qualified, then the
18 statute essentially means -- with respect to
19 (a)(3) is zero, it means nothing at all.

20 So if the interpretation is it must be
21 charges brought by the supreme court
22 disciplinary commission, which as you all know,
23 is a prosecutorial body, not a sanctioning
24 body -- if the interpretation is the sanction or
25 the charges must be brought by that particular

1 body and no one else and that the judicial
2 qualifications bringing charges, bringing
3 discipline -- excuse me, bringing charges to
4 seek discipline does not qualify them, then
5 you're exactly right and our petition absolutely
6 fails -- there's no question about that.

7 And the fact that there's been an
8 admonishment for altering a CCS for which any of
9 the four of you would be disciplined or probably
10 disbarred, and what ultimately led to this
11 three-day suspension, which is walk into another
12 judge's courtroom and make a semi profane tirade
13 against both the prosecutor and defendant in
14 that case, then I guess our petition absolutely
15 fails and judges can do whatever they want and
16 they're essentially immune and we'll have to
17 leave it up to the voters to try and vote him
18 out.

19 But those are to tighten things down to
20 that very point -- of course, I have lots of
21 other stuff to say, but you're right, that's the
22 crux of the whole thing. If we're going to
23 tighten it down to that point, then this statute
24 is absolutely a nullity, and for whatever
25 purpose it was introduced, I think, in 1984,

1 it's absolutely pointless.

2 So to interpret the statute, to give it
3 something, and of course, I'm not going to try
4 and guess why it deals with Allen County --
5 well, there's two counties that those two type
6 of things deal with, but this one, in
7 particular, is Allen County, and I'm not going
8 to guess why it happened, who did it because I
9 was 14 years old when they did it, but I do have
10 to say statutes, generally speaking, are passed
11 with a purpose and they're passed to have some
12 type of effect. They're not just tossed out
13 there to fill the books.

14 So if we are going to have a statute that
15 has effect and mean something and do something,
16 then this needs to be interpreted in a fairly
17 liberal manner. I would also point out, the
18 last hearing one of the things that we talked
19 about -- this table talked about was the
20 democratic process, little D, little P,
21 democratic process -- not the Democrats, the
22 Democratic Party, but the democratic process.

23 What we would also point out is the supreme
24 court disciplinary commission of Indiana is all
25 lower case. It's not upper case. It's not a

1 title of the particular body. Our
2 interpretation of that would be that it's a
3 general -- it's a general category, it's a
4 general catch all that brings the qualifications
5 committee and this judiciary committee under
6 that same umbrella.

7 I would remind you that both bodies were
8 established in the same batch of court rules --
9 one is in Rule 23 and one is in Rule 25, under
10 rules for admission to the bar and discipline of
11 attorneys, there are 30 rules put together to
12 deal with all of us, all of us, and to tighten
13 this to the point where we are speaking of a
14 specific body would have required
15 specific -- would require specific
16 capitalization; in other words, democratic
17 process versus Democrat, democratic process.

18 Would it require capitalization as a
19 specific reference to a specific body, and it's
20 our position that this refers to a general body,
21 refers to a general process, and that it refers
22 to a sanction which is imposed upon a judge or
23 an attorney by the supreme court which is the
24 only body that actually has the power and the
25 authority to do that.

1 CHAIRMAN D. DUMEZICH: The body that you're
2 referring to, can you please describe it to me?

3 MR. J. ARNOLD: Supreme court.

4 CHAIRMAN D. DUMEZICH: Supreme court and...

5 MR. J. ARNOLD: It's the only body that has
6 the ability to levy sanctions is the supreme
7 court. The others have the ability to seek
8 sanctions. They don't have the ability to levy
9 it. They can agree to it, impose it, no
10 different than a plea agreement, but I think in
11 order to try and say this doesn't fall under
12 the -- this does not include the conduct that
13 Judge Scheibenberger has engaged in would be to
14 essentially give judges a pass that the rest of
15 us don't enjoy.

16 MS. K. CELESTINO-HORSEMAN: Do you
17 acknowledge that there is a body called the
18 supreme court disciplinary commission?

19 MR. J. ARNOLD: I do.

20 MS. K. CELESTINO-HORSEMAN: Which is
21 completely separate from the judicial
22 qualifications; correct?

23 MR. J. ARNOLD: Yeah, it is.

24 MS. K. CELESTINO-HORSEMAN: Because
25 judicial qualifications was created by the

1 Indiana constitution.

2 MR. J. ARNOLD: Yes.

3 MS. K. CELESTINO-HORSEMAN: So this -- so
4 the way you want us to read it is to disregard
5 that full term of art, supreme court
6 disciplinary commission?

7 MR. J. ARNOLD: I don't think it would be
8 disregarding it at all. I think what it would
9 be doing is giving broad reading to that term.
10 If it were a term of art, our position is that
11 it would have been written as a term of art. It
12 would have been in capital letters, which deals
13 with -- in other words, if it had said the
14 Supreme Court of Indiana, it would have been
15 capital S, capital C.

16 MS. K. CELESTINO-HORSEMAN: Well, if it had
17 said the Supreme Court of Indiana, that is the
18 body which sanctions attorneys and judges. If
19 it would have said Supreme Court of Indiana,
20 then both groups would be covered, but I agree
21 with you -- I'm not sure why it was done this
22 way, but it appears that the statute was done to
23 protect incumbent judges, and you're saying that
24 coming in that if you're sanctioned, you cannot
25 be eligible to run. I guess it's because once

1 you're elected, perhaps the people can decide
2 regarding it.

3 MR. J. ARNOLD: I would say the people can
4 decide, period, and when we're dealing with a
5 disqualification, I think one of the things
6 that -- of course, I haven't talked about it
7 earlier, but I think it's well known that
8 incumbent judges rarely lose elections --
9 sometimes they do, but incumbent judges rarely
10 lose elections, and it's in part name
11 recognition, it's in part -- whatever you want
12 to call it, how you remove -- keep a judge that
13 is a consistent problem from being reelected
14 again and again and again, you eventually say
15 look, if they're a problem, we've got to
16 disqualify them. We've got to get them out of
17 there. We've got to make it so they can't run
18 again because we need to make sure that the
19 integrity of the judiciary is protected.

20 CHAIRMAN D. DUMEZICH: If the legislature
21 had agreed with you, they could have drafted a
22 statute that covered this, specifically; is that
23 not true?

24 MR. J. ARNOLD: I'm sure that's true.

25 CHAIRMAN D. DUMEZICH: When was the last

1 thing filed for this office?

2 MR. J. ARNOLD: I don't know that.

3 VICE CHAIR A. LONG: Do you not agree,
4 Judge -- I can't pronounce his name but the
5 judge that's the subject of this was -- the
6 minutes for the judiciary is that the supreme
7 court would have some obligations to step in and
8 give a three-day sanction and send him home.

9 MR. J. ARNOLD: I think as -- as much as I
10 enjoy having a license, I don't want to get too
11 far into that, but I'm certain if he was unable
12 for that -- I'm thinking of the Lagrange circuit
13 judge that was removed about ten or 15 years
14 ago, and those were fairly extreme situations,
15 and perhaps the legislature was addressing the
16 fact that problems were not addressed until they
17 became quite extreme.

18 VICE CHAIR A. LONG: And I appreciate the
19 diplomacy at which you answered that.

20 CHAIRMAN D. DUMEZICH: Time is up.

21 VICE CHAIR A. LONG: Thank you.

22 CHAIRMAN D. DUMEZICH: Thank you very much.

23 MR. R. THOMPSON: Along with the statute,
24 Mr. Chairman, I'd like to give you our written
25 appearance.

1 CHAIRMAN D. DUMEZICH: Please identify
2 yourself for the record?

3 MR. R. THOMPSON: Yes, my name is Bob
4 Thompson, and my co-counsel is Steven Rothberg,
5 and we're appearing on behalf of Judge
6 Scheibenberger. May I remain seated --

7 CHAIRMAN D. DUMEZICH: Yes, you may.

8 MR. R. THOMPSON: -- in making our
9 argument? I would like to point out first an
10 irrelevancy to the question before us, a
11 significant part of the presentation that
12 counsel for challenger just made.

13 He talks about a circumstance where Judge
14 Scheibenberger years ago received an admonition.
15 The statute that we're dealing with here talks
16 in terms of not previously having had any
17 disciplinary sanction. An admonition in the
18 hierarchy of discipline is not a sanction. It
19 is exactly what it is, an admonition, so in no
20 event would this statute be effected by an
21 admonition regardless of who, who brought that
22 admonition about.

23 And commissioner, I think you hit the
24 distinction of what this statute means and why
25 it does not support a challenge to Judge

1 Scheibenberger's position. Disciplinary
2 commission, Supreme Court Disciplinary
3 commission of Indiana is not a general term.
4 It's a term of art. There is a supreme court
5 disciplinary commission in this state.

6 It was created by a rule, Rule 23 of the
7 rules of admission and discipline of the Supreme
8 Court. It was created in about 1970 to '71 --
9 I'm not sure of the exact date but right in that
10 close period of time, and it was created with a
11 limited purpose of instituting and prosecuting
12 proceedings for the discipline of attorneys or
13 conduct in the practice of law.

14 It had nothing to do with the discipline of
15 sitting judges, and the reason it had nothing to
16 do with the discipline of sitting judges was the
17 constitution of the State of Indiana was amended
18 within a year of the time Rule 23 was created.

19 Now that amendment to the constitution
20 constitutionally created the judicial
21 qualifications commission. That commission had
22 a very special constitutional mandate which was
23 to investigate, instigate, and prosecute
24 complaints of misconduct against sitting
25 judicial officers.

1 So in 1970 to '71, our law was clear with
2 regard to attorney conduct disciplinary
3 commission, with regard to judicial conduct --
4 judicial qualifications commission, two entirely
5 separate bodies with separate mandates. Now our
6 statute that we're involved with here,
7 33-33-2-10 (a)(3) didn't come along until --
8 let's see, I'm thinking it was in 1983, '84 --
9 why, that's 12 years no less after the
10 disciplinary commission was created as a
11 separate body and the judicial qualifications
12 commission was created as a separate body, and
13 one thing with regard to legislative enactments,
14 they carry with them a presumption that the
15 legislature was aware of the current status of
16 the law at the time of the enactment.

17 The legislature was aware that there were
18 different bodies for discipline of lawyers in
19 the practice of law as adverse to sitting judges
20 in their judicial duties. When the legislature
21 enacted 33-33-2-10 and used the term of art,
22 disciplinary commission, legislative
23 interpretation requires that we assume that the
24 legislature knew what it was talking about, and
25 inclusion of that term is not in any way

1 irrational.

2 All the legislature was saying was if you
3 want to become a judge, you can't have had a
4 disciplinary sanction while you were practicing
5 law as a lawyer. If they meant to include -- if
6 they meant to include disciplinary sanction as a
7 sitting judge, knowing the law, they would have
8 included a sanction instigated or prosecuted by
9 not only the disciplinary commission of the
10 supreme court but also the judicial
11 qualification commission.

12 The statute is, I think, carefully crafted
13 to draw some distinction between the two, and to
14 say with regard to sitting judges, we are going
15 to trust that the judicial qualifications
16 commission will handle complaints of improper
17 conduct adequately.

18 CHAIRMAN D. DUMEZICH: Time.

19 MS. K. CELESTINO-HORSEMAN: Certainly, we
20 can under -- we can understand that non --
21 laypersons who are not familiar with this, to
22 them, the distinction between a lawyer who's
23 been sanctioned and a judge who's been
24 sanctioned that are running for office or
25 re-election, it might be difficult to understand

1 why the legislature would draw such a
2 distinction; do you have any idea as to why?

3 MR. R. THOMPSON: Why the legislature might
4 draw that distinction?

5 MS. K. CELESTINO-HORSEMAN: Yes.

6 MR. R. THOMPSON: I think the law was
7 imposed and carried by a legislator from Allen
8 County, Richard Whorten (Phonetic), and I do
9 not, of course, commissioner, his rationale for
10 drafting it that way, but he was a long time
11 legislature from our neck of the woods up there
12 and I'm sure he had his reasons for doing it the
13 way he did.

14 In terms of legislative objective, I think
15 that it may be high regard for the judicial
16 qualifications commission and just a feeling
17 that if judicial conduct is bad that they will
18 adequately address that problem.

19 In our case here, we had conduct that was
20 admittedly misconduct. It was addressed by the
21 court, by this judicial qualifications
22 commission, and it was addressed in a way that
23 apparently the Petitioners don't think was
24 severe enough.

25 Well, the election commission is not the

1 place to argue the severity of judicial
2 sanctions. At the time the Supreme Court issued
3 that order --

4 CHAIRMAN D. DUMEZICH: I think you're past
5 her question so any rebuttal?

6 MR. J. ARNOLD: We waive rebuttal.

7 CHAIRMAN D. DUMEZICH: You read a document
8 before. I don't believe we've received that.

9 VICE CHAIR A. LONG: That was news to me.

10 CHAIRMAN D. DUMEZICH: Do you have
11 something to say, sir?

12 MR. J. ARNOLD: He does against counsel's
13 advice.

14 CHAIRMAN D. DUMEZICH: Please identify
15 yourself for the record, sir?

16 MR. R. RUNESTAD: Rick Runestad, and if you
17 look at the actual statute, what it says in
18 plain English, and I believe that it was simply
19 read, it says have any disciplinary sanction
20 imposed. So I think the fundamental question is
21 you have the commission of judicial
22 qualifications and you have the supreme court
23 disciplinary commission -- what disciplinary
24 sanctions can they impose? What disciplinary
25 are they authorized to impose? Are they capable

1 of imposing a judicial sanction?

2 And if the answer is no, and if you're
3 going to say well, we're going to ignore that
4 part of it because there's only one body that
5 has that, and I think everyone agrees that
6 that's the Indiana Supreme Court, so it is --
7 they're laughing over there and they're saying
8 oh, it doesn't pertain to us judges, we're
9 special, or what have you, ignore that part,
10 that it says very specifically judicial
11 sanctions, and focused exclusively in lower
12 case, it says supreme court disciplinary
13 commission.

14 The next person who appears, assuming he
15 does want to run for judge in Allen County who's
16 an attorney simply shows up and says the statute
17 says judicial sanction. They can't give a
18 judicial sanction -- here you go, the statute
19 has zero meaning.

20 CHAIRMAN D. DUMEZICH: Rebuttal.

21 MR. R. THOMPSON: If there's any
22 significance at all to the fact that
23 disciplinary sanctions are not imposed by the
24 disciplinary commission or the judicial
25 qualifications commission or by the supreme

1 court as counsel earlier stated. Subsection 3
2 creates no requirement. It just creates no
3 requirement.

4 I would say through their further argument
5 that you should, if it creates no requirement,
6 just construe it any way you want to, which in
7 effect, what I hear from the argument -- I think
8 that's not a good legal argument. I think you
9 have to construe it according to its words, and
10 I didn't have a chance before, but I will now,
11 and I'll just close my argument.

12 CHAIRMAN D. DUMEZICH: In about 15 seconds.

13 MR. R. THOMPSON: Okay. Inclusio through
14 expressio unius est exclusio alterius. Primary
15 law or rule of judicial interpretation, clear
16 expression of one thing by the legislature
17 excludes all others. Here we have a clear
18 expression of disciplinary commission and
19 according to the -- a primary rule of --

20 CHAIRMAN D. DUMEZICH: You're done.

21 MR. R. THOMPSON: Thank you.

22 CHAIRMAN D. DUMEZICH: Sure. Do we have
23 questions, any questions of the parties?

24 VICE CHAIR A. LONG: I have no questions.

25 COMMISSIONER J. MYERS: No questions.

1 CHAIRMAN D. DUMEZICH: Okay. Thus having
2 no questions, we declare the hearing on 2010-10
3 closed. Do we have any discussion?

4 VICE CHAIR A. LONG: One comment.

5 CHAIRMAN D. DUMEZICH: Okay.

6 VICE CHAIR A. LONG: I think it's possible
7 this statute doesn't do anything, and that
8 wouldn't be the first time. Just by the error
9 that the legislature might have made, it doesn't
10 do anything, but the one possibility -- I think
11 it's possible that the legislature intended in
12 their consultation or knowledge of what the
13 supreme court had done, was to create a
14 threshold for practicing attorneys who run for
15 judge who have not been subject to discipline
16 issues or any kind of sanctions, and deferred
17 that once they're elected, that judges are under
18 the exclusive jurisdiction of the Indiana
19 Supreme Court.

20 There's possible consideration that there
21 may be a separation of powers. In that small
22 deference on the Republican side of the aisle of
23 life, I'm most reluctant to be characterized as
24 an activist commission member to make law.

25 I think the supreme court is the ultimate

1 arbitrator of qualifications of judges and
2 whether or not they -- and I guess to some
3 limited degree of people, based on the structure
4 in some counties -- I don't know, but I assume
5 you run in Allen County on parts of the
6 elections or maybe there's retention codes.

7 If their retention, I have to say I agree
8 that less than frequent that judges are less
9 than rejected. My 40 years of practice, I don't
10 know of one that's been -- I know someone that's
11 got beaten in elections. The net result is I'm
12 not declined to vote against the candidacy of a
13 sitting judge about the discipline and facts of
14 this case because I don't think the statute
15 gives us direction.

16 If the legislature wants something
17 different, they can tell us. If the supreme
18 court wants to tell us that we have the
19 authority to, in essence, remove their judges on
20 the bench, then they can tell us, but I'm
21 inclined today to defer to the Supreme Court for
22 the issue of sanction and continuation of
23 service of sitting judges, and I think there are
24 two separate bodies under any interpretation,
25 that in reading the statute, it requires us to

1 deny this challenge.

2 CHAIRMAN D. DUMEZICH: Any other -- any
3 other discussion?

4 COMMISSIONER J. MYERS: Yeah, I would just
5 like to add -- you know, I don't know, kind of
6 being the new guy today, it just seems to me
7 that anybody ought to be able to file and run
8 for office, you know, in the State of Indiana so
9 long as they meet the requirements that are set
10 by the statutes, and, you know, have the
11 opportunity to get on the ballot and find out
12 that nobody wants to vote for them, if that's
13 what the reality is, but -- so unless I would
14 see a statute that's crystal clear saying that
15 someone should be denied that opportunity to run
16 for office, I'm disinclined to keep somebody off
17 the ballot.

18 MS. K. CELESTINO-HORSEMAN: All the people
19 that are here as part of this challenge, could
20 you raise your hand and see who's here -- I just
21 see two -- I thought the other folks behind you
22 were part of this.

23 CHAIRMAN D. DUMEZICH: He's just popular.

24 MS. K. CELESTINO-HORSEMAN: I just want to
25 say I agree with my co-commissioner here, and

1 you're right, if it had said just supreme court
2 but the disciplinary commission really makes it
3 a problem, so you know, like you said, we
4 probably can enforce the laws. You can go and
5 get your legislators to go and change the law
6 but we have to deal with what's here before us,
7 but thank you for your challenge. You did a
8 great job.

9 CHAIRMAN D. DUMEZICH: Is there a motion on
10 the floor to deny or approve the challenge?

11 VICE CHAIR A. LONG: I would move to deny
12 the challenge.

13 CHAIRMAN D. DUMEZICH: Is there a second?

14 COMMISSIONER J. MYERS: Second.

15 CHAIRMAN D. DUMEZICH: All in favor of the
16 motion to deny the challenge say aye?

17 THE COMMISSION: Aye.

18 CHAIRMAN D. DUMEZICH: All against, say
19 nay?

20 (No response.)

21 CHAIRMAN D. DUMEZICH: Let the record
22 reflect that it's 4-0 to deny the motion to the
23 challenge of the candidate in this Cause No.
24 2010-10.

25 VICE CHAIR A. LONG: Both counsel did a

1 good job. I appreciate that.

2 MR. J. ARNOLD: Thank you.

3 MR. R. THOMPSON: Thank you. Mr. Chairman,
4 would you consider it disrespectful if we leave
5 the hearing at this point in time?

6 CHAIRMAN D. DUMEZICH: No, I wish I could,
7 too.

8 VICE CHAIR A. LONG: Take some people with
9 you.

10 MR. R. THOMPSON: Thank you very much.

11 CHAIRMAN D. DUMEZICH: At this time we
12 would like to call the hearing in the matter of
13 the challenge to the candidate William I. Fine,
14 Republican Party candidate for Lake County
15 Circuit Court Judge. It is Cause 2010-11. It
16 is filed by Michael J. Lambert on August 11,
17 2010. I declare the hearing open and I
18 recognize the challenger or his representative
19 for the record, please.

20 MS. P. POTESA: Mr. Chairman and
21 Commissioners, as our Chairman stated, on
22 June 10th, a certificate of candidate selection
23 to fill an early ballot vacancy was filed by
24 Mr. Fine, and on August 11th, we received a
25 challenge from Mr. Lambert.

1 At this time I believe that Mr. Fine is
2 being represented by Mr. Jim Ammeen and
3 Mr. Cordell Funk, and I'm sorry, I don't know
4 the other gentleman's name.

5 MR. W. FINE: I'm William Fine.

6 MS. P. POTESTA: I'm sorry.

7 MR. W. FINE: I get to come, too; right?

8 MS. P. POTESTA: And Mr. Lambert is
9 represented by Mr. Michael Beck.

10 MR. M. BECK: Correct.

11 MR. B. KING: Mr. Chairman and Members of
12 the Commission, just to add, we did receive
13 appearances, memoranda from Mr. Fine in support
14 of denial of the challenge, which is in the
15 binder.

16 VICE CHAIR A. LONG: Is that subsequent to
17 our -- I printed off what you e-mailed us out,
18 is there something more in the binder than what
19 you sent us other than the declaration of
20 Barbara McClellan than what we got today?

21 MR. B. KING: There was a memorandum filed
22 on August 30th in the late afternoon that I
23 believe I forwarded.

24 VICE CHAIR A. LONG: If you e-mailed it to
25 me, I guess -- I hate to kill all these trees

1 but -- August 30th?

2 MR. B. KING: Yes.

3 CHAIRMAN D. DUMEZICH: Are we ready to
4 proceed?

5 MR. J. AMMEEN: Yes.

6 MR. M. BECK: Yes.

7 CHAIRMAN D. DUMEZICH: Mr. Beck.

8 MR. M. BECK: Michael Beck. I'm here on
9 behalf of Mr. Lambert who's challenging the
10 candidacy of Mr. Fine for Lake Circuit Court,
11 and I want to point one thing out concerning
12 your first challenge, if that man's water heater
13 was in his room, he would not need to have gas
14 to turn it on, but other than that, it's been a
15 pleasant day, and I thank you for hearing us.

16 We are here and I'll run through the
17 points. Some of the arguments I was going to
18 make, Counsel, Miss Barnes has pointed out
19 things -- the authority you believe you have so
20 I won't have to go through that in great detail.
21 I do believe there was a jurisdictional
22 challenge, first of all, to our challenge which
23 we think is met by the statute fully cited by
24 Miss Barnes.

25 The background is -- I think you've already

1 heard today and probably many times before, that
2 Lake Circuit Court is not a county job, it is a
3 circuit job. We used to have some circuits that
4 comprised three counties, etc., so we don't need
5 to go through all those things with you, but
6 it's important to -- for our purposes today to
7 at least point out that it is a constitutional
8 position, not a position that is otherwise
9 created by the legislature.

10 On March 7th, 2009, there was a resolution,
11 and I believe it's an exhibit, to Mr. Fine's
12 materials, and that resolution gave the then
13 current Lake County Republican chairman, Mr.
14 Curley the authority to appoint candidates for
15 certain positions, then on October 13th, 2009
16 Mr. Curley died.

17 On October 31st, 2009, Kim Krull became the
18 Lake County chair. She won that position
19 through caucus election. On May 13th, 2010, Mr.
20 Fine announced that he had been appointed to run
21 for the Lake circuit court judge's position. On
22 May 29th, 2010, representatives of the Lake
23 County Republic Party, the treasurer, secretary,
24 chair and vice president, they had a caucus, and
25 at that point in time I believe they had another

1 resolution concerning the authority of the chair
2 to make appointments and the resolution was
3 simply added that the continuation, or the
4 resolution of the 2009 body was to continue in
5 full force and effect.

6 CHAIRMAN D. DUMEZICH: Just a quick
7 question for you. You mentioned that this
8 particular position, the circuit court position
9 would be different than other positions; for
10 example, let's say the Lake County assessor,
11 would it be different than that?

12 MR. M. BECK: Yes, sir.

13 CHAIRMAN D. DUMEZICH: Would your argument
14 extend to somebody running for another position
15 such as Lake County assessor?

16 MR. M. BECK: No, sir. It would be -- it
17 would go to the prosecutor; in particular,
18 positions in the...

19 CHAIRMAN D. DUMEZICH: I just wanted a
20 point of clarification to know what region this
21 was.

22 MR. M. BECK: Thank you. Mr. Dumezich --

23 CHAIRMAN D. DUMEZICH: Chair.

24 MR. M. BECK: I know your name so I can
25 pronounce it. In northwest Indiana, we get to

1 pronounce those kinds of names. Contrary to the
2 statement in Mr. Fine's materials, Mr. Lambert
3 did not apply for -- was not considered -- was
4 not given an opportunity, was not given notice
5 to go through this process, to be part of the
6 process to apply for or run for this position.

7 We do have an early ballot vacancy, and I
8 think everyone on the commission knows what that
9 means. Just hitting the high points of the
10 jurisdiction. I.C. 3-8-1-2; particularly,
11 3-8-1-2(b), and in this particular case,
12 3-13-1-16-5(a), all questions concerning the
13 validity of a certification selection filed with
14 the election division shall be determined by the
15 commission.

16 I think this is what Miss Barnes pointed
17 out earlier today. I don't think there was any
18 disagreement as to that. I think there was some
19 disagreement as to the interpretation of a fact
20 situation which counsel addressed, and also we
21 talked about earlier today that the judicial
22 positions for circuit and how those are dealt
23 with in Section 7 of -- the constitution is what
24 creates those.

25 I would point out that the U.S.

1 Constitution also now we need to recognize the
2 due process considerations and equal protection
3 considerations, and I refer this commission to
4 the Bush and Gore case heard by the Supreme
5 Court in 2000. I believe that's 531 U.S. 98,
6 and although it was a federal election, the
7 Supreme Court recognized that there are equal
8 protection issues in state law procedures for
9 elections, and I think that's an important point
10 just to keep it in the back of your minds when
11 we're talking about arguments back and forth on
12 each side.

13 The early ballot vacancy statute, it's
14 3-13-6-1(a), an early ballot vacancy can be
15 filled by one of three ways. One is by the
16 caucus of the precinct committeeman -- let's
17 call it No. 1; No. 2 by the county chairman of
18 the political party; or by the caucus of offices
19 of a county committee chairman, the vice chair,
20 secretary, etc., etc -- those three ways, okay.

21 The Republican Party has chosen, has
22 specifically chosen by enacting Rule 3-50, but
23 they're not going to use one or two, but they're
24 only going to use a caucus, and there's a reason
25 for that. The reason is, and some people may

1 say maybe it's because of Lake County, but the
2 reason is you don't want the county chairman
3 that perhaps has something down the line where
4 there's a challenge coming, maybe there's an
5 indictment that's rumored and there happens to
6 be an opening for prosecutor or circuit court
7 judge, so you don't want that person hand
8 picking who the prosecutor is going to be, who
9 the circuit judge is going to be, who the
10 candidate is going to be for that.

11 So in its wisdom, the Republican Party --
12 in its wisdom the Republican Party chose to
13 disregard the other two options and chose to go
14 with the caucus, and I think that's very wise in
15 this situation. So for a prosecutor or for a
16 circuit court position, that's No., and that's
17 3-50.

18 Now I can read that to you, but it's
19 getting late in the afternoon, and it's very
20 very clear that's the situation. The Republican
21 rules very clearly indicate at 3.2 that you
22 cannot, you cannot pass a resolution in
23 violation of the state rules.

24 If we have a state rule and that state rule
25 is 3-50, the decision by the caucus, you cannot

1 then pass a resolution, the Lake County
2 Republican Party, to avoid that and use two or
3 three, you must use a caucus system.

4 Miss Krull chose not to do that. She chose
5 to ignore 3-50, she chose to ignore 3-2, and she
6 chose to hand pick -- I say this with respect,
7 because Mr. Fine is a friend of mine, she chose
8 to choose to that person as opposed to going to
9 the caucus.

10 Well, we get to the situation and you find
11 this person inappropriately chosen by the
12 Republican Party in Lake County, and now we're
13 suggesting and asking you to determine if that's
14 inappropriate, that this gentleman should not be
15 a candidate for this office.

16 There are several cases that Mr. Fine's
17 lawyer cites, and one of the major cases that he
18 cites is the Nolan case, and some other cases,
19 and those cases talk about whether a court can
20 hear a restraining order and issue relief based
21 on political issues and things of that nature,
22 and we have cases in Indiana that say well no,
23 you can't, you can't go to court. You have to
24 go through the procedure. Your body doesn't
25 have that. Your body has specific statutory

1 authority where you look at certification,
2 that's your job.

3 We are making argument, although I think
4 based on your past rulings as a body, that the
5 resolution that was passed for Mr. Curley was
6 specific to Mr. Curley. We are proposing that.
7 I think that's been something that you've ruled
8 on in the past, that you indicate no, if a party
9 has ruled that way, but we want to preserve that
10 argument, but we certainly believe the fact that
11 there was a resolution from Miss Krull giving
12 her the authority to make these appointments
13 after she appointed Mr. Fine was problematic at
14 the very least.

15 CHAIRMAN D. DUMEZICH: One minute, Mr.
16 Beck.

17 MR. M. BECK: That really is the crux and
18 essence of my argument. Thank you, Mr.
19 Chairman.

20 CHAIRMAN D. DUMEZICH: Okay, Mr. Ammeen.

21 MR. J. AMMEEN: May it please the
22 Commission, I'm James Ammeen, and I'm joined by
23 Cordell Funk, and we represent the candidate,
24 William I. Fine. I want to make one quick
25 point, we're jumping into argument, and my

1 original appearance was left on my desk today so
2 it's one piece of paper, Mr. Long, that was not
3 in the file and it was supplemented yesterday by
4 e-mail.

5 VICE CHAIR A. LONG: We recognized your
6 status as an attorney before, the year before,
7 and I have no objection to his entering that and
8 substituting it later or filing it later. I
9 don't think the chairman and any of the other
10 members...

11 MR. M. BECK: We have no objection.

12 CHAIRMAN D. DUMEZICH: I am fine with that.

13 MR. J. AMMEEN: This matter is one -- we
14 request the commission to deny the challenge
15 outright and enter a final order here
16 immediately. We're not seeking to dismiss this
17 challenge because we believe there is no
18 jurisdiction for the commission to decide this
19 because it is a political matter. We ask the
20 commission to enter an order resolving that
21 question.

22 Specifically, we believe that the
23 commission does not have jurisdiction because
24 the challenge does not concern the kind of
25 matter that is in the ordinary province of the

1 commission which is the eligibility of
2 qualifications of the candidate itself and the
3 filing of paperwork and the administrative, the
4 administrative function that is the province of
5 the commission, but yet, this challenge concerns
6 the act, the conduct of the county chairperson
7 in making the appointment to fill the ballot
8 vacancy.

9 The remedy that's available to the
10 challenger is one that's available under state
11 rules, and it concerns the state processes, the
12 party processes, and that remedy was ignored or
13 issued in favor of coming here and in an attempt
14 to circumvent the political process which
15 raises -- within the party, which raises a
16 number of other issues, some of which are
17 constitutional.

18 The reason why this body does not have
19 jurisdiction lies in I.C. 3-6-1-13, and most
20 specifically, in Subsection 3, reading that
21 statute, it states unless otherwise provided in
22 the political party's rules, the state committee
23 of each political party may, and then skipping
24 down to No. 3, maintain civil actions, in the
25 committee's own name, to enforce obedience to

1 its rules or resolutions.

2 If indeed Miss Krull acted without
3 authority, if the resolution granting her
4 authority to fill the ballot vacancy was
5 invalid, the challenge was to be taken to the
6 state committee and it was up to the state
7 committee to enforce its rule, which it would do
8 then by resort to the civil courts, or trial to
9 the bench, and an injunction would be entered,
10 whether a mandatory injunction compelling
11 certain behavior, prohibitory injunction, and
12 adjoining other behavior.

13 But in any event, the remedy sought here by
14 the challenger is a remedy that belongs to the
15 party itself, and it is a remedy that is to be
16 decided in the courts of law and not through
17 administrative function.

18 So this challenge itself is already outside
19 the jurisdiction of this body, but it's
20 important now for this body to say so itself
21 now, so we respectfully the commission to deny
22 it on that basis up front.

23 And further, we believe that the
24 interpretation of the party Rule 3-50 is
25 incorrect, as a matter of law and logic, and

1 today we offered and tendered to the commission
2 the declaration of Barbara McClellan, who is the
3 Indiana State Republican secretary.

4 It contains the set of rules that have been
5 in force at the time, as well as memorandum,
6 that she prepared in her official capacity in
7 response to an inquiry from Mr. Fine and that --

8 CHAIRMAN D. DUMEZICH: You provided that to
9 us?

10 MR. J. AMMEEN: Today.

11 CHAIRMAN D. DUMEZICH: Mr. Beck, any
12 objections?

13 MR. M. BECK: I do not -- I read that today
14 and do not have an objection.

15 CHAIRMAN D. DUMEZICH: Very good. Please
16 take it into evidence.

17 VICE CHAIR A. LONG: That's entitled,
18 "Declaration of Barbara McClellan?"

19 MR. J. AMMEEN: Yes.

20 VICE CHAIR A. LONG: I just wanted to make
21 sure that...

22 MR. J. AMMEEN: And there are four bullet
23 points, on the bottom of Page 2, Paragraph 8,
24 essentially, it summarizes the resolution that
25 was adopted on March 7th, 2009, gave the

1 authority to the county chair, to the office,
2 not the person, which when we read the
3 resolution, it clearly states it's to the office
4 and not to the person, there's no name
5 mentioned, and that that resolution is still in
6 force.

7 We know that Miss Krull is the duly
8 appointed chair by virtue of the party process
9 that took place in October of 2009. She had the
10 authority to fill the ballot vacancy, therefore,
11 her conduct was appropriate within the party's
12 rules. On that, I will yield the remainder of
13 our time and request the commission to deny the
14 challenge.

15 CHAIRMAN D. DUMEZICH: Let's take a
16 ten-minute recess.

17 (A recess was taken.)

18 CHAIRMAN D. DUMEZICH: Can we go back on
19 the record?

20 MR. J. AMMEEN: Mr. Chairman?

21 CHAIRMAN D. DUMEZICH: I have to note the
22 time. It's 4:05 Eastern time on September 2nd.
23 Go ahead.

24 MR. J. AMMEEN: I was going to yield the
25 balance of my time, but I'd like to have one

1 minute back to make one point of rebuttal.

2 CHAIRMAN D. DUMEZICH: I didn't say you had
3 a minute.

4 MR. J. AMMEEN: Specifically, addressing
5 Republican Party Rule 3-50, the Republican Party
6 did not opt out of the first choices under the
7 statute for appointing -- filling ballot
8 vacancies by putting Rule 50 in there. Rule 50,
9 specifically, deals with the situation that
10 exists in the judicial circuits that involve the
11 counties of Jefferson, Switzerland, Ohio and
12 Dearborn which are judicial circuits that have
13 two counties.

14 Therefore, you can't have a single county
15 chair make an appointment to fill a ballot
16 vacancy because you have two counties involved
17 and you need to have it done jointly, and that's
18 why it's administered by the central committee
19 of the state party rather than the county
20 committees, and that's all that Rule 50 really
21 deals with.

22 The fact that the word "judicial circuit"
23 is in there is because the judicial circuits
24 have encompassed more than one county throughout
25 the state's history, but that's it. It's not

1 meant to deal with the circuit judge or
2 prosecutor elections, specifically, and of
3 course, it deals with the situations in their
4 offices -- state house rep, for example, might
5 cover two counties.

6 CHAIRMAN D. DUMEZICH: Mr. Beck, rebuttal,
7 and let me tell you where I'm coming from so you
8 know at least what you have to do to get one
9 vote here.

10 MR. M. BECK: All right.

11 CHAIRMAN D. DUMEZICH: Okay. First of all,
12 I agree with the last argument of counsel.
13 Second of all, I believe political parties have
14 the absolute right to make their own rules, and
15 I don't think there's any sort of constitutional
16 problem because there was a time that he could
17 have filed during the course of the primary to
18 avail himself to that office, and he chose not
19 to.

20 So he has not been denied any rights by
21 having Miss Krull make this appointment. So
22 those are the three points that I -- why I at
23 this point in time -- except that you can change
24 my mind with an eloquent rebuttal why the
25 rule...

1 MR. M. BECK: And if I'm not capable of an
2 eloquent rebuttal?

3 CHAIRMAN D. DUMEZICH: Take your best shot.

4 MR. M. BECK: Here's how 3-50 reads: If a
5 ballot or office vacancy occurs in any judicial,
6 circuit, state or legislative district, such
7 vacancy shall be filled by the precinct
8 committeeman. I don't think we need to say more
9 about that.

10 In terms of where we go with this, I have
11 questions they didn't answer, but where do we
12 go? Are we going to go to the circuit courts --
13 no, we can't go to the courts because the case
14 law is very clear, we can't go to the Lake
15 County Board, we go to you.

16 So the jurisdiction issue, I think, is
17 this, in terms of your question, Mr. Chairman,
18 we deal, specifically, with that issue -- if I
19 could find the current case I just had -- I
20 believe that's the Sammons v. Conrad 2000 case,
21 that is 740 N.E. 2nd 114.

22 In that particular case we had the issue of
23 a circuit court judgeship being filled and that
24 went to a body such as yours -- the procedure is
25 important. The case law is very clear in

1 Indiana, when a political party has interparty
2 squabbles, that is one thing, because it is
3 acting as a private entity at that time that
4 particular time. However, when it becomes some
5 entity that is nominating officials for state
6 offices and especially constitutional offices,
7 then I think that they become a state agency. I
8 have some case law on that, if you want to bear
9 with me.

10 CHAIRMAN D. DUMEZICH: That's your due
11 process argument; correct?

12 MR. M. BECK: It is.

13 CHAIRMAN D. DUMEZICH: And I would say due
14 process was fulfilled based on his ability to
15 file in the primary. He's not being denied the
16 right because he had the ability to today that.

17 MR. M. BECK: That's correct, he had the
18 ability to do that, but then there's another
19 election -- actually, there's two elections,
20 early and late filling of those vacancies, and
21 at that particular time he had the right to come
22 in.

23 What actually happened here is the
24 Republican Party was able to sit back and let
25 the Democrats fight it out, and as many of you

1 know, it was an ugly fight in the county for the
2 Democratic primary for this particular office
3 and they were able to sit back and say we're
4 going to choose who we have without giving
5 anybody else the opportunity to do that, and I
6 think he had the right or opportunity to do
7 that.

8 And they're suggesting -- this is an
9 interesting point, but they're suggesting that
10 Mr. Lambert would have to follow the rules of
11 the party but they're suggesting they don't have
12 to, that they can get away with what they want,
13 they don't have to follow a rule that
14 specifically says they have to have a caucus,
15 that he has to -- and one question that I would
16 have that no one has been able to answer, they
17 say that Mr. Lambert would have to go through
18 the process of the Republican Party. He's here
19 as a voter. He's not here as a Republican.
20 He's here as a voter. The law --

21 CHAIRMAN D. DUMEZICH: He's obviously not
22 here as a Republican. I will stipulate to that.

23 MR. M. BECK: I don't -- I don't want to
24 argue with the Chair. He'll tell you that he's
25 here because Mr. Fine voted as a Democrat in

1 1985, not really a Republican, that's what he'll
2 tell you -- '84, sorry -- yeah, so the last time
3 you voted was this last time. In any event,
4 this gives you guys, specifically, the remedy
5 here to come here and see you with these sort of
6 things.

7 A Democrat should not have to go to, and
8 you're suggesting he's a Democrat, he shouldn't
9 have to go to a Republican party and say go and
10 enforce your rules, that's not going to happen,
11 that's absurdity. We all know -- you're all
12 your lawyers, a lot of you are required to
13 perform absurdities, so here we are, and that
14 was eloquent to address one of your points.

15 CHAIRMAN D. DUMEZICH: Gentlemen.

16 MR. J. AMMEEN: Mr. Chairman, I think the
17 absurdity might be the last argument, in the
18 sense that a Democrat would have a right to have
19 influence or control over the Republican nominee
20 or vice versa, a Republican would want to file a
21 challenge to the ballot to actually the
22 Democratic nominee or Democratic candidacy. It
23 just stands things on its head.

24 CHAIRMAN D. DUMEZICH: And correct me if
25 I'm wrong, if Mr. Fine is not on the ballot, the

1 voters will have no choice in November?

2 MR. J. AMMEEN: Well, they'll have one
3 choice. As I understand it, there will be a
4 Democratic candidate on the ballot and no
5 Republican candidate on the ballot.

6 CHAIRMAN D. DUMEZICH: Do you have any
7 questions of counsel?

8 VICE CHAIR A. LONG: I have none. Do you
9 have any?

10 MS. K. CELESTINO-HORSEMAN: Yes.

11 VICE CHAIR A. LONG: Okay.

12 MS. K. CELESTINO-HORSEMAN: The certificate
13 of candidacy selection states that the chair of
14 the central committee was authorized to certify
15 the selection. That authorization necessarily
16 comes through party rules -- I mean, that chair
17 is subject to the party rules; is that correct?

18 MR. J. AMMEEN: Correct.

19 MS. K. CELESTINO-HORSEMAN: So if this
20 chair was not authorized to certify because the
21 rules say that does not give the power to that
22 chair to certify, then would you agree that the
23 chair didn't have the authority to certify?

24 MR. J. AMMEEN: I would agree completely.
25 In fact, there are counties, county committees

1 where the committee -- in plenary, the committee
2 as a whole, has not chosen to take advantage of
3 Rule 49 and delegate that according to the
4 county chair. So it's not uniformed across the
5 state and it depends on the county committee and
6 how the politics play out there locally.

7 CHAIRMAN D. DUMEZICH: I would defer to the
8 declaration of Barbara McClellan. She states
9 that -- in at least of the Republican state
10 committee, that Miss Krull was properly
11 delegated the authority to appoint candidates to
12 fill ballot vacancies.

13 MS. K. CELESTINO-HORSEMAN: For purposes of
14 the -- I'm talking about for the -- and perhaps
15 I didn't make it clear. I would agree that the
16 authorization for the county chair...

17 CHAIRMAN D. DUMEZICH: Is granted?

18 MS. K. CELESTINO-HORSEMAN: That's fine,
19 but what I'm saying is the bylaws of the
20 Republican Party set forth, give the county
21 chair the power, so to speak -- they create
22 them, and those bylaws say that the county chair
23 is not to pick the person to fill the vacancy in
24 the judicial circuit.

25 I -- I agree with the Chairman. I don't

1 want to get messy into party rules, but the
2 certificate of candidate selection does state
3 that the chair of the central committee was
4 authorized, and it would appear that 3-50
5 expressly states that the county chair doesn't
6 have that authorization.

7 MR. J. AMMEEN: But the wording of 3-50
8 makes it, I think, clear as well. What it is
9 dealing with is it makes it in the judicial
10 circuit or state legislative district. The
11 judicial circuit -- you know, a prosecutor is
12 still considered a local office, yet it is one
13 that can extend beyond one county.

14 It's the same with the circuit judge, where
15 you would have a legislative office that might
16 cross county lines, in which case, you would
17 then have a contest between county committees or
18 county chairs as to who gets to select or
19 appoint the -- to fill a ballot vacancy.

20 MS. K. CELESTINO-HORSEMAN: It says the
21 circuit court.

22 CHAIRMAN D. DUMEZICH: It's fully
23 encompassed by the...

24 MS. K. CELESTINO-HORSEMAN: Correct, but
25 it's still the judicial circuit.

1. MR. J. AMMEEN: Right. But if you were to
2 read it that way, you completely nullify the
3 rules, the rights, the powers created in Rule 49
4 which were not intended. The fact that you have
5 two particular classes of office shows that the
6 intent of the rule here, the spirit of the rule,
7 and what is meant for those offices where there
8 would be conflict between county committees, in
9 which case, you will have to go to a caucus
10 process and that caucus will be called by a
11 state committee to fill those vacancies.

12 CHAIRMAN D. DUMEZICH: If no caucus was
13 called there, then the state chairman could make
14 the appointment; correct?

15 MR. J. AMMEEN: Correct.

16 MR. M. BECK: But the state chairman
17 actually has to qualify it. It says the state
18 chairman shall preside at any such meeting and
19 may be the deciding vote in case of a tie.

20 MR. J. AMMEEN: And there's some very
21 practical reasons, too, for why Rule 49 is
22 here -- I mean, the cost, the expense for
23 calling a caucus -- it's one thing to have a
24 caucus to replace -- to fill an office and
25 something else for a ballot vacancy, and one is

1 of a higher magnitude, filling the office, of
2 course, but the costs, the expense, and precinct
3 committeemen don't like calling a caucus --
4 having a caucus called anymore than the county
5 chair likes calling a caucus, but there's a
6 reason why this rule is here, and I would
7 imagine it's probably handled much like the
8 Democrat, it's for the same reason; otherwise,
9 there would be caucuses called monthly.

10 MR. M. BECK: Can I give the chair the
11 cites for the two cases that I was talking
12 about?

13 CHAIRMAN D. DUMEZICH: Certainly.

14 MR. M. BECK: Political parties are not
15 merely private owned associations but are state
16 agencies, State -- Butz, B-U-T-Z, v. Erie,
17 (Phonetic) Circuit Court, 720 N.E. 2d 225, it's
18 an Indiana case. The second case is Smith v.
19 Albright, (Phonetic) A-L-B-R-I-G-H-T, 321 U.S.
20 649. It's a 1944 case.

21 MR. J. AMMEEN: It's the first case that
22 Thurgood Marshall won.

23 MR. M. BECK: If I could take one second to
24 address your question, if that's all right,
25 Mr. Chair?

1 CHAIRMAN D. DUMEZICH: Sure.

2 MR. M. BECK: 3-50.

3 CHAIRMAN D. DUMEZICH: Make the record.

4 MR. M. BECK: 3-50 does not at all talk
5 about multi-districts. 3-50 is very specific,
6 if a ballot or office vacancy occurs in any
7 judicial circuit or state legislative district,
8 such vacancy shall be filled by the precinct
9 committeemen, and it says nothing about multiple
10 districts.

11 MR. J. AMMEEN: However, it says that they
12 must act jointly, so, obviously, they have two
13 county committees.

14 MR. M. BECK: With all due respect, it
15 says --

16 CHAIRMAN D. DUMEZICH: Do you have any more
17 questions?

18 MR. M. BECK: -- the time and place of the
19 joint meeting. The joint meeting is the caucus.

20 CHAIRMAN D. DUMEZICH: I would like to
21 close the record on Cause 2010-11 and open the
22 floor to discussion.

23 VICE CHAIR A. LONG: I've decided the
24 authority, Mr. Chairman -- the case that arose
25 down in Martin County, which is my district --

1 matter of fact, I was called as a witness in
2 that case. I was called as supposedly an expert
3 on the rules on behalf of the Democratic Party.

4 I may point the reason before I move on to
5 the hearing, but the gist of that case was, and
6 I agree that the whole in that case is that the
7 parties are the arbitrators of their own rules
8 and disputes, and unless I'm just -- my mind's
9 completely given up on me, and that's a
10 possibility, but that case involved -- I know it
11 involved filling a vacancy in the clerk's office
12 and the qualifications, and the challenge was
13 who should be eligible to vote in the caucus and
14 proxy.

15 The judge made a ruling in that one and
16 ruled -- the determination from my
17 understanding, and I should have pulled it and
18 refreshed myself, but it was decided. And my
19 first observation on this case is that I believe
20 that the certification of -- for the chair to
21 fill vacancies was not chair specific, to the
22 individual who was chair at the time, although
23 that person's name appears and signed it.

24 As I understand it, that chair halfway --
25 in any event no longer became chair and someone

1 replaced that person in October. I think to the
2 extent -- on that issue to the extent that that
3 certification is applicable to the chair -- it's
4 applicable to the chair that did the
5 certification.

6 This all comes down to me on the issue. We
7 have to interpret 3-50 of the rules of the
8 Republican Party in order to rule on this issue.
9 I'm inclined to believe that the board has
10 jurisdiction because there is a CAN-31,
11 declaration of candidacy filed by Mr. Fine, and
12 the certification, the CAN-29, those are things
13 within our jurisdiction, and I think the thing
14 that's important to me is when you look at that,
15 we have certification by the chair -- Krull, is
16 that her name?

17 MR. M. BECK: Yes.

18 VICE CHAIR A. LONG: That she was empowered
19 to make this appointment. I think that's
20 something that's within our jurisdiction. I
21 think it would also -- and I agree with the
22 argument -- I don't know what the challenger's
23 status is, but I could see where a person could
24 maybe want to challenge, do a candidate appeal
25 under this and say that's the only place you can

1 challenge it.

2 The Republican organization might not have
3 a reasonable possibility of proceeding through
4 the system like it would be if it were the
5 Democrat Party. I believe the Republican Party
6 could be -- either party should deal with the
7 issue in its own way.

8 So I believe we have jurisdiction and I
9 don't think we have to interpret the rule
10 because I think the rule is clear, that is that
11 certification doesn't extend to the circuit --
12 the offices that it's...

13 CHAIRMAN D. DUMEZICH: Do you think that
14 rule would extend to other county positions, say
15 the county assessor?

16 VICE CHAIR A. LONG: I think -- my reading
17 of this rule, the 3-50 would not. I think the
18 chair would have -- I think a reporter would
19 hang up on me -- is the prosecutor a local
20 office or a judge, a circuit court judge a local
21 office in one county, and by virtue of the
22 circuit -- I think those are all circuit --
23 they're are all state offices that -- I think
24 the prosecutor is a state office. That's why we
25 had jurisdiction, I think -- the earlier case we

1 had on the prosecutor legislative candidate.

2 I think anybody that's basically paid by
3 the state, you know, is a circuit type employer,
4 and I would take it a step further. I think it
5 says -- as I recall, 3-50 says -- it implies any
6 judicial circuit or state legislative district,
7 and I think that -- I don't think it applies to
8 superior court judges who are created by statute
9 or created by county by county, even though I
10 think they're state offices, but I think that
11 this says circuit.

12 And if there was a -- we're in the second
13 judicial circuit, so if it was the second
14 judicial circuit of the superior court and that
15 was the title of the office, then I think it
16 would be covered by the rule. Ours says Warren
17 County Superior Court, and I saw one the other
18 day -- Allen County, we decided on that. I
19 think if it's circuit office or a state office,
20 I think the rule is clear, that a caucus should
21 be requested.

22 CHAIRMAN D. DUMEZICH: And if there would
23 not be -- I just want to make sure we have a
24 clarification, so when we do this motion, that
25 the wrong import is not taken from what will

1 probably be a split vote. If this was -- if
2 this person was a county assessor sitting in
3 front of us, in all likelihood, the basis for
4 your situation would be different?

5 VICE CHAIR A. LONG: And I would vote -- I
6 mean, I want the record to be clear on this
7 because, you know, I welcome guidance from the
8 court on this issue. I think the lawyers have
9 done a real good job of presenting it.

10 If this whole argument were made to a
11 county assessor's position, my vote would be
12 that the chair -- everything else being the
13 same, that the chair had the authority to fill
14 it without a caucus, and I think it's because it
15 is a circuit position, that for whatever
16 reason -- I don't want to get into the
17 interpretation of the reasoning for the
18 Republican Party making it a rule, and you know,
19 I think, likely, the Democratic Party, our state
20 rules -- I'm not going to change the rules and
21 say they're any better or worse than ours, but
22 you know, I'm sure that ours went through
23 changes virtually at every meeting that we've
24 been in with the committees.

25 If these are all your rules, then you don't

1 have any rules -- ours are thick, but the net
2 result is when I was in Morgan County, when I
3 was county chairman, the rules worked the best
4 and there was only one copy of the rules and I
5 had them. That result is -- my position is, my
6 vote is it's going to be on a very narrow issue,
7 and I say that for the record, but I know at one
8 time -- you know, we can produce a hundred page
9 long minutes, but my words will be said, and I
10 think it's limited to this particular -- if it
11 was a local legislative or prosecutor situation,
12 it would be different if it were a county office
13 or a township office or local non-circuit
14 office; is that clear enough?

15 CHAIRMAN D. DUMEZICH: I want to make sure
16 that the record is very clear.

17 VICE CHAIR A. LONG: And I want it that
18 way, too, because however this comes out, I
19 would invite someone getting us a review of it
20 and give us some guidance.

21 CHAIRMAN D. DUMEZICH: I think we're going
22 to differ on the case in chief, but I want to
23 make it clear that my position is that this in
24 no way can extend to a county office like the
25 county assessor. I think that there is

1 absolutely no question that Kim Krull had the
2 ability to appoint county positions, absolutely
3 no doubt, and to the extent that the members of
4 the board differ from the position that Mr. Long
5 and I have stated, I'd like them to put it on
6 the record as well.

7 COMMISSIONER J. MYERS: No, I haven't been
8 a county chairman myself. I agree with Tom or
9 Tony, that the rules work the best, and there's
10 only one set, and I'm the guy holding the rules.

11 CHAIRMAN D. DUMEZICH: But you would agree
12 that Miss Krull would have the ability to
13 appoint someone at the county level?

14 COMMISSIONER J. MYERS: Yes.

15 CHAIRMAN D. DUMEZICH: Miss Horseman.

16 MS. K. CELESTINO-HORSEMAN: I am with
17 Anthony in this. I don't like going into party
18 rules, but this Rule 3-50 could have been
19 drafted in such a way to make clear, if it was
20 intended to cover those situations with more
21 than one county involved, and for whatever
22 reason, it doesn't do that -- I mean, it
23 couldn't even reference the state statute that
24 talks about it because it references it in 3-49
25 and such, so I'm not sure what the reasoning is

1 on that, but I know in reading it, it says
2 judicial circuit so I'm with Anthony and the
3 chair in the sense that I don't think this rule
4 would have application of this scenario, at
5 least on anything but judicial circuit or state
6 legislative.

7 CHAIRMAN D. DUMEZICH: So let the record
8 reflect that all four commissioners agree that
9 this would only extend -- if in fact we end up
10 taking a vote or come to a conclusion, it would
11 only extend to the situation involving the
12 judicial circuit or legislative district or a
13 prosecutor.

14 It would not, repeat not extend to someone
15 that is a -- running for a county office that
16 was not described before. Any more discussion
17 on this matter?

18 (No response.)

19 CHAIRMAN D. DUMEZICH: With that, I'll
20 entertain a motion.

21 COMMISSIONER J. MYERS: Mr. Chairman, I'd
22 move that we deny the challenge.

23 CHAIRMAN D. DUMEZICH: Second -- since I
24 hear a second, all in favor say aye -- aye.

25 COMMISSIONER J. MYERS: Aye.

1 CHAIRMAN D. DUMEZICH: All opposed, please
2 indicate?

3 VICE CHAIR A. LONG: Nay.

4 MS. K. CELESTINO-HORSEMAN: Nay.

5 MR. M. BECK: Our request failed.

6 CHAIRMAN D. DUMEZICH: And I make a -- the
7 motion was denied that we just voted on. I
8 would make a motion.

9 MS. K. CELESTINO-HORSEMAN: That was the
10 motion.

11 VICE CHAIR A. LONG: It was a motion to
12 deny the challenge, and I'm going to make two
13 motions. We're -- does either counsel think we
14 need to accept jurisdiction formally?

15 CHAIRMAN D. DUMEZICH: I think they waived
16 that.

17 VICE CHAIR A. LONG: Oh, they waived that.
18 Too much time has passed. I would move that --
19 I know I've got to get to Booneville in two and
20 a half hours, but I would move that we grant the
21 challenge.

22 MS. K. CELESTINO-HORSEMAN: Deny the
23 challenge.

24 VICE CHAIR A. LONG: No, you've already
25 moved to deny.

1 CHAIRMAN D. DUMEZICH: We voted to deny the
2 challenge, now he's going to make the opposite
3 motion.

4 VICE CHAIR A. LONG: So it's going to make
5 it 2-2 both ways, so whatever that other motion
6 was, I make the opposite.

7 CHAIRMAN D. DUMEZICH: Well, I don't hear a
8 second on that.

9 MS. K. CELESTINO-HORSEMAN: Second.

10 CHAIRMAN D. DUMEZICH: Having heard a
11 second on the motion, I ask all in favor of the
12 motion to approve the challenge of this
13 candidate, to indicate by saying aye?

14 VICE CHAIR A. LONG: Motion to approve,
15 aye.

16 MS. K. CELESTINO-HORSEMAN: Aye.

17 CHAIRMAN D. DUMEZICH: All opposed, please
18 indicate nay -- nay.

19 COMMISSIONER J. MYERS: Nay.

20 VICE CHAIR A. LONG: Thank you all very
21 much.

22 CHAIRMAN D. DUMEZICH: Thank you. It
23 was...

24 MR. J. HERO: Mr. Chairman, can I at this
25 time --

1 CHAIRMAN D. DUMEZICH: No.

2 MR. J. HERO: -- file a challenge as a
3 resident voter of Lake County that the decision
4 of this board has taken away our right to vote
5 in Lake County for circuit court judge.

6 VICE CHAIR A. LONG: Not here, you can't.

7 MR. J. HERO: I would amend that challenge
8 and I would use Title 3-13-1-6 which says local
9 office, office of the circuit court judge, and
10 it indicates on there that the county chairman
11 has the power to appoint, and you agree that
12 they had power by the caucus. I point that out
13 as a matter of justice. I wish you would read
14 that section.

15 CHAIRMAN D. DUMEZICH: The hearing was
16 closed, but -- the hearing was closed on it and
17 it's not properly before us.

18 VICE CHAIR A. LONG: I don't think we've
19 got anything before us to rule on.

20 CHAIRMAN D. DUMEZICH: Agreed.

21 VICE CHAIR A. LONG: Is there anything else
22 on the agenda that requires four votes?

23 CHAIRMAN D. DUMEZICH: No.

24 (A discussion was held off the record.)

25 VICE CHAIR A. LONG: My motion is that we

1 not send anymore out based on our approval of
2 the forms today, but through this election, we
3 accept any incoming votes in order that we don't
4 disenfranchise any of our people that would be
5 covered on the old forms, that we continue to
6 accept them through this election because of the
7 great distances involved so we can deal with
8 that, and that goes hand in hand, I think, with
9 the military thing; am I making myself clear
10 enough, because I asked a question if we could
11 still use them, and that was the thought I was
12 having, because it's my understanding that after
13 today, they're no longer valid, and if they're
14 at ground school in Germany and they use them
15 and send them back here, it could well be
16 rejected and I think that would be
17 inappropriate.

18 CHAIRMAN D. DUMEZICH: Second the motion.

19 MR. B. KING: Mr. Chairman, and Mr. Vice
20 Chair, from the perspective of myself as
21 codirector, I don't see any problem with that.
22 I just want to get on the record that we will be
23 having different versions of the absentee
24 applications come in, so that if those
25 applications are examined during a recount

1 contest, that everyone understands that the
2 commissioners authorized both are intended to be
3 used for that.

4 VICE CHAIR A. LONG: My motion was that
5 none be sent out, and we stop sending them out
6 and start the process of just doing away with
7 the old ones, but that the ones that come in,
8 that maybe if they have inventory out in the
9 field and overseas, particularly, that those
10 folks -- of all of the people in the world that
11 deserve not to be disenfranchised, it would be
12 those. It is limited to this election, and by
13 the end, we should have it fixed up. That was
14 my motion and you seconded it?

15 CHAIRMAN D. DUMEZICH: I seconded it. The
16 motion on the floor and having heard second, all
17 in favor of the motion say aye?

18 THE COMMISSION: Aye.

19 CHAIRMAN D. DUMEZICH: All opposed?

20 (No response.)

21 CHAIRMAN D. DUMEZICH: The motion carries
22 forward.

23 VICE CHAIR A. LONG: Mr. Chairman, can we
24 address the issue -- I learned on the way up
25 here that I have to be at the county-council in

1 Booneville on a local issue tonight that we --
2 all these folks that have been here on campaign
3 finance, if we reduce the penalties, which we do
4 customarily, and it requires four votes, I would
5 ask to please be excused, that the campaign
6 finance issue be heard -- that they be heard,
7 and if they meet the qualifications from our
8 standards, reduce the penalty until our next
9 meeting and I -- and the codirectors can brief
10 me on that, and I'll be prepared to vote at that
11 time.

12 CHAIRMAN D. DUMEZICH: Any committee rep
13 that's currently here, please identify yourself?

14 MR. J. AMMEEN: I would include Mr. Fine at
15 this point, and we've got nine days to take an
16 appeal and then get ballots printed and
17 delivered to the county committees.

18 MS. L. BARNES: And they can also be
19 reprinted after.

20 CHAIRMAN D. DUMEZICH: Please state your
21 name -- anybody that's here representing a
22 committee on committee finance issues.

23 MS. C. MEYER: It's just me.

24 CHAIRMAN D. DUMEZICH: Your name, you've
25 got to tell us your name?

1 MS. C. MEYER: My name is Cynthia Meyer,
2 and I ran for District 63 state rep in the
3 primary, which unfortunately I lost. I did not
4 return one thing in a timely manner. It was an
5 in-kind contribution that I was fortunate to get
6 from the Indiana Chamber of Commerce.

7 They sent me the form on April 27th, and I
8 was knocking on doors and eating fish dinners --
9 I missed it, and it wasn't filed by my campaign
10 person.

11 So I would just ask that you all have
12 understanding that we folks that are in the
13 community that are asked to serve who are not
14 career politicians -- I'm a business owner, I
15 own restaurants, and I was asked to run by the
16 people in my district because I know my
17 districts well and I have common sense.

18 Unfortunately, it's -- it can be a little
19 overwhelming to navigate everything with the
20 election board when you're running for the first
21 time and it's for state rep.

22 So I apologize. I have no excuse other
23 than I was overwhelmed in the final days of the
24 campaign. Everything else was done in a very
25 timely manner and I followed every rule other

1 than the 48 hours on an in kind, which I wasn't
2 certain -- I basically did not have the
3 understanding of an in-kind contribution.

4 CHAIRMAN D. DUMEZICH: Okay. What we're
5 going to do is we've taken down in the record so
6 you won't have to return and we'll rule on it at
7 our next hearing and you'll be notified.

8 MS. C. MEYER: Okay.

9 CHAIRMAN D. DUMEZICH: Then I'd like to
10 recognize Michelle Thompson and Abbey Taylor to
11 present information regarding the finance
12 settlement agreements.

13 MS. M. THOMPSON: Mr. Chairman and Members
14 of the Commission, the first page of your
15 campaign finance tab is a list of committees to
16 ratify -- that have agreed to pay the settlement
17 agreement and waive the hearing. It's in your
18 book.

19 CHAIRMAN D. DUMEZICH: I would like to hear
20 a motion to ratify the settlement agreements set
21 forth on Exhibit A-1-A?

22 COMMISSIONER J. MYERS: I move that we
23 ratify the settlement agreement on A-1-A.

24 MS. K. CELESTINO-HORSEMAN: Second.

25 CHAIRMAN D. DUMEZICH: Having heard a

1 second, is there any discussion on the motion?

2 (No response.)

3 CHAIRMAN D. DUMEZICH: No discussion being
4 heard, anyone agree with the motion to ratify
5 the settlements on page 1-A-1, vote aye?

6 THE COMMISSION: Aye.

7 CHAIRMAN D. DUMEZICH: All opposed?

8 (No response.)

9 CHAIRMAN D. DUMEZICH: Not hearing nay, the
10 vote carries 3-0.

11 MS. M. THOMPSON: Okay. The next order in
12 your packet there is an order 2010-2 which has
13 been prepared from the actions taken at the
14 November 16, 2009 meeting and this order is
15 ready for adoption.

16 CHAIRMAN D. DUMEZICH: Is there a motion to
17 approve Order 2010-02, is that...

18 MS. A. TAYLOR: Here's what happened. In
19 2009, statewide candidates in an election year
20 for which their office thought they were on the
21 ballot -- they have two reports, one was due
22 July 15th and one due January. We sent out
23 letters notifying the committees that they have
24 these reports due, and our letter that we sent
25 out to Hoosiers to Eric Miller said if you were

1 not on the ballot, please disregard.

2 So he was not on the ballot that year so he
3 didn't file his reports, so it was essentially
4 our error in saying don't file if you don't have
5 to, so we screwed up and asked that the
6 commission dismiss the fine, and the commission
7 said dismiss it. This is the order that we can
8 finally send to Hoosiers for Eric Miller saying
9 hey, it's dismissed. You don't owe us anything.
10 It was our fault.

11 MS. K. CELESTINO-HORSEMAN: I'll make a
12 motion that we sign off on the order.

13 CHAIRMAN D. DUMEZICH: To adopt the order.

14 MS. K. CELESTINO-HORSEMAN: To adopt Order
15 2010-2.

16 CHAIRMAN D. DUMEZICH: Second?

17 COMMISSIONER J. MYERS: I'll second it.

18 CHAIRMAN D. DUMEZICH: Any discussion?

19 (No response.)

20 CHAIRMAN D. DUMEZICH: Hearing no
21 discussion, I'd move -- anyone in favor of
22 adopting Order 2010-2, please indicate so --
23 please indicate by saying aye?

24 THE COMMISSION: Aye.

25 CHAIRMAN D. DUMEZICH: All opposed?

1 (No response.)

2 CHAIRMAN D. DUMEZICH: Hearing no nays, the
3 vote is 3-0 to adopt the order.

4 MS. M. THOMPSON: Mr. Chairman --

5 CHAIRMAN D. DUMEZICH: Can you please
6 report on the committees to dissolve?

7 MS. M. THOMPSON: Yes. These are
8 committees that we administratively dissolved.
9 They have not filed a report in the past three
10 years and they have a balance of less than a
11 thousand dollars. With these in mind, these are
12 committees that we can administratively
13 dissolve.

14 CHAIRMAN D. DUMEZICH: And those committees
15 are set forth on...

16 MS. M. THOMPSON: On the third sheet.

17 CHAIRMAN D. DUMEZICH: On A-1-3?

18 MS. M. THOMPSON: Yes.

19 CHAIRMAN D. DUMEZICH: I would like to here
20 a motion?

21 COMMISSIONER J. MYERS: Mr. Chairman, I
22 move that we administratively dissolve the
23 committees listed on Sheet A-1-3.

24 MS. K. CELESTINO-HORSEMAN: Second.

25 CHAIRMAN D. DUMEZICH: Thus hearing a

1 second, I would like to take a vote. If there's
2 no further discussion, all in favor of adopting
3 the motion to dissolve committees set forth on
4 A-1-3, please indicate by saying aye?

5 THE COMMISSION: Aye.

6 CHAIRMAN D. DUMEZICH: Those opposed?

7 (No response.)

8 CHAIRMAN D. DUMEZICH: Hearing nothing, the
9 vote is 3-0 to allowing those committees on
10 A-1-3 to be dissolved.

11 MS. L. BARNES: Mr. Chairman?

12 CHAIRMAN D. DUMEZICH: Yes.

13 MS. L. BARNES: Abbey Taylor pointed out on
14 both motions that you adopted, in the past,
15 you've made a motion to allow the election
16 division to...

17 MS. A. TAYLOR: Motion for the order on
18 Hoosiers for Eric Miller, a signature stamp --
19 don't you need to make a motion for that?

20 MS. L. BARNES: Can we make a motion for
21 the use of signature stamps?

22 CHAIRMAN D. DUMEZICH: Yes. Entertain a
23 motion for the use of signature stamps on Order
24 2010-10, 02 and 03.

25 COMMISSIONER J. MYERS: I make the motion

1 that we -- staff be allowed to use our signature
2 stamps to sign 01, 02 and 03 on our behalf.

3 CHAIRMAN D. DUMEZICH: Second?

4 MS. K. CELESTINO-HORSEMAN: Second, but I
5 want to say Order 02.

6 CHAIRMAN D. DUMEZICH: Excuse me, amend the
7 motion to Order 2010-02.

8 MS. K. CELESTINO-HORSEMAN: So moved,
9 second.

10 COMMISSIONER J. MYERS: Second.

11 CHAIRMAN D. DUMEZICH: All in favor of the
12 motion, indicate by saying aye?

13 THE COMMISSION: Aye.

14 CHAIRMAN D. DUMEZICH: Opposed?

15 (No response.)

16 CHAIRMAN D. DUMEZICH: Hearing nothing, the
17 motion passes. Use the signature stamp. With
18 respect to the motion made by Mr. Long, do we
19 have any housekeeping issues with respect to it?

20 MR. B. KING: Mr. Chairman and Members of
21 the Commission, earlier, the Members of the
22 Commission adopted Order 2010-1. Subsequently,
23 the motion that Mr. Long has adopted by the
24 commission, provisions of that order were
25 amended.

1 We need to get the direction now with
2 regard to the use of new ABS-15 form immediately
3 and so we want to make sure that Pam Potesta and
4 I are authorized to send out Order 2010-1 as
5 amended at today's meeting?

6 COMMISSIONER J. MYERS: I would move that
7 the codirectors have the authority to send out
8 the new Order 2010-1 as amended immediately
9 following today's meeting.

10 MS. K. CELESTINO-HORSEMAN: Second.

11 CHAIRMAN D. DUMEZICH: Having a second, I'd
12 like to take a vote on it. Who would like to
13 adopt the motion to allow the codirectors to
14 send out the information relating to 2010-01,
15 indicate by saying aye?

16 THE COMMISSION: Aye.

17 CHAIRMAN D. DUMEZICH: All opposed, say
18 nay?

19 (No response.)

20 CHAIRMAN D. DUMEZICH: Having three ayes
21 and no nays, the motion is adopted. I would
22 like to recognize Michelle Thompson and Abbey
23 Taylor to discuss the various issues related to
24 finance committees, including...

25 MS. C. MEYER: Cindy Meyer.

1 MS. M. THOMPSON: Cindy Meyer Ziemke?

2 CHAIRMAN D. DUMEZICH: Yeah.

3 MS. M. THOMPSON: Mr. Chairman, Cindy Meyer
4 Ziemke for state representative, Cause No.
5 2010-5950-51. Miss Ziemke is before us for a
6 preprimary supplemental, which is a large
7 contribution report. She received contribution
8 on 4/27. It was due in our office on 4/29. She
9 filed the report on 5/10 of 2010. The proposed
10 civil penalty is \$554.02.

11 CHAIRMAN D. DUMEZICH: That matter will be
12 held in advance until we have a full commission.
13 Plead proceed with the remainder of the fine
14 reductions or default -- default judgments.

15 MS. M. THOMPSON: Do you want me to do
16 these individually?

17 MS. A. TAYLOR: How do you want to do
18 these?

19 CHAIRMAN D. DUMEZICH: Just describe them
20 for us, that's all.

21 MS. A. TAYLOR: Mr. Chairman, Members of
22 the Commission, there is a spreadsheet of 25
23 pages mass. These are 2008 annuals, 2009
24 annuals, 2010 preprimary reports and --

25 MS. M. THOMPSON: 2009 semiannuals.

1 MS. A. TAYLOR: -- 2010 semiannuals.

2 CHAIRMAN D. DUMEZICH: These are both
3 candidates and...

4 MS. M. THOMPSON: Yes.

5 MS. A. TAYLOR: The majority of these
6 committees are repeat offenders. Most of their
7 mail is returned. We no longer have a working
8 address for these committees, and they're all, I
9 believe, \$1,000 fines, and their mail costs
10 vary.

11 CHAIRMAN D. DUMEZICH: The floor will
12 entertain a motion to proposed fines contained
13 as Exhibit C regarding adoption of fines as
14 indicated in the forms.

15 MS. K. CELESTINO-HORSEMAN: So moved.

16 CHAIRMAN D. DUMEZICH: I hear it moved,
17 second?

18 COMMISSIONER J. MYERS: Second.

19 MS. L. BARNES: Mr. Chairman, did you mean
20 to exclude Miss Ziemke?

21 CHAIRMAN D. DUMEZICH: Yes. Is she in the
22 packet?

23 MS. M. THOMPSON: Yes, she's in the packet
24 and we tabled that one.

25 CHAIRMAN D. DUMEZICH: Amend the motion to

1 exclude Miss Ziemke. The motion's been made and
2 seconded, all in favor of the motion, say aye?

3 THE COMMISSION: Aye.

4 CHAIRMAN D. DUMEZICH: All opposed?

5 (No response.)

6 CHAIRMAN D. DUMEZICH: Hearing no nays, the
7 motion adopted 3-0. The last is voting systems.
8 I would ask that we turn to No. 8 on the agenda,
9 Voting System Technical Oversight Program
10 Report, and I would ask that the presentation be
11 made by Ball State University. Whoever's going
12 to be speaking, please indicate your name for
13 the record?

14 MR. R. SCHEELE: Yes, I'm Ray Scheele with
15 the Bowen Center for Public Affairs at Ball
16 State and codirector of the V-Stop Program.
17 With me is Joe.

18 MR. J. LOSCO: Hi, my is Joe Losco, Ball
19 State University, Political Science Department.

20 MR. R. SCHEELE: We'll change the subject
21 real fast. This is a briefing real quickly for
22 you on something that's just developed within
23 the last ten days with respect to voting systems
24 that are in use here in Indiana.

25 Ten days ago the election assistance

1 commission in Washington DC that certifies all
2 voting systems at the federal level sent out an
3 advisory that we received -- Brad King received
4 it and immediately forwarded it to us, and we've
5 been in communication with Brad and Pam on this
6 matter. It's been a developing matter.

7 The advisory is in your packet that we just
8 handed out, along with a couple of other
9 documents, one of which is the most recent
10 IEC-11 form filed by MicroVote in 2009,
11 MicroVote being the vendor to which the advisory
12 pertains.

13 We also have in that packet for your own
14 reading a federal Wyle lab evaluation of the --
15 dealing with the MicroVote system, and then
16 finally, a MicroVote addendum on a newly
17 certified machine EAC approved.

18 Here's the issue. The machine that the EAC
19 has put out this advisory on is not certified in
20 Indiana and not in use in Indiana. However, the
21 MicroVote machines that are in use in Indiana,
22 in 47 of our 92 counties, have the same panels
23 and they have the same cards, if you will,
24 that -- to which the votes are transferred.

25 The advisory from the EAC says that there

1 could be problems with the grounding of these
2 machines or what we call the voting systems and
3 we are now working very closely with EAC -- as
4 of just two hours ago we had another e-mail from
5 them, as to whether or not this advisory is
6 going to impact in Indiana and the MicroVote
7 voting systems that are in use in our counties.

8 We are still working on in and it's
9 changing. EAC is very interested in our
10 situation here in Indiana. Basically, it's a
11 function of -- if these cards, which are 8 bit,
12 16 bit or 32 bit cards that record the votes, if
13 they are underneath the 32, they're probably
14 going to be all right, is the guess, but
15 nobody's tested it yet, okay.

16 If it's over 32 bits, they are -- MicroVote
17 has assured us that there shouldn't be a problem
18 because the voting systems in Indiana have been
19 grounded with -- in the sense that -- and that's
20 the problem, the pins may not be grounded and
21 then the votes might be lost, okay -- might be
22 is the question here.

23 So we just want to alert you to this. We
24 are working on this very closely and we'll keep
25 Pam and Brad in the loop on this, and if there's

1 one thing that may develop is -- and I'm not so
2 sure that this commission has ever put out an
3 advisory to the clerks on something like this,
4 but it could very well be that we'll need
5 information from the clerks as to what size card
6 they have in their machines, and if it is a 8
7 bit or a 16 bit card, they're probably all
8 right, but we'll wait and see once we get more
9 information from the EAC. Does that pretty well
10 summarize where we're at on this?

11 MR. J. LOSCO: Yes, it does. Just the very
12 latest thing we got from them a couple of hours
13 ago by mail was that the systems in Indiana,
14 they believe, if they're all using 32 megabit or
15 less memory cards, then they should be all
16 right.

17 Now we don't know whether or not the clerks
18 have tried to use anything beyond that. If
19 there is something beyond that, there may be a
20 problem. We've been in contact with MicroVote.
21 They've given us their statement that they
22 didn't think there was a problem because the
23 machines would not turn on if the memory card
24 didn't work.

25 The latest from the EAC is, yeah, the

1 machine might turn on, but there might be some
2 other problems so we continue to investigate it.

3 CHAIRMAN D. DUMEZICH: Was MicroVote
4 apprised of today's hearing?

5 MR. J. LOSCO: Yes.

6 MR. R. SCHEELE: Yes.

7 CHAIRMAN D. DUMEZICH: When were they
8 apprised of it?

9 MR. J. LOSCO: We were getting e-mails back
10 and forth with them, but certainly, as of
11 yesterday, they were aware, because they
12 responded to us and we said we need information
13 for this meeting.

14 CHAIRMAN D. DUMEZICH: Were you under the
15 impression that they were going to show up
16 today?

17 MR. R. SCHEELE: No, but they have
18 responded to our e-mail and given us
19 information.

20 MS. K. CELESTINO-HORSEMAN: When you say
21 that votes might -- as I understand it, the
22 problem with this is one might -- it could
23 affect how a machine keeps track of votes?

24 MR. J. LOSCO: There could be a malfunction
25 of unrecognizable dimensions right now. They

1 don't know.

2 MS. K. CELESTINO-HORSEMAN: So it would
3 keep track of some votes or no votes or...

4 MR. R. SCHEELE: It would be a corrupted
5 file, and our other codirector, Dr. Jay Bagga,
6 who's our computer scientist who works with us,
7 but if it's a corrupted file, it may not make
8 sense to anyone -- you know, it'll just be all
9 garbled, so we're not sure what might happen, or
10 there may not be any votes that would be
11 accurately recorded.

12 MR. J. LOSCO: But again, the latest from
13 the EAC is if everybody is using the cards which
14 were supplied with the machines, things should
15 be fine. If for some reason they have gone out
16 and gotten different cards, there may be a
17 problem, and that's why I'm sure we'll be
18 consulting with the clerks to make sure we know
19 what they're using.

20 MR. R. SCHEELE: We just wanted to alert
21 you to this and we'll continue working because
22 47 of our counties use them and we've got an
23 election coming up, so we want to make sure this
24 gets solved very quickly. Any questions?

25 (No response.)

1 MS. K. CELESTINO-HORSEMAN: Thank you for
2 your patience and waiting.

3 CHAIRMAN D. DUMEZICH: They get paid by the
4 hour.

5 MR. D. SIMMONS: They're used to it.

6 MS. K. CELESTINO-HORSEMAN: You've got a
7 good payday today.

8 MR. B. KING: Mr. Chairman and Members of
9 the Commission, in addition to the report that
10 was just given by Ball State, we want to
11 recognize that we received a voting application
12 from Unisyn, Election Solutions, and just note
13 that that's been provided to V-Stop for their
14 review and they'll report back later.

15 MR. R. SCHEELE: We'll be working on that.

16 MS. J. PING: Mr. Chairman.

17 CHAIRMAN D. DUMEZICH: Please identify
18 yourself for the record?

19 MS. J. PING: I'm Jennifer Ping. I
20 represent RBM Consulting. RBM is working with
21 Unisyn in Monroe County and Monroe County has
22 requested that they may be in receipt of a bid
23 to an RFP proposal from RBM with Unisyn knowing
24 that Unisyn is not yet certified, and in the
25 event that Unisyn is not certified, RBM will

1 withdraw their bid, if that pleases the
2 commission.

3 CHAIRMAN D. DUMEZICH: Do we need a motion?

4 MR. B. KING: No. Mr. Chairman, let me
5 just state for the record that I was advised by
6 Dan McGinnis that RBM would not be responding to
7 the RFP by Monroe County, and so if that
8 situation has changed, that's not something...

9 MS. J. PING: As of when I got here,
10 probably -- maybe.

11 MR. B. KING: So just be the aware that
12 that was the latest information that we received
13 until just now.

14 MS. J. PING: Should that not be certified,
15 we will withdraw the bid.

16 CHAIRMAN D. DUMEZICH: Should we -- do we
17 need to do anything with that?

18 MR. B. KING: No.

19 MS. J. PING: I'll keep you apprised, Mr.
20 Chairman.

21 CHAIRMAN D. DUMEZICH: Okay, thank you very
22 much.

23 MS. J. PING: Thank you.

24 CHAIRMAN D. DUMEZICH: The meeting is
25 hereby adjourned. Thank you very much.

1 (At this time the meeting was adjourned.)

2 (Time noted: 5:15 p.m.)

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1 STATE OF INDIANA)
) SS:
 2 COUNTY OF HENDRICKS)

3

4 I, Rhonda J. Hobbs, RPR, and a Notary Public
 5 and Stenographic Reporter within and for the County
 6 of Hendricks, State of Indiana at large, do hereby
 7 certify that the transcript is a full, true and
 8 correct transcript made from my stenograph notes.

9 IN WITNESS WHEREOF, I have hereunto set
 10 my hand and affixed my notarial seal this _____
 11 day of September, 2010.

12

13

14

 N O T A R Y P U B L I C

15

16 My Commission Expires:
 August 24, 2017
 17 County of Residence:
 Hendricks County

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