

1 **CHAIRMAN T. WHEELER:** Is there anybody whose's
2 going to testify as to counts other than the two of
3 you? Are you testifying or are you just...

4 **COMMISSION MEMBER S. RIORDAN:** What about
5 people from the Division?

6 **CHAIRMAN T. WHEELER:** Well, that -- I'm going
7 to get there in just a minute. But as far as
8 you're concerned, the only two people that are
9 going to testify as to what was attached to the
10 first petition, the second petition is the two of
11 you guys; correct? You don't have anybody else
12 that you're -- providing the count and I don't
13 either and you're going to say I counted and you're
14 going to say you counted?

15 **MR. T. COOK:** Yes, sir.

16 **CHAIRMAN T. WHEELER:** All right. So we'll get
17 to that, all right. Now as to ask Commissioner
18 Riordan's question, do we have -- are there
19 individuals -- do you want is it ask that question
20 or do you want me to ask that question?

21 **COMMISSION MEMBER S. RIORDAN:** Well, I think
22 procedurally, we can do a couple of things, and I
23 would suggest that we take a look at the second
24 challenge and we decide whether as a commission we
25 would count the Senator's first submission and the

1 second submission because that seems like a
2 threshold issue.

3 VICE CHAIR A. LONG: Count it as one
4 submission?

5 COMMISSION MEMBER S. RIORDAN: Yeah. Right.
6 If we would -- if we would sandwich the two
7 together for purposes of the 500.

8 CHAIRMAN T. WHEELER: And that's -- that's
9 just the pure legal issue, I take it?

10 COMMISSION MEMBER S. RIORDAN: Yeah. And then
11 that might get us down to...

12 CHAIRMAN T. WHEELER: Mr. McClamroch, do you
13 agree with that as well?

14 MR. T. McCLAMROCH: Yeah.

15 CHAIRMAN T. WHEELER: Mr. Cook?

16 MR. T. COOK: Uh-huh.

17 CHAIRMAN T. WHEELER: All right. With respect
18 to that, as I understand it, if we -- we lump that,
19 and if you would agree, if we lump those two
20 together, there are over 500 less the Tippecanoe
21 issue.

22 COMMISSION MEMBER S. RIORDAN: Or -- or unless
23 there are over 500 but he still thinks that they
24 are not all valid.

25 CHAIRMAN T. WHEELER: That's what I mean, less

1 the Tippecanoe issue. That's the first step.

2 COMMISSION MEMBER S. RIORDAN: Well, I don't
3 want to limit it to Tippecanoe, but there are less
4 than 500 ballots, let's just put it that way.

5 CHAIRMAN T. WHEELER: I -- I tried to -- I
6 tried to pin him down on whether he had something
7 other than two -- you know, maybe I missed that.
8 All right. Given that, I agree with Commissioner
9 Riordan. The first issue is -- we're going to take
10 the issues backwards because of -- as a purely
11 legal issue, does the second CAN-7 filing, which
12 how many signatures came with the second CAN-7 --
13 Mr. McClamroch?

14 MR. T. McCLAMROCH: Pardon me?

15 CHAIRMAN T. WHEELER: How many came with the
16 second CAN?

17 VICE CHAIR A. LONG: Thirteen.

18 MR. T. McCLAMROCH: Thirteen.

19 CHAIRMAN T. WHEELER: Thirteen votes with the
20 second CAN-7.

21 VICE CHAIR A. LONG: In the 4th District?

22 CHAIRMAN T. WHEELER: In the 4th District.

23 COMMISSION MEMBER S. RIORDAN: And where were
24 those from?

25 VICE CHAIR A. LONG: Morgan County.

1 **MR. T. McCLAMROCH:** Morgan County.

2 **CHAIRMAN T. WHEELER:** All right. So the
3 question -- the question -- the legal question
4 which I now want to address the counsel is -- I'm
5 sorry, I suppose there hasn't been a legal argument
6 from the two of you. Mr. McClamroch, you have the
7 opportunity address whether there should be...

8 **MR. T. McCLAMROCH:** Well, I did a few minutes
9 ago. I mean I can't state it any differently.

10 **CHAIRMAN T. WHEELER:** All right. And then
11 what I would ask the two Division counsel with
12 respect to that, we have -- we clearly have two
13 separate filings. There's no dispute that both
14 filings were in the -- within the time period to
15 make those filings; correct?

16 The challenge is, specifically, on the issue
17 of whether the second filing can supplement the
18 first filing or whether it has to redo the entire
19 first filing again; is that correct? Is that your
20 argument, Mr. Cook?

21 **MR. T. COOK:** Yes.

22 **CHAIRMAN T. WHEELER:** I'll start with Dale and
23 then I'll flip over to Leslie.

24 **MR. D. SIMMONS:** Mr. Chairman, and Members of
25 the Commission, this focuses on interpretation of

1 Indiana Code 3-8-3-2, and of course --

2 CHAIRMAN T. WHEELER: Give me -- which one,
3 Dale?

4 MR. D. SIMMONS: And that's on Page 169. Of
5 course, understanding that again, there's another
6 section in that chapter that indicates when
7 you -- when the filing deadline is and that they
8 are timely.

9 The section reads, and I think the word that
10 the commission might want to focus on, is
11 accompanied by certain language. I suppose one --
12 I would imagine or argue -- I certainly see that
13 there were accompanying -- and I think maybe it's
14 whether you read it simultaneously or more broadly
15 and simultaneously. When filed immediately, with
16 the other argument, the other now, and they are
17 accompanying the requests. It would depend on how
18 you interpret that particular section.

19 CHAIRMAN T. WHEELER: What's the section that
20 says the -- the deadline is the 22nd?

21 VICE CHAIR A. LONG: It's 4, Section 4.

22 MR. D. SIMMONS: Yeah.

23 VICE CHAIR A. LONG: And 5 -- 4 and 5.

24 CHAIRMAN T. WHEELER: So as I understand it,
25 No. 5 says that a request or petition filed under

1 this chapter is not valid unless received by in
2 this case the 27th.

3 MR. D. SIMMONS: And certainly, the Election
4 Division has in the past accepted and we have no
5 grounds to reject a filing. Now we have several
6 grounds to reject filings in State law for
7 untimeliness, for being on the wrong form, and a
8 (indiscernible) commission, to a form merely being
9 filed by a fax.

10 This -- there's simply no reason -- the
11 statute for the Election Division rejects that
12 filing. We have accepted those filings in the
13 past.

14 CHAIRMAN T. WHEELER: And in this case, the
15 Division did not reject these filings; correct?

16 MR. D. SIMMONS: They did not. They accepted
17 the filings.

18 CHAIRMAN T. WHEELER: Do you know if any other
19 campaigns filed supplemental filings?

20 MR. D. SIMMONS: That, I don't know.

21 MR. B. KING: I can speak to that perhaps,
22 Mr. Chairman.

23 CHAIRMAN T. WHEELER: Mr. King.

24 MR. B. KING: Mr. Chairman and Members of the
25 Commission, the law that governs both presidential

1 and primary petition candidates and candidates for
2 governor or U.S. Senator by major parties is silent
3 with regard to the method for delivery from the
4 county voter registration office after
5 certification.

6 Custom has certainly been that the candidate's
7 committee collects them, prepares them for filing,
8 and submits them, and that's done in the ordinary
9 course of the Election Division's business. That
10 being said, we did receive a number of letters from
11 individual county voter registration offices.

12 For example, there was one from Blackford
13 County that contained a McCain petition that was
14 submitted directly by the county voter registration
15 office. So we do receive other submissions in a
16 different way, but we have also received filings
17 from the candidates directly.

18 **CHAIRMAN T. WHEELER:** Leslie.

19 **MS. L. BARNES:** Thank you, Mr. Chairman. I
20 would agree with Dale that the statute the
21 commission's being asked to interpret is 3-8-3-2
22 and also with Mr. King, in that it has been the
23 Division's custom to accept petitions that are sent
24 directly from the county.

25 It seems that the question before the

1 Commission is whether -- whether or not they
2 interpret the definition accompanied by to be
3 simultaneously filed along with the request? Do
4 the petitions have to be filed at the time the
5 request is filed?

6 The -- there is no case law that interprets
7 3-8-2, although there is case law in Indiana that
8 does interpret the definition of accompanied by. I
9 don't know if the Commission wants us to go into
10 that. The -- I guess if we were to allow the
11 requests to be filed first and then petitions to
12 come in, a candidate would be able to file a
13 request for ballot placement without the necessary
14 number of signatures and then the signatures could
15 trickle in.

16 At what point then would the co-directors
17 issue a confirmation of filing? State statute
18 requires the co-directors to issue a CAN-5 or
19 something similar to a CAN-5 for the presidential
20 candidate, let the candidate know we have received
21 your request and petition, and that the
22 confirmation is in no way confirming that the
23 candidate's valid or eligible to be placed on the
24 ballot, but it is the Division's -- in complying
25 with the statute, the General Assembly requires the

1 division to let a candidate know when we have
2 received their either request for ballot placement
3 or their declaration of candidacy.

4 COMMISSION MEMBER S. RIORDAN: Mr. Chairman?

5 CHAIRMAN T. WHEELER: Go ahead.

6 COMMISSION MEMBER S. RIORDAN: My sense,
7 there's no dispute that all of these signatures
8 came in before the deadline which was due on
9 February 22nd. I am inclined to accept all of the
10 petitions that were submitted by that point, the
11 22nd of February at noon.

12 For purposes of resolving the other question
13 of whether there are the requisite number of valid
14 signatures in the 4th Congressional District which
15 I understand to be the dispute so I --

16 CHAIRMAN T. WHEELER: Was that a motion?

17 COMMISSION MEMBER S. RIORDAN: If that makes
18 sense? And then I was intending -- actually, I
19 would say --

20 CHAIRMAN T. WHEELER: Okay.

21 COMMISSION MEMBER S. RIORDAN: -- that's my
22 inclination, that's my thinking and so I would move
23 that we essentially reject Mr. Cook's first
24 argument, that the two filings by Senator McCain
25 should be analyzed separately, and rather we

1 analyze them together as though they were made as
2 one filing; for the purpose of resolving the
3 remaining question, of whether there are 500
4 ballots in the 4th Congressional District?

5 VICE CHAIR A. LONG: I agree with that.

6 CHAIRMAN T. WHEELER: The motion's been made
7 and seconded, any further discussion on that?

8 COMMISSION MEMBER D. DUMEZICH: I have one
9 question. You mentioned interpreting the words
10 accompanied by, is that -- is the precedent that
11 you're referring to in interpretation of statute
12 under the Indiana Election Code?

13 MS. L. BARNES: No. No, it's not.

14 COMMISSION MEMBER D. DUMEZICH: It is not,
15 okay. It's just a general...

16 MS. L. BARNES: Correct.

17 COMMISSION MEMBER D. DUMEZICH: Okay. That's
18 fine.

19 CHAIRMAN T. WHEELER: And let me -- since I've
20 been on this commission, we have made every effort,
21 I think, to read -- read our statutes somewhat
22 liberally, and frankly, I think the term that's
23 been used by the commissioners before, to let the
24 people decide.

25 To the extent we're going to err, we're going

1 to err -- at least personally -- to the extent I'm
2 going to err, I'm going to err on the side of
3 keeping somebody on the ballot. So I agree
4 completely with Miss Riordan, and I agree with the
5 motion to the extent it says basically we're going
6 to interpret our statutes -- we're not going to
7 adopt a hyper-technical reading of our statutes to
8 keep somebody off the ballot. I would rather have
9 the people of Indiana make those decisions rather
10 than hyper-technical reading of what the statute
11 requires speaking from our side.

12 COMMISSION MEMBER D. DUMEZICH: I second the
13 motion.

14 CHAIRMAN T. WHEELER: The motion's already
15 been made and seconded, but I appreciate your
16 backup -- all right, the motion's made and
17 seconded, any further discussion?

18 *(No response.)*

19 CHAIRMAN T. WHEELER: Hearing none, all in
20 favor of -- restate your motion, denying...

21 COMMISSION MEMBER S. RIORDAN: That we -- let
22 me put it this way, --

23 CHAIRMAN T. WHEELER: Aggregate.

24 COMMISSION MEMBER S. RIORDAN: -- I would move
25 that the Commission aggregate all the signatures

1 filed on the 22nd of February -- filed on or before
2 the 22nd of February by the Senator for the purpose
3 of determining whether they are valid, 500 validly
4 certified signatures in the 4th Congressional
5 District.

6 VICE CHAIR A. LONG: That's what I interpreted
7 the motion.

8 CHAIRMAN T. WHEELER: That's a second?

9 VICE CHAIR A. LONG: Did I second it, yes.

10 CHAIRMAN T. WHEELER: All in favor, signify by
11 saying aye?

12 THE COMMISSION: Aye.

13 CHAIRMAN T. WHEELER: Those opposed, same
14 sign?

15 *(No response.)*

16 CHAIRMAN T. WHEELER: That being said, we've
17 now limited the issue to looking at, as I
18 understand it, --

19 VICE CHAIR A. LONG: The count.

20 CHAIRMAN T. WHEELER: -- the count. And Tony,
21 would you characterize that as one of the issues?

22 VICE CHAIR A. LONG: I think the only issue is
23 determine there are 500 signatures in the 4th
24 Congressional District that are validly certified
25 signatures that are on file.

1 **COMMISSION MEMBER S. RIORDAN:** And to sort of
2 further try to narrow down the issue. My
3 understanding is, Mr. Cook, your argument is that
4 47 of those in Tippecanoe are not valid because
5 they were not certified by all members of the
6 bipartisan Board of Voter Registration?

7 **MR. T. COOK:** Not necessarily all of them
8 because -- I don't think I would make the argument
9 that all three of them have to, but my argument is
10 that because they failed to proceed in the -- what
11 I view as bipartisan spirit of the creation of that
12 body, that they are invalid.

13 **CHAIRMAN T. WHEELER:** I understood. So what
14 you're saying is...

15 **MR. T. COOK:** Because there was not -- because
16 they were both Republicans.

17 **CHAIRMAN T. WHEELER:** So you're saying
18 legally, it's okay, you just don't like it?

19 **MR. T. COOK:** No. I'm saying the spirit of
20 the -- the step -- the Supreme Court case that I
21 referred to dealing with the election division
22 makes clear that the legislative intent behind the
23 creation of that body was to have it be a
24 bipartisan entity.

25 And I believe that -- because the language

1 used in that is used in the creation of county
2 boards of registration and in fact is used in the
3 Tippecanoe County as far as splitting resources,
4 evenly staffing, budgetary, etc., etc., that the
5 intent behind the creation of that body was for it
6 to be a bipartisan one.

7 CHAIRMAN T. WHEELER: Let me ask you this
8 question: You don't dispute that there are two
9 Republican signatures on those 47?

10 MR. T. COOK: I do not.

11 CHAIRMAN T. WHEELER: All right.

12 VICE CHAIR A. LONG: And if they're both
13 members of the board?

14 CHAIRMAN T. WHEELER: And if they're both
15 members of the board?

16 MR. T. COOK: That is true.

17 CHAIRMAN T. WHEELER: All right. It's just
18 the Democrat didn't sign; correct?

19 MR. T. COOK: Was never made aware of these
20 petitions, was never allowed to evaluate them, and
21 did not sign them.

22 CHAIRMAN T. WHEELER: As I understand your
23 argument then, in counties where we have a
24 multi-member board, three-member board, including
25 like Tippecanoe, the minority member of the board

1 could freeze up the entire petition process by
2 simply refusing to sign, is your argument; right?

3 MR. T. COOK: I -- I think that that could
4 occur in any election board of one or more people.
5 I think that...

6 CHAIRMAN T. WHEELER: But that's the upside of
7 your argument? Your argument is that they
8 have -- even though they're a minority member, they
9 disagree, they can freeze the petition process, and
10 if it had been a Republican say in Lake County, he
11 could have blocked say the Obama or Clinton...

12 MR. T. COOK: I think that effective that's
13 been the case with...

14 VICE CHAIR A. LONG: Mr. Chairman, in defense
15 of Mr. Cook's position, --

16 CHAIRMAN T. WHEELER: Maybe I didn't
17 understand.

18 VICE CHAIR A. LONG: -- the clerk in any other
19 county, one person can freeze up the whole system
20 by refusing to certify it. So I mean that's not
21 unique to a three-member county because one person
22 in any county under that scenario -- in my county,
23 we have a clerk, she certifies it, and she could
24 say I'm not -- I don't like John McCain or whoever,
25 I'm going to certify any of them.

1 **MR. T. COOK:** It's true. And the legislature
2 made it clear that over a certain population
3 threshold, they wanted -- they wanted multi-member
4 bipartisan boards to deal with voter registration
5 issues. They made that clear. And that's why some
6 of the smaller counties, as you said, are allowed
7 to have a one-person clerk certify this.

8 But at any level of any of these boards, sure,
9 one person could -- whether it be the clerk,
10 whether it be a two-person board in which one of
11 the members refuses to, so certainly that
12 possibility exists in any board of registration.

13 **CHAIRMAN T. WHEELER:** Of course, the --

14 **COMMISSION MEMBER S. RIORDAN:** Mr. Chairman.

15 **CHAIRMAN T. WHEELER:** The difference
16 would -- give me one second, the difference with
17 the remedy for one clerk is that you have a
18 (indiscernible) with the circuit court to force
19 them to do their duty.

20 In this case, you would agree with me that the
21 statute says that there's a -- there are three
22 members, and that two of them went ahead and
23 signed -- a majority of them went ahead and signed;
24 is that correct?

25 **MR. T. COOK:** I would argue that two

1 Republican members signed it incorrectly.

2 CHAIRMAN T. WHEELER: I understand. But you
3 would agree that the two...

4 MR. T. COOK: Yes, this are two signatures.
5 Yes, it is the clerk, and yes, it is the Republican
6 co-director.

7 CHAIRMAN T. WHEELER: Okay. And if I can ask
8 one more question, and I want to -- I want to
9 address a cite that is not in our book, 1-1-4-1,
10 what does 1-1-4-1 provide? Have you ever looked...

11 MR. T. McCLAMROCH: I just -- I just cited it
12 a -- I just cited it a few minutes ago.

13 CHAIRMAN T. WHEELER: And it says as I -- and
14 I quote, words importing joint authority to three
15 (3) or more persons shall be construed as authority
16 to a majority of the persons. In that case, that
17 would be two of the three; correct?

18 VICE CHAIR A. LONG: Where did you get that?

19 CHAIRMAN T. WHEELER: I thought that's what
20 Toby read.

21 MR. T. McCLAMROCH: 1-1-4-1.

22 VICE CHAIR A. LONG: I was looking for it
23 but...

24 CHAIRMAN T. WHEELER: Somebody just handed it
25 to me.

1 **COMMISSION MEMBER S. RIORDAN:** Mr. Chairman?

2 **CHAIRMAN T. WHEELER:** Yes. I've got copies.

3 **COMMISSION MEMBER S. RIORDAN:** I see a legal
4 issue bubbling up that seems to be whether the
5 commission would view this statute in a
6 hyper-technical or very technical fashion, and that
7 would be to require bipartisan certification in
8 Tippecanoe County or not, so that's something that
9 we have to think about.

10 And I agree with the chairman that we should
11 err or on the side of access, and that's what I'm
12 thinking about right now. But these petitions have
13 ten signatures so if we're looking at 500
14 signatures, you know, we're looking at 50, 60 or 70
15 or maybe a hundred pieces of paper.

16 And I would say within the 4th Congressional
17 District, in the first submission and the second
18 submission, that's open them up.

19 **CHAIRMAN T. WHEELER:** Your suggestion is that
20 they open, that the Commission open them up and
21 count them?

22 **COMMISSION MEMBER S. RIORDAN:** The 4th, let's
23 open them up.

24 **CHAIRMAN T. WHEELER:** And count which?

25 **COMMISSION MEMBER S. RIORDAN:** The 4th

1 Congressional District to see if there are 500
2 signatures.

3 CHAIRMAN T. WHEELER: The entire 4th
4 Congressional District?

5 COMMISSION MEMBER S. RIORDAN: Well, Mr.
6 Wheeler, and I know that my personal experience
7 isn't particularly germane, but I can say that I'm
8 very very familiar with this process and I know
9 that it doesn't take that long to do it. Not
10 because I've reviewed these, of course, but
11 because...

12 CHAIRMAN T. WHEELER: And your contention is
13 that the Commission as a whole should do that?

14 COMMISSION MEMBER S. RIORDAN: Or you know, I
15 would be happy to do it on behalf of my political
16 party, with Dan -- we don't have to agree on
17 anything, but I just -- I'd like to see them?

18 CHAIRMAN T. WHEELER: There was an attempt at
19 the Division to do that; correct?

20 MR. D. SIMMONS: That's correct.

21 CHAIRMAN T. WHEELER: What happened?

22 MR. D. SIMMONS: Last Friday, we attempted to
23 meet at the, I believe the Chairman's request to
24 see if staff could get together and agree, and in
25 the sense that okay, how many do you see

1 here -- seven -- you see seven, okay, then we can
2 put that in a pile and we can agree on how to count
3 that.

4 And we were unable to agree to that process.
5 The Democratic members of the Election Division did
6 not -- for reasons I'm not fully and can explain,
7 I'm not fully understanding, would not do that.

8 MS. P. POTEITA: Mr. Chairman, excuse me,
9 please, we'll address that.

10 CHAIRMAN T. WHEELER: We can get there in just
11 a second.

12 COMMISSION MEMBER D. DUMEZICH: Well...

13 VICE CHAIR A. LONG: You'll get a chance to
14 say...

15 COMMISSION MEMBER D. DUMEZICH: I think -- I
16 think those are -- we've narrowed this down to a
17 specific issue by the parties -- the parties
18 agreeing to stipulation of certain facts -- I think
19 we are past that point at this time, because the
20 question --

21 COMMISSION MEMBER S. RIORDAN: Actually, I
22 disagree. I don't -- I don't think we've
23 stipulated to what's in those boxes, and I won't,
24 until I see what's there so...

25 CHAIRMAN T. WHEELER: All right. Hold on a

1 minute. Let me -- let me -- I thought where we
2 were was we were down to the legal issue of whether
3 the 47 votes in Tippecanoe County, if this goes up
4 or down; correct -- correct me if I'm wrong, Mr.
5 Cook and Mr. McClamroch, this goes up or down on
6 whether or not we count -- if we don't -- if we
7 choose not to count those 47 votes, then the
8 petition -- you would agree, Mr. McClamroch, that
9 the petitions are -- are under -- you would agree;
10 correct -- you don't want to agree?

11 **MR. T. McCLAMROCH:** I told you my count was
12 514 so I've already said 514.

13 **CHAIRMAN T. WHEELER:** 514 minus 47 brings you
14 under.

15 **COMMISSION MEMBER D. DUMEZICH:** But I think
16 that we should agree to tell rules by which
17 were -- which were counted which is whether or not
18 two Republican signatures would allow us to say
19 that those are certified.

20 So I would -- before we go in through the
21 exercise of counting it, I want to make sure that
22 we have an agreement from the board, that in fact
23 when we count these things, when we pull something
24 up, both the petitions have two of our signatures
25 on the back of it, that that is something that's

1 going to be counted or not, depending on how the
2 board votes.

3 COMMISSION MEMBER S. RIORDAN: Yeah. I mean I
4 propose that as a legal issue that we have to
5 resolve but I don't why we have to resolve that
6 before we can see what's inside those boxes.

7 COMMISSION MEMBER D. DUMEZICH: Because
8 the --

9 CHAIRMAN T. WHEELER: Let me ask...

10 COMMISSION MEMBER D. DUMEZICH: -- the
11 suspense is just killing us.

12 CHAIRMAN T. WHEELER: Let me ask legal --
13 legal counsel on both sides.

14 VICE CHAIR A. LONG: Just a misunderstand.

15 CHAIRMAN T. WHEELER: Oh, I'm sorry.

16 VICE CHAIR A. LONG: We owe our co-director
17 here.

18 CHAIRMAN T. WHEELER: Oh, I'm sorry. I
19 apologize.

20 VICE CHAIR A. LONG: She asked to have the
21 floor a while ago.

22 CHAIRMAN T. WHEELER: I apologize.

23 VICE CHAIR A. LONG: I would ask the Chair to
24 recognize her to address the issues she chose to
25 address.

1 **MS. P. POTESTA:** Mr. Chairman, thank you
2 Mr. Long for bringing that up. Just for the
3 record, so there are no speculations anywhere, I
4 made the decision myself as co-director, Democratic
5 Co-Director of the Division not to count the
6 ballots on March 7th, as we were asked to do by the
7 Chairman, because we could not agree on a method on
8 which to count them or record them. So for that
9 reason, I decided we would not participate.

10 **CHAIRMAN T. WHEELER:** And I thank you. In
11 fairness to Pam, given the conversation the
12 Commission has had up there, there is certainly
13 some disagreement about that. Let me ask one
14 question of Dale.

15 **COMMISSION MEMBER D. DUMEZICH:** One second.
16 And I firmly agree with the standard that you
17 applied, hence the reason we should move this to a
18 vote, for the very reason your co-director did not
19 count them last Friday.

20 **COMMISSION MEMBER S. RIORDAN:** Well, I don't
21 know that I necessarily said we need to count them.
22 I want to see them.

23 **CHAIRMAN T. WHEELER:** All right. Let me --
24 let me stop and ask one additional question.
25 Mr. Simmons, did you go ahead and count in the

1 presence of a Democrat but not with any agreement
2 of a Democrat; correct?

3 MR. D. SIMMONS: Correct.

4 CHAIRMAN T. WHEELER: And your number was?

5 MR. D. SIMMONS: At the direction of Mr. King,
6 I went ahead and counted only the 4th Congressional
7 District in the presence of Michelle Brzycki. I
8 subsequently cross-checked with the scan copies to
9 come up with the count of my own at Mr. King's
10 request.

11 CHAIRMAN T. WHEELER: And that number was?

12 MR. D. SIMMONS: 514.

13 CHAIRMAN T. WHEELER: And that includes the 47
14 Tippecanoes?

15 MR. D. SIMMONS: Yes, it would include those.

16 VICE CHAIR A. LONG: And then Miss Brzycki,
17 may I -- did you -- did you look at them?

18 MS. M. BRZYCKI: I did count petitions, not
19 the originals. I looked at both the photocopies
20 and I looked at the scans.

21 CHAIRMAN T. WHEELER: And your number was?

22 MS. M. BRZYCKI: I counted the photocopies
23 twice, the scans twice, and if you aggregate it
24 with the 13 in the second submission, as you've
25 decided, 511 certified signatures submitted to us.

1 CHAIRMAN T. WHEELER: All right.

2 VICE CHAIR A. LONG: Okay. Then that -- are
3 there issues -- so if we get this squarely from --

4 MS. M. BRZYCKI: Yes.

5 VICE CHAIR A. LONG: -- everybody, beyond the
6 47?

7 MS. M. BRZYCKI: The three in question that is
8 a difference between my number and Dale's number
9 and I believe, even though we didn't work with
10 either party, their numbers, I can explain because
11 I -- those petitions very well by now.

12 COMMISSION MEMBER S. RIORDAN: Copy of the
13 second. When you say 511 certified signatures --

14 MS. M. BRZYCKI: Submitted.

15 COMMISSION MEMBER S. RIORDAN: -- that were
16 not submitted, you are not saying that you believe
17 that there are 511 validly certified signatures?

18 MS. M. BRZYCKI: That's true, just submitted.

19 COMMISSION MEMBER S. RIORDAN: Okay. And you
20 never looked at the originals in those boxes?

21 MS. M. BRZYCKI: No, I haven't.

22 COMMISSION MEMBER S. RIORDAN: But Mr.
23 Simmons, you have looked at the originals?

24 MR. D. SIMMONS: I have, yes.

25 COMMISSION MEMBER S. RIORDAN: Are there any

1 photocopies in the originals?

2 MR. D. SIMMONS: Yes. I did find photocopies.

3 COMMISSION MEMBER S. RIORDAN: In what -- in
4 what county's submission?

5 MR. D. SIMMONS: Morgan.

6 COMMISSION MEMBER S. RIORDAN: In Morgan
7 counsel's submission?

8 MR. D. SIMMONS: Uh-huh.

9 COMMISSION MEMBER S. RIORDAN: How many
10 photocopies did you find?

11 MR. D. SIMMONS: I found five separate
12 petitions that were photocopied --

13 VICE CHAIR A. LONG: Found the signatures.

14 MR. D. SIMMONS: -- and recorded the first
15 name of each petition.

16 VICE CHAIR A. LONG: And how many names are on
17 the photocopy?

18 MR. D. SIMMONS: There were 30 signatures.

19 VICE CHAIR A. LONG: Total?

20 MR. D. SIMMONS: Total.

21 COMMISSION MEMBER S. RIORDAN: And were any of
22 those duplicates of each other?

23 MR. D. SIMMONS: I'm not sure what you mean,
24 Commissioner Riordan.

25 COMMISSION MEMBER S. RIORDAN: Well, if -- if

1 you -- if you assuming you discover a photocopy in
2 that, is that another identical copy of it; in
3 other words, any names of petitions submitted for
4 counting twice?

5 VICE CHAIR A. LONG: I think she said a
6 duplicated petition?

7 COMMISSION MEMBER S. RIORDAN: Yeah.

8 MR. D. SIMMONS: When I found a photocopy of
9 the original, I simply did not count again. I
10 already counted.

11 CHAIRMAN T. WHEELER: And Michelle, did you do
12 the same thing?

13 MS. M. BRZYCKI: Yes. What I did was I
14 organized them by county and then alphabetized them
15 by the last name on the first line, whether or not
16 it was counted or not, and then if it was the exact
17 same, I pulled those aside and did not count them.

18 CHAIRMAN T. WHEELER: So your 511 --

19 MS. M. BRZYCKI: My 511.

20 CHAIRMAN T. WHEELER: -- removes the Morgan
21 County duplicate?

22 MS. M. BRZYCKI: Yes.

23 CHAIRMAN T. WHEELER: I think at least there's
24 some awareness that there were duplicates out of
25 Morgan County?

1 MS. M. BRZYCKI: Yes.

2 CHAIRMAN T. WHEELER: You -- did you not count
3 those?

4 MS. M. BRZYCKI: I did not count them.
5 There's five pages all of originals that were
6 included in the submission, not five photocopies of
7 ones that were not...

8 CHAIRMAN T. WHEELER: And you did the same
9 thing, did you not count them?

10 MR. D. SIMMONS: Correct.

11 CHAIRMAN T. WHEELER: Now...

12 VICE CHAIR A. LONG: He's got five photocopied
13 pages that are for each individual; correct?

14 MR. D. SIMMONS: They're photocopies of
15 originals from the same county, Morgan County.

16 VICE CHAIR A. LONG: Where are the originals?

17 CHAIRMAN T. WHEELER: They're the ones here.

18 VICE CHAIR A. LONG: So they're -- so they're
19 just duplicates?

20 CHAIRMAN T. WHEELER: We've got duplicates.

21 VICE CHAIR A. LONG: All of the ones you count
22 in your 514 were original signatures?

23 MR. D. SIMMONS: Right.

24 COMMISSION MEMBER S. RIORDAN: And so
25 you're -- you're counting...

1 **COMMISSION MEMBER D. DUMEZICH:** And all -- all
2 the ones you counted in your 511 were original
3 signatures?

4 **MS. M. BRZYCKI:** Yes.

5 **COMMISSION MEMBER D. DUMEZICH:** Okay.

6 **COMMISSION MEMBER S. RIORDAN:** So you -- when
7 you say original signatures, do you mean signatures
8 in ink with the -- with the ink signature of the
9 certifying body on the ballot?

10 **MR. D. SIMMONS:** Certainly, the best I can
11 determine it. I mean...

12 **COMMISSION MEMBER S. RIORDAN:** Okay.

13 **CHAIRMAN T. WHEELER:** Let me ask, you
14 were -- you were going to make a distinction. Were
15 you just going to explain the difference between
16 the 511 and 514, plus three?

17 **MS. M. BRZYCKI:** Yes. I -- when you mean the
18 certified copies, I mean the number that was on the
19 back of the form, the numbers that the county
20 certified, so the number certified in the 4th. I
21 did not -- when you came -- when it came to an
22 issue that was an obvious clerical error, such as
23 they have reversed the columns or had done the
24 entire sheet upside down, and each case was
25 obviously what the intent of the person filled out.

1 **CHAIRMAN T. WHEELER:** They wrote -- I think in
2 one case there was a 6 and a 4 that were
3 transposed?

4 **MS. M. BRZYCKI:** True. I always went with
5 what was obvious of the intent of the number that
6 they wanted to put down, which always was of the
7 higher number for -- to go towards the John
8 McCain's petitions.

9 **CHAIRMAN T. WHEELER:** But bottom line, your
10 511 --

11 **MS. M. BRZYCKI:** Yes.

12 **CHAIRMAN T. WHEELER:** Your 514 -- Commissioner
13 Riordan asked you the question validly signed, are
14 you -- are you leaving it out, referring to
15 Tippecanoe?

16 **MS. M. BRZYCKI:** No, I'm not leaving any
17 numbers out.

18 **CHAIRMAN T. WHEELER:** Okay.

19 **VICE CHAIR A. LONG:** When he uses the word
20 "out," he's not meaning are you leaving anything
21 out.

22 **CHAIRMAN T. WHEELER:** I -- I apologize.

23 **VICE CHAIR A. LONG:** You have some questions,
24 as I understand, about the validity of some of the
25 511?

1 **MS. M. BRZYCKI:** I saw numerous ones in the
2 511 that I had questions on and made no decisions
3 on.

4 **CHAIRMAN T. WHEELER:** When you say numerous,
5 are you referring to Tippecanoe or just something
6 separate?

7 **MS. M. BRZYCKI:** Tippecanoe is one of my
8 numerous concerns.

9 **CHAIRMAN T. WHEELER:** All right.

10 **MS. M. BRZYCKI:** But it's not my place.

11 **VICE CHAIR A. LONG:** I'll make it your place.
12 What are the numerous ones?

13 **MS. M. BRZYCKI:** Well, Tippecanoe was one
14 issue. Another issue is ones that are not signed
15 at all. Another issue of whether a stamp
16 constitutes a clerk's signature of receipt -- I'm
17 not talking about -- I mean there is the issue of
18 whether or not a stamp, an ink stamp that -- like a
19 deputy would use or an employee would use and then
20 an issue on top of that is whether a raised seal of
21 a county counts as a clerk's signature.

22 **CHAIRMAN T. WHEELER:** Okay. Do you know -- so
23 that particular county, do you know if they did
24 that with say the Obama petitions and the Clinton
25 petitions as well, would that be something...

1 **MS. M. BRZYCKI:** I would -- I can -- I will
2 check. They did one with the raised signature,
3 they did not. The petitions that we checked for
4 the other presidential candidates in our possession
5 was the two Democrats signed. Also, Tippecanoe
6 County was signed by a Democratic and a Republican
7 for each one, so the Obama petitions and the
8 Clinton petitions.

9 I did not go through all the other petitions
10 to see if there's any that were just not signed.
11 Another problem would be -- and this -- this
12 suggest where the discrepancy of three counts
13 between Dale and my number is in Monroe County
14 there is three signatures on the front and on the
15 back they do not certify anything for the 4th
16 District.

17 **CHAIRMAN T. WHEELER:** So they missed three?

18 **VICE CHAIR A. LONG:** No.

19 **MS. M. BRZYCKI:** They didn't certify those
20 three.

21 **VICE CHAIR A. LONG:** They just didn't put any
22 number in the blank.

23 **CHAIRMAN T. WHEELER:** Did you -- did you count
24 it?

25 **MS. M. BRZYCKI:** Monroe County -- I did not.

1 Monroe County is one of the counties that is split
2 between numerous districts and they -- they
3 certified for one district. They did not go
4 through and certify for the other districts. I did
5 not count those.

6 MR. T. McCLAMROCH: That's the difference.

7 MS. M. BRZYCKI: I believe that may be the
8 three, in difference in number.

9 CHAIRMAN T. WHEELER: Is that the three
10 difference in numbers?

11 MR. T. McCLAMROCH: Yeah.

12 CHAIRMAN T. WHEELER: Okay.

13 COMMISSION MEMBER D. DUMEZICH: If we throw
14 out all the ones that you've just mentioned,
15 what -- how many is that?

16 MS. M. BRZYCKI: I don't have the exact
17 number, but I think that it can get -- if you throw
18 out all the little discrepancies, the clerical
19 errors, everything is very low. It's about --
20 between 430, 440. But I don't have an exact
21 number. My 4__ -- my 511 number counts clerical
22 errors in which the intent was just absolutely
23 obvious.

24 COMMISSION MEMBER S. RIORDAN: Mr. Chairman?

25 CHAIRMAN T. WHEELER: Yes, ma'am.

1 **COMMISSION MEMBER S. RIORDAN:** But you don't
2 dispute that there are 5 -- 540 -- 511 voters put
3 their names on those petitions to support the
4 presence of Senator McCain on the ballot in
5 Indiana?

6 **MS. M. BRZYCKI:** I would say that that number
7 would be even higher considering that a lot of
8 people, but...

9 **COMMISSION MEMBER S. RIORDAN:** The signatures
10 may not look invalid for the reasons that they
11 weren't --

12 **MS. M. BRZYCKI:** Exactly.

13 **COMMISSION MEMBER S. RIORDAN:** -- in that
14 congressional district?

15 **MS. M. BRZYCKI:** Also the three that were not
16 certified on the back of the Monroe County petition
17 could have been happen elsewhere and I wouldn't
18 feel comfortable saying that 511 is the number or
19 514 is the number, but I can -- I am very
20 comfortable in saying that 511 is the number
21 certified by the county.

22 **CHAIRMAN T. WHEELER:** So...

23 **COMMISSION MEMBER S. RIORDAN:** So 511 that
24 were -- that were certified and our dispute is
25 whether or not those certifications are valid?

1 MS. M. BRZYCKI: Exactly.

2 COMMISSION MEMBER S. RIORDAN: I think that
3 all of this discussion and the points that have
4 been made really points up -- the unfortunate
5 reality that Indiana is a state that puts up some
6 obstacles between the individual and the ballot,
7 puts obstacles between, obviously, the candidate
8 and the ballot, and in my view, the voter and the
9 ballot with our voter ID and otherwise.

10 But we've talked before about how we favor the
11 notion of access and I think that has to apply
12 regardless of party, that that has to be our
13 primary informing philosophy, and it is mine. I
14 know that the details imposed by our statutes
15 governing presidential ballot access are very very
16 strict.

17 I know that because it was my job for my
18 presidential candidate to actually gather over 500
19 signatures in the 4th Congressional District and I
20 know that it is a very difficult thing to do.

21 And Mr. McClamroch made the point that Senator
22 McCain should not be required to come back and
23 verify every single one of those signatures, and I
24 think that's right, but I also think that the law
25 in Indiana requires you to do that and I had to do

1 it for my candidate, and I like I said, it's a lot
2 of work.

3 But my view after hearing all of this and
4 participating in this lengthy discussion, which I
5 think is very important, I would be inclined to
6 total all of those signatures, if there is a mark
7 of some type from a certifying authority, whether
8 it is a member of a board of voter registration, a
9 raised seal or some other identifying marks, such
10 as a signature stamp, certifying that that voter is
11 registered in that district, that we should accept
12 that.

13 And if there are 511, if there are 514, if
14 there's 501, that's enough, and Senator McCain is
15 his party's nominee -- he's not my party's nominee,
16 but he's his party's nominee, and I don't think
17 that these technical problems should keep him off
18 the ballot in the State of Indiana because that's
19 what matters to the people of the State of Indiana.

20 **CHAIRMAN T. WHEELER:** Was that a motion?

21 **COMMISSION MEMBER S. RIORDAN:** Yes, it is.

22 **VICE CHAIR A. LONG:** I'll second that.

23 **CHAIRMAN T. WHEELER:** The motion's been made
24 and seconded, any further discussion? Let me
25 add...

1 **VICE CHAIR A. LONG:** Discussion, yeah,
2 that's -- go ahead.

3 **CHAIRMAN T. WHEELER:** I was going to add
4 speaking as someone who has collected petitions and
5 organizing them for a candidate that is no longer
6 in the race, let me speak to the -- and I hope
7 we're speaking to the legislature and for those of
8 you from the -- from the media here, I hope you
9 convey this to the legislature, I think -- and I
10 was responsible for multiple states.

11 We have an arcane method of putting these
12 individuals on the ballot. It is one that is as
13 you can see from what we've done today is fraught
14 with confusion, fraught with error, fraught with
15 the opportunity for problems like we've dealt with
16 today.

17 I agree with Commissioner Riordan that it is
18 not the candidate's responsibility to go through
19 and certify, it is the county clerk's
20 certification, and if a county clerk improperly
21 certifies, I don't know that it's fair to allow
22 particularly a candidate of the opposite political
23 party to be responsible for those improper
24 certifications.

25 As a consequence, I agree and I would

1 certainly add or courage the legislature to do away
2 with that particular ballot process, this petition
3 process, at least by congressional district because
4 I believe it's unwieldily, it's very difficult for
5 the candidates, and it's fraught with precisely the
6 problems we've seen here today.

7 VICE CHAIR A. LONG: Mr. Chairman, on echo, I
8 want to go one step further and tell this young man
9 here, Mr. Cook, what a classy job you did here
10 today. I mean that was a real piece of work. They
11 asked you if you were an attorney, you
12 conducted -- we didn't know the answer, and
13 that's -- for those of us that are lawyers, that
14 was -- should be taken as a compliment. Maybe
15 others won't think of it as a compliment.

16 MR. T. COOK: Thank you.

17 VICE CHAIR A. LONG: The fact is you've done a
18 real service for the people of the State of Indiana
19 because you've pointed out exactly how arcane our
20 system is. And you know, the legislators need to
21 address this -- I mean putting blocks between the
22 people getting to the ballot are -- to either be on
23 it or to voters. They're not serving our cause.

24 And you've done a nice job here and I'm very
25 proud of you -- of the presentation that you've

1 made. We would have expected that out of Mr.
2 McClamroch, he's a seasoned veteran, and he,
3 obviously, did a good job. I hope the message here
4 goes out to the legislature. We need -- we need to
5 stop making it so difficult for people who run for
6 office.

7 McCain, Senator McCain is his party's nominee
8 presumptively, and I agree he needs to be on the
9 ballot. And I believe if we're going to error,
10 it's going to be -- in my mind, unless the law is
11 so abundantly clear that there's a violation, if
12 it's ambiguous at all, that we error on the side of
13 letting people run from any people before them.

14 **CHAIRMAN T. WHEELER:** Thank you, Mr. Vice
15 Chair.

16 **COMMISSION MEMBER D. DUMEZICH:** If you do
17 decide to go to law school, I'll give you my card.
18 Send me your resume.

19 **CHAIRMAN T. WHEELER:** All right. Were that
20 being said, would you like to restate your motion?

21 **COMMISSION MEMBER S. RIORDAN:** No.

22 **MR. T. McCLAMROCH:** But is that a motion? Is
23 it a motion to deny the challenge?

24 **COMMISSION MEMBER S. RIORDAN:** Yes.

25 **CHAIRMAN T. WHEELER:** As I understood that, it

1 was a motion to deny the challenge based upon I
2 think the count from both --

3 COMMISSION MEMBER D. DUMEZICH: Both counties;
4 right?

5 CHAIRMAN T. WHEELER: Both -- we already voted
6 on the first count and the second count -- now
7 we're determining the first counts, and we voted to
8 aggregate them. As we understand, the aggregated
9 numbers I heard from Michelle was 511, from Dale it
10 was 514, either way that's over 500, and I took
11 that as a basis of Commissioner Riordan's motion?

12 COMMISSION MEMBER S. RIORDAN: I'll second
13 that.

14 CHAIRMAN T. WHEELER: It's been made and
15 second, all in favor, signify by saying aye?

16 THE COMMISSION: Aye.

17 CHAIRMAN T. WHEELER: Those opposed, same
18 sign?

19 *(No response.)*

20 CHAIRMAN T. WHEELER: Thank you very much.

21 VICE CHAIR A. LONG: Thank you.

22 CHAIRMAN T. WHEELER: Let's take a minute
23 recess, and then we have --

24 VICE CHAIR A. LONG: Michelle, thank you.

25 CHAIRMAN T. WHEELER: -- five minutes, then we

1 have Senator Waltz's residency challenge.

2 (A recess was taken.)

3 CHAIRMAN T. WHEELER: While -- Michelle, while
4 you're handing that out, I am going to call the
5 meet to go order, and I am going to ask Mr. King,
6 do you have a statement?

7 MR. B. KING: Yes. Mr. King -- rather, sorry,
8 Mr. Chairman and Commission Members, just for the
9 sake of clarity, that the effect of the motion just
10 adopted prior to recess was to deny the complaint
11 in both Causes, 08-171 and 08-176?

12 VICE CHAIR A. LONG: That's correct.

13 CHAIRMAN T. WHEELER: That is correct.

14 COMMISSION MEMBER D. DUMEZICH: Correct.

15 VICE CHAIR A. LONG: And that Senator McCain
16 will be on our ballot unless there's some other
17 impediment to that.

18 CHAIRMAN T. WHEELER: Don't say that after
19 Mr. McClamroch left. All right. I'm going to call
20 cause No. 8-170. It's a challenge to the candidacy
21 of Brent Waltz, candidate for Indiana State Senate,
22 District 36. I see Senator Waltz is here. Senator
23 Waltz, I'm going to ask that -- well, actually, I
24 can ask Mr. King to administer the oath since you
25 were not present for the oath.

1 **SENATOR B. WALTZ:** Very good.

2 **MR. B. KING:** Please stand.

3 **CHAIRMAN T. WHEELER:** And if there is anyone
4 else that is going to testify with respect to
5 Mr. Waltz's that was not here earlier and did not
6 take the oath, please stand as well?

7 *(The participants complied.)*

8 **MR. B. KING:** Please respond I do at the
9 conclusion of the oath. I do solemnly swear that
10 the testimony I will give the Commission in this
11 cause today will be the truth, the whole truth, and
12 nothing but the truth, so help me, God?

13 **SENATOR B. WALTZ:** I do.

14 **CHAIRMAN T. WHEELER:** Could you -- there are
15 several people at the table. Could the counsel
16 introduce themselves and whoever is sitting with
17 you?

18 **MR. B. SPEAR:** Yes. Mr. Chairman, my name is
19 Bob speaker. I'm counsel for Senator Waltz.

20 **VICE CHAIR A. LONG:** I'm sorry, I didn't...

21 **MR. B. SPEAR:** Bob Spear, that's S-P-E-A-R.

22 **CHAIRMAN T. WHEELER:** All right. And Senator
23 Waltz is with you. And then the Challenger?

24 **MR. D. VIGH:** Thank you, Mr. Chairman. My
25 name is Dylan Vigh. I'm with the law offices of

1 Dylan a. Vigh.

2 VICE CHAIR A. LONG: Could I get your name
3 again?

4 MR. D. VIGH: It's Dylan Vigh. V-I-G-H is the
5 last name, and D-Y-L-A-N is the first one.

6 VICE CHAIR A. LONG: D-Y...

7 MR. D. VIGH: -- L-A-N. And I'm with the law
8 offices of Dylan A. Vigh here in Indianapolis, and
9 seated next to my right is the Challenger, Michael
10 Beeles.

11 CHAIRMAN T. WHEELER: Let me do one procedural
12 issue. I have appearances from both of you.
13 Mr. Vigh you had previously filed, in addition to
14 your appearance, and I believe that's in the
15 materials that has been handed to the commission
16 members now, a request for an issuance after
17 subpoena?

18 MR. D. VIGH: That is correct.

19 CHAIRMAN T. WHEELER: And a variety of
20 documents relate to go Mr. Waltz, Senator Waltz and
21 his residence. The problem as I think we indicated
22 in a conference call with you is that the issuance
23 after subpoena would involve the full -- full
24 commission to meet and actually issue an order, the
25 issuance of such a subpoena.

1 I indicated to you that, as I understood it,
2 neither the Division nor I as Chairman of the
3 Commission had the ability to issue such a
4 subpoena, and therefore, we were unable to act on
5 it at that point in time.

6 With respect to your request for issuance of a
7 subpoena, I guess that's -- that's still
8 outstanding. How do you want to handle that given
9 the fact that we're having a hearing right now?

10 **MR. D. VIGH:** Well, having researched the
11 issue, Mr. Chairman, I guess I've come to the
12 unfortunate conclusion that my -- my client doesn't
13 have the ability, obviously, to issue the subpoena.
14 As you indicated, the Commission has to do so.

15 So what we would request is that the committee
16 go ahead and grant the request for the issuance of
17 a subpoena, understanding that it's sort after moot
18 consideration considering that we're here today to
19 discuss the issue and we have until tomorrow in
20 which to finalize it.

21 Some of the documents, obviously, are
22 pertinent, and sort of as a preliminary statement,
23 as a prelude to what we would present here today,
24 it's an unfortunate circumstance when it turns into
25 an adversarial process in order to procure this

1 information. And quite frankly, that's what it's
2 been.

3 It's been very difficult, as the committee
4 knows, and will know, my client actually has had a
5 protective order against him for attempting to
6 procure some if not all of this information by
7 whatever means possible, and those means generally
8 comport with his ability, his constitutional rights
9 to redress grievances.

10 And I want to bring that before the committee
11 and really delve into that somewhat, is that what
12 my client did, what Mr. Beeles did is he took an
13 opportunity, his constitutional right, pursuant to
14 the 5th Amendment --

15 **CHAIRMAN T. WHEELER:** Mr. Vigh, let me -- let
16 me back you up. I'm ready for opening statements
17 in a minute. I'm good with that. Let me deal with
18 the request for issuance of subpoena.

19 **MR. D. VIGH:** And we would ask for a special
20 consideration, a special meeting. If those
21 documents aren't produced by Senator Waltz today,
22 we ask the committee hold off until tomorrow,
23 convene a special meeting for us so that we have an
24 opportunity for Senator Waltz to produce those
25 documents.

1 **CHAIRMAN T. WHEELER:** I understand the
2 request. Let me -- I think as I addressed it in
3 our telephone conversation, as I understand it, due
4 to the requirements of the Indiana's Public Meeting
5 Statute, it would be impossible for the Commission
6 to notice and have a meeting, a second meeting, nor
7 can we, I believe, recess and have another meeting.

8 I believe it's an impractical impossibility.
9 I'll defer to either of any counsel or the
10 co-directors to issue that issue, but I don't
11 believe it's possible for us to, for example, hold
12 a portion of this hearing, recess it, having this
13 stuff done and then reconvene this hearing by
14 tomorrow. I believe that's impractical. That's a
15 legal impossibility, if I'm correct. Leslie or
16 Dale or...

17 **MS. L. BARNES:** I'm not aware of anything that
18 would prevent you from recessing, and under the
19 Open Door Law, the two days' notice that's required
20 can be waived under certain circumstances. I'm not
21 sure. Perhaps Mr. Simmons is more familiar with
22 these rules.

23 **MR. D. SIMMONS:** Within the Open Door Law, it
24 does allow a governing body to -- as long as they
25 announce the date and the time and the subject

1 matter of the agenda doesn't change, they can
2 recess and reconvene without the 48 hours.

3 CHAIRMAN T. WHEELER: Fair enough. All right.
4 We'll take that under advisement, the request for
5 the issuance of a subpoena. For example, as you
6 indicated, he may have brought all that information
7 anyway.

8 MR. D. VIGH: Thank you, Mr. Chairman.

9 CHAIRMAN T. WHEELER: And we'll be able to
10 address that. At this point in time, I think
11 that's the only preliminary issues with respect to
12 this particular challenge, and is it Vigh?

13 MR. D. VIGH: It's Vigh.

14 CHAIRMAN T. WHEELER: Vigh. I apologize.
15 Mr. Vigh, you and your client have the burden of
16 proof so you get to go first. I'd like brief
17 opening statements, like ten minutes or so, and
18 then I assume you have evidence to introduce as I
19 assume Senator Waltz, and his attorney, Mr. Spear?

20 MR. B. SPEAR: Yes.

21 CHAIRMAN T. WHEELER: Give me -- spend
22 about -- give me about ten minutes on a brief
23 opening statement.

24 MR. D. VIGH: Thank you, Mr. Chairman. On
25 behalf of my client, as I indicated earlier, what

1 we're here for is to redress a grievance.
2 Essentially, what my client's done is taken the
3 opportunity pursuant to his constitutional right to
4 redress the grievance and formally and
5 unequivocally believes that Senator Waltz does not
6 live or reside at the address indicated in his
7 filings that have been tendered I believe to each
8 committee member pursuant to notebooks that were
9 prepared in advance.

10 That particular common address is located at
11 307 Elmead Court, #2010, and that's the actually
12 unit itself. And just for brief description of --
13 the residence itself is a series of townhomes that
14 are connected but in this particular townhome that
15 Mr. Waltz resides in or has listed as his primary
16 address, there's actually four units.

17 You enter in through the front door and to
18 your immediate left or right are the bottom two
19 units which are respectively 1009, 1010 -- 1010,
20 and then there's two upper units, and Mr. Waltz
21 resides at 2010.

22 My client filed his challenge to Mr. Waltz's
23 residency, and for all intents and purposes, what I
24 would like to do is turn the chair over to him so
25 that he could for the sake of brevity briefly

1 explain the reasons why he decided to file that
2 challenge, and then I'll go into after opening
3 statements are concluded, a list of evidence that
4 we have.

5 I just might note to the commission, to
6 Mr. Chairman, himself, that it has been difficult
7 to procure certain information. Of course, we're
8 not privy, nor do we have the subpoena power to
9 gather information pertinent to the challenge;
10 specifically, residential leases that Mr. Waltz
11 might have, since he is not the owner of the
12 condominium unit and utility bills.

13 What I've done is I've attached as an exhibit
14 in the exhibit notebooks that I'll tender to each
15 commission member, including the Chairman, our
16 exhibits, but they are sparse, to say the least.
17 They number a total of five exhibits. We were
18 unable to procure any copy of Mr. Waltz's utility
19 bills after this case hit the media, due to the
20 fact of privacy concerns, and we fully appreciate
21 that.

22 But this is not Mr. Beeles' challenge. This
23 is really the public at large. When a challenge is
24 made by any member, any constituent, any district,
25 that the Senator should come forth, obviously, with

1 information pertaining to evidence showing that he
2 does unequivocally live in the residence in which
3 he delineates that he spends the night there.

4 The other fact I would take into
5 consideration, the Commission is -- by my research
6 and calculation, what we're dealing with, in
7 defining residency, is the residence of a person
8 since it is unequivocal that Mr. -- Senator Waltz
9 is unmarried that Indiana Statute 3-5-5-15 defines
10 the residence of a person who somebody unmarried
11 and who does not have immediate family is where the
12 person usually sleeps.

13 And that's an important consideration for the
14 Commission to take into account -- what it's going
15 to have to do is define that. Understanding,
16 having researched this particular statute, that
17 this statute in effect has been played several
18 times before commissions both presently and in the
19 past.

20 But because of Mr. Waltz's status as being an
21 unmarried individual with no immediate family, his
22 official residence is where he sleeps, and where he
23 usually sleeps, I would argue to the Commission is
24 probably more than 50 percent in a given year, and
25 that would seem to me is usually where you sleep.

1 It could be more than that. The evidence that we
2 hope to present to the commission will prove
3 positive that in fact he does not sleep at that
4 residence, that that residence is used solely for
5 storage at this time.

6 At this time I'll just turn it over to
7 Mr. Beeles as to why he went ahead and issued a
8 challenge himself claiming it.

9 MR. M. BEELES: Thank you. Basically, the
10 complaint, the challenge came from -- I guess up to
11 now, if you talk to several people, this is
12 something that actually started to develop back in
13 '04, before the November election with the
14 Democratic candidate.

15 So when I got involved, I went to several
16 different people that I really trust, and I really
17 have respect for in politics and -- which I was
18 involved in dealing with local politics several
19 years, they always mentioned, you know, thinking
20 about running for state senator in District 36, and
21 it always popped up.

22 Well, Brent Waltz doesn't live where he says
23 he lives. Everybody that you talk to, he doesn't
24 live there, you may want to look into it, so I
25 looked into it, and started basically with the

1 voter registration and went over to different areas
2 of public information so this is where we're at
3 right now.

4 I believe we have a very valid issue or I
5 would not be here. I'm still giving you the
6 total -- total of evidence, I'll let him take back
7 over.

8 CHAIRMAN T. WHEELER: Let me -- let me ask one
9 question.

10 MR. M. BEELES: Sure.

11 CHAIRMAN T. WHEELER: Your counsel referred to
12 this as not your challenge, but the people's
13 challenge. With respect -- are you candidate?

14 MR. M. BEELES: I am now a candidate, yes.

15 CHAIRMAN T. WHEELER: For what?

16 MR. M. BEELES: State senate seat versus...

17 CHAIRMAN T. WHEELER: So you're a candidate
18 for his seat?

19 MR. M. BEELES: Yes.

20 CHAIRMAN T. WHEELER: On the Republican or
21 Democratic side?

22 MR. M. BEELES: Republican side.

23 CHAIRMAN T. WHEELER: So if you knock him out
24 on this challenge, are there any other candidates?

25 MR. D. VIGH: No, there's not.

1 MR. M. BEELES: Considered a Republican, no.

2 CHAIRMAN T. WHEELER: All right. So if you
3 knock him out, you're the presumptive Republican
4 candidate; correct?

5 MR. M. BEELES: If that's the way it rules,
6 yes.

7 CHAIRMAN T. WHEELER: So from a -- you have a
8 real personal interest in knocking him out, which
9 is if he's off the ballot, you're on the ballot;
10 right.

11 MR. M. BEELES: Right.

12 CHAIRMAN T. WHEELER: Okay. Anything else,
13 Mr. Vigh?

14 MR. D. VIGH: Nothing else, other than just
15 the opportunity to hand the notebooks out to the
16 committee members.

17 CHAIRMAN T. WHEELER: We'll do that in just a
18 second.

19 MR. D. VIGH: Okay.

20 CHAIRMAN T. WHEELER: Let me hear Mr.
21 Spear's --

22 MR. D. VIGH: Thank you.

23 CHAIRMAN T. WHEELER: -- opening and then
24 we'll go into the evidence.

25 MR. B. SPEAR: Thank you, Mr. Chairman.

1 Again, my name is Bob Spear. I represent
2 Respondent, Senator Brent Waltz. The
3 qualifications for State Senator in Indiana are
4 found in Article 4, Section 7 of the Indiana
5 Constitution, which reads no person should be a
6 Senator representative at the time of his election
7 who is not a citizen of the United States nor
8 anyone who has not been for two years next
9 preceding his election an inhabitant of this state
10 and for one year next proceeding an election an
11 inhabitant of the district from which he may be
12 chosen. Senators shall be at least 25, and
13 representatives, at least 21 years of age.

14 This is refined but not changed by Indiana
15 Code 3-8-1-13 which says a candidate for the office
16 of senator in the general assembly must: 1) be a
17 United States citizen at the time of election; 2
18 have resided in the state for at least two (2)
19 years and in the senate district for at least one
20 year before the election; and 3) be at least
21 twenty-five (25) years old upon taking office as
22 provided in Article 4, Section 7 of the
23 Constitution of the State of Indiana.

24 The boundaries of Senate District 36 are found
25 in Indiana Code 2-1-11-36 which includes Precinct 4

1 in Johnson County. Now Senator Brent Waltz lives,
2 resides at and is domiciled at 307 Elmead Court,
3 #2010, Greenwood, Indiana, 46142 since October
4 2003, which is Senate District 36, and meets the
5 standards set by the Indiana Supreme Court in the
6 State Election Board versus Bayh, at 521 N.E.2d
7 1313, Indiana Supreme Court 1988, and this
8 residency challenge is frivolous. Thank you.

9 CHAIRMAN T. WHEELER: Mr. Vigh.

10 MR. D. VIGH: At this point I'd like to hand
11 these notebooks out to the committee members,
12 please.

13 CHAIRMAN T. WHEELER: And is this a
14 (indiscernible) copy of this complaint?

15 MR. D. VIGH: Yes.

16 MR. B. KING: Mr. Chairman, if I may just say,
17 Mr. Vigh's agreed also to provide a copy for the...

18 CHAIRMAN T. WHEELER: For the records of the
19 Division?

20 MR. B. KING: Yes.

21 MR. D. VIGH: I apologize for...

22 CHAIRMAN T. WHEELER: So we -- that just
23 means -- that just means we can write on ours.

24 MR. D. VIGH: Thank you. And for the sake of
25 brevity, as I indicated in the opening statement,

1 we just have five exhibits, Exhibit A through E,
2 and what I'll do is, again, for the sake of
3 brevity, is just to summarize.

4 The first exhibit is an affidavit of Chad
5 Woods. Chad Woods is a 21-year-old individual that
6 lives in a tenement where Senator Brent Waltz
7 resides. He lives and shares a common
8 ceiling/floor with Senator Waltz. He is, in
9 effect, in 10 -- 10307 Elmead Court. The affidavit
10 speaks for itself.

11 But through my conversations that I had with
12 Mr. Chad Woods, he had indicated that he had only
13 known the Senator to be there, approximately, 12
14 times, and that he as in Paragraph 3, in his
15 opinion, based on his personal knowledge and
16 familiarity with the tenant located at 307 Elmead,
17 that Senator Brent Waltz has not slept there within
18 the past year.

19 Of course, that's important, because in order
20 to qualify for the district seat, you have to have
21 to resided at the address within the senate
22 district for a period of at least one year. The
23 sum and substance of this affidavit essentially say
24 that is Senator Waltz does not sleep there. And of
25 course, going back to what we would be Exhibit D

1 that we have which is the real standard in defining
2 the residence of Senator Waltz, who is an unmarried
3 with no immediate family, is the place where he
4 usually sleeps.

5 Chad Woods who has not been convicted of a
6 felony, but did not want to appear here today, and
7 of course, I could not coerce him, (indiscernible)
8 being in power to do so, but he was willing to
9 execute and sign an affidavit. That's the sum and
10 substance of Exhibit A.

11 Exhibit B that we have is just generally our
12 request for the issuance of a subpoena. We
13 requested specifically that Senator Waltz appear
14 here today. He, obviously, has appeared of his own
15 volition and accord, and we also requested a series
16 of enumerated documents -- of importance would be
17 his residential leases, and of importance, would be
18 copies of utility bills.

19 We are at a loss and frustrated, of course,
20 due to the fact that we don't have the ability or
21 access or are privy to this information. However,
22 that being said, I would draw the committee's
23 attention to Exhibit C, which is in and of itself
24 is an unusual exhibit, because that is an ex parte
25 order attached that Senator Waltz sought from the

1 Johnson County Court and received against my
2 client, Mr. Beeles.

3 I enter it into evidence and ask the
4 Commission just take appraisal of the issue dealing
5 with the exhibits that were tendered ex parte to
6 the Honorable Judge Handy. Those exhibits are
7 comprised almost exclusively of newspaper paper
8 articles.

9 So the reason in putting in these newspaper
10 paper articles, quite frankly, was since it was
11 good enough for an ex parte commission, with all
12 due respect to an ex parte hearing, and then
13 Johnson Superior Court, that I hope that at least
14 the commission would give us due weight here on the
15 articles that Senator Waltz delineated as exhibits.

16 And specifically, Exhibit A, on Page 2,
17 Senator Waltz, through his own testimony and
18 through newspaper articles, indicates that the Duke
19 Energy utility records on average as place of
20 residence over the last month for 2007 is
21 approximately \$17 per month.

22 **CHAIRMAN T. WHEELER:** And you're reading from
23 the last sentence of the exhibit?

24 **MR. D. VIGH:** I'm reading, yes, actually the
25 last sentence on what would be Page 1 of Exhibit A

1 to our Exhibit C, and then the subsequent page
2 where it says that somebody from Duke Energy
3 indicated that \$17 a month utility bill is
4 comparable to operating a refrigerator.

5 **CHAIRMAN T. WHEELER:** And I take it the
6 purpose of this is you couldn't get the utility
7 bills because the subpoena wasn't out, but your
8 contention is because Senator Waltz introduced this
9 as part of the protective order, we ought to take
10 some notice of the fact that the utility bills
11 which you couldn't obtain say that he was basically
12 using enough electricity to run a refrigerator?

13 **MR. D. VIGH:** That is correct. And since he
14 specific -- excuse me, specifically, identified
15 this newspaper article as an exhibit in the ex
16 parte hearing, that the committee should give it at
17 least some weight here with respect to the
18 residency challenge.

19 **CHAIRMAN T. WHEELER:** And let me suggest
20 perhaps the best way to handle this, and I'm going
21 to refer to this as well for the other items in
22 your subpoena, Senator Waltz is here and available
23 to testify. He will be testifying under oath and I
24 think the appropriate method, rather than
25 introducing these newspaper exhibits, is he is

1 quoted in this article?

2 MR. D. VIGH: Yes, he is.

3 CHAIRMAN T. WHEELER: I think the appropriate
4 method to handle this from an evidentiary
5 standpoint is simply to ask him those questions,
6 and -- and he's under oath, and either you know, he
7 says I made that statement, or with all due respect
8 to the members of our (indiscernible) state, maybe
9 they got it wrong, but we'll find out directly from
10 his mouth under -- under penalty of perjury. So
11 we'll find out one way or the other. And I would
12 suggest that's the best way to introduce rather
13 than ask us to take notice of newspaper articles
14 which...

15 MR. D. VIGH: And in that regard, then we
16 would ask...

17 VICE CHAIR A. LONG: He can call him himself.

18 COMMISSION MEMBER D. DUMEZICH: That's my
19 understanding.

20 VICE CHAIR A. LONG: (Indiscernible).

21 MR. D. VIGH: I'll defer and let.

22 CHAIRMAN T. WHEELER: I mean we -- you know
23 we --

24 MR. D. VIGH: I'll let -- I'll let Mr.
25 Spear...

1 **CHAIRMAN T. WHEELER:** Well, you can -- you can
2 call Mr. Waltz and ask him.

3 **MR. D. VIGH:** I'll let Mr. Spear call him
4 first and then I'll cross-examine, if that's okay.

5 **CHAIRMAN T. WHEELER:** Let me -- let me -- with
6 all due respect, let me warn you of the -- you have
7 the burden of proof. If he chooses not to call
8 Senator Waltz and you do not, you could lose your
9 case out of the box.

10 I would suggest, having been on that side of
11 the aisle and done a lot of these, my suggestion is
12 that you call Senator Waltz --

13 **MR. D. VIGH:** I would call Senator Waltz then.

14 **CHAIRMAN T. WHEELER:** -- if you wish to make
15 it part of your case.

16 **MR. D. VIGH:** I will call Senator Waltz.

17

18 **DIRECT EXAMINATION**

19 **QUESTIONS BY MR. DYLAN A. VIGH:**

20 **Q** Senator, could you state your name for the
21 record, please.

22 **A** Yes. Darryl, D-A-R-R-Y-L, Brent, B-R-E-N-T,
23 Waltz, W-A-L-T-Z, Jr.

24 **Q** And where do you reside Senator Waltz?

25 **A** I reside in a condominium numbered 2010 at 307

1 Elmead Court in Greenwood, Indiana, 46142 is the
2 zip code.

3 Q And how long have you resided at that particular
4 address for?

5 A Since October of 2003.

6 Q And do you rent that?

7 A I do.

8 Q And would do you rent that from?

9 A From Pamela Ingalls, I-N-G-A-L-L-S; first name
10 Pamela, PAMELA.

11 Q And do you have any personal relationship with
12 Ms. Ingalls?

13 A No.

14 Q And have you brought here today any copies of
15 leases that you have with Ms. Ingalls on that
16 particular residence?

17 A Yes.

18 Q And have you brought any rent checks for that
19 particular residence here today?

20 A No.

21 Q And why have you not brought any rent checks or
22 cancelled rent checks?

23 A I suspect that because there'll be adequate
24 evidence that we'll be provided that will
25 demonstrate conclusively that I live where I

1 live.

2 Q And do you pay rent at that particular address
3 there?

4 A I do.

5 Q And what is the rent per month?

6 A \$525 a month.

7 Q And how is that paid to Ms. Ingalls every month?

8 A By personal check.

9 Q And when is that rent due?

10 A It's due the 1st of each month.

11 Q And how actually tender payment?

12 A Via the mail.

13 Q Via the mail?

14 A U.S. Postal Service First Class.

15 Q And in that particular address at 307 Elmead,
16 Apartment 2010, in the last year, how many
17 nights would you say you've slept there?

18 A Well, I've never counted.

19 Q Approximately, how many nights? Would it be
20 more than six months out of a given year?

21 A I have never counted.

22 Q Would it be more than three months?

23 A I have never counted.

24 Q Let's say --

25 A But I do -- but for the record, I do sleep

1 there, but I've never counted the exact precise
2 numbers of nights I've spent there.

3 Q Let's take the last month, how many nights have
4 you slept there in the last month?

5 A I've never counted.

6 Q You can't give an approximation? Is it more
7 than seven?

8 A You're asking me to speculate.

9 Q I'm not asking you to speculate. I'm just
10 asking you to give me an answer as to how many
11 nights --

12 A Yes, it's been -- it's more than seven, and more
13 than half.

14 Q More than half?

15 A (The witness nodded.)

16 Q And when you say more than half, what are you
17 referring to?

18 A I'm answering your question.

19 Q Half of what?

20 A You asked me -- if I understand you correctly,
21 the question was: Have you spent more than half
22 of the nights within the last month at my home?
23 And the answer is yes.

24 Q And what time do you usually arrive at home?

25 A I keep very erratic hours; particularly, this

1 time of year. Last night I arrived home about
2 2:00 o'clock in the morning, but actually it was
3 this morning that I arrived home.

4 Q And with respect to 307 Elmead, when was the
5 last time you entertained or had guests over at
6 that residence?

7 A Well, I had a friend of mine, Greg Hannon
8 (Phonetic), who assisted me with some
9 photographs that we will be presenting this
10 afternoon.

11 Q Okay. And when was he over at your particular
12 residence?

13 A A few days ago.

14 Q And do you receive mail at that address?

15 A I do not. I have a post office box in Greenwood
16 that I've had since 19__, either late 1995 or
17 early 1996.

18 Q And are you familiar with the article where it
19 was quoted that you pay approximately \$17 a
20 month in utility bills?

21 A I'm familiar with the article. I don't know if
22 necessarily that was the quote. I haven't read
23 that article in several weeks, but if memory
24 serves correctly, it says, and I do remember
25 saying this to the reporter, that I pay my bill,

1 whatever that is.

2 I can tell you that a few days after the story
3 came out, that I did receive a utility bill, it was
4 between 40 and \$50, which I then pay to Duke
5 Energy.

6 Q Okay. Did you bring that here with you today?

7 A I did not.

8 Q Okay. And why did you not bring that utility
9 here today -- surely, you thought it must be an
10 issue?

11 A I would not presume what you would determine to
12 be an issue.

13 Q Well, regardless of that, it appeared from a
14 previous article that there is an issue that
15 indicated that you grant approximately \$17 a
16 month in 2007 which was the equivalent of a
17 refrigerator, so it being equivalent of running
18 a refrigerator, I would presume that that means
19 that you do not run any electricity, and you're
20 indicating that your last utility was in the
21 amount of \$40?

22 A I said between 40 and \$50.

23 Q And do you have actually a telephone, a land
24 line hooked up to that residence?

25 A No. I use my cell phone for all my

1 communication.

2 Q Okay. And how long have you not had a land line
3 connected to that residence in that regard?

4 A I've never had a land line connected to that
5 residence.

6 Q You've never had a land line?

7 A No. I've had my cell phone since late 1995,
8 early 1996, and I use that for my primary
9 communication.

10 Q Do you have any reason to know why there was a
11 sticker attached to your mailbox which indicated
12 that your particular residency was vacant?

13 A I think so. And this is a little speculative,
14 but I believe it's the U.S. Postal Service, any
15 time that there's a mailbox that is not in use,
16 that they will annotate that.

17 It has nothing to do with the vacancy or lack
18 thereof of a residence. It has, I believe,
19 everything to do with the lack of use of a post
20 office box or a mailbox or a mail slot, for that
21 matter, and so that's what it refers to. And I
22 believe it's the U.S. Postal Service that does
23 that.

24 Q Okay. So you don't dispute that there was in
25 effect a sticker or some sort of adhesive that

1 was attached to the top of your -- your mailing
2 box that said 2010 was vacant; is that correct?

3 A I don't dispute that there was a piece of tape
4 that somebody, and again -- and the reason why I
5 say this is because a television reporter was
6 shooting some film and was interviewing me and
7 said oh, we were taking some footage of your
8 home and we notice that had there was a United
9 States Postal worker that came in and was
10 actually putting tape on that.

11 So that's why I'm presuming that that's the
12 case. How that originally got there, I wouldn't
13 speculate on, but that is what a newspaper, or a TV
14 reporter told me.

15 Q Okay. And are you familiar with the quotes that
16 were put into the media regarding your failed
17 attendance in that particular residence or unit;
18 specifically, The Woods, Paige Woods and Chad
19 Woods?

20 A I don't remember any quote specifically from
21 him. That doesn't mean that it doesn't exist.

22 Q Have you had any interaction with any other --
23 other residents in that unit?

24 A Yes, I have.

25 Q Okay. And would, specifically, have you had

1 interaction with?

2 A Velma Wilmer (Phonetic), who is a 90-year-old
3 lady, sometimes she'll leave the keys stuck in
4 her door in the entryway, and when I'm -- if
5 it's not too late, I'll knock on the door and
6 remind her that she should probably take the
7 keys out of that. That's happened a few times.

8 Q Okay. Is that the Velma Wilmer that said that
9 she didn't believe that you lived at that
10 particular address and that that address was in
11 fact vacant?

12 A I don't know if she said that or not.

13 Q Okay.

14 A She's never said that to me.

15 Q Well, according to the newspaper, she said and I
16 quote there's no one living there, and she said
17 she's lived in the building the last eight years
18 and she believed that you store items in the
19 condominium, but she did not recall seeing you
20 in at least a year. Do you recall seeing Ms.
21 Velma Wilmer within the last year?

22 A I don't remember the timing on that. I would
23 also draw your attention that there are some
24 other articles later on under the headline
25 backtracking from your client that says that

1 Ms. Wilmer does not routinely look out the
2 window and does not see people coming and going
3 and would not be qualified to make that
4 statement.

5 So apparently, she seems to have backtracked a
6 little bit herself on it. Keep in mind, she's is
7 90 years of age. And when I arrive home, normally
8 she -- it's probably past her bedtime most nights.
9 So I don't know if necessarily out of respect for
10 her if she might be the most qualified person to
11 make that -- that assessment.

12 But I do interact with her -- I have over the
13 years and am fairly fond of her. She's a very nice
14 lady. She's always been very nice to me.

15 Q Are you familiar with Paige Woods and Chad Woods
16 that live below you?

17 A I think I may have seen them a few -- on a few
18 occasions but I don't believe that I've ever
19 been introduced to them.

20 Q Okay. Do you have any reason or have you formed
21 any opinion as to why Chad Woods would by way of
22 affidavit indicate that he does not believe
23 you've slept there within the past year?

24 A I have no opinion on that. I don't know him,
25 and really have not discussed with him the

1 affidavit.

2 Q Are you familiar with his wife's quotation in
3 the newspaper that indicated she's never heard
4 footsteps actually on the common wall ceiling
5 that you two share and that she doesn't believe
6 that you live there?

7 A I do remember reading that article and I kind of
8 was amused when I read that. I thought I'd turn
9 up some Metallica at 2:00 o'clock in the morning
10 just to let her know that I'm there next time.
11 So I did read that article, yes.

12 Q And it's your testimony that in the last month
13 you've slept at that residence at least 15 days;
14 is that correct?

15 A Yes. And again, that's an approximation, but
16 I've never kept track of the number of days or
17 nights that I sleep there. My business takes me
18 out of state on occasion, and certainly, this
19 time of year is a -- a fairly busy time with the
20 Indiana General Assembly.

21 Sometimes I'll stay the night at the Columbia
22 Club. It's generally a little bit more -- a little
23 more convenient for me, sometimes if there's a
24 early morning meeting with that. So it is a busy
25 time.

1 Q Okay. And I can appreciate and respect that,
2 Senator.

3 A Thank you.

4 Q What utilities do you have at that particular
5 residence? You've testified that you don't have
6 a phone. I understand you have electricity.
7 What other utilities do you incur there?

8 A I have water which is folded into the lease
9 payment and also my utility bill.

10 Q Okay. Do you have a cable bill at all --

11 A No.

12 Q -- or satellite?

13 A No.

14 Q You actually have a TV in the residence?

15 A No, I don't.

16 Q Okay. Any reason for that?

17 A I'm formally not there and my schedule is such
18 that I don't watch a lot of TV. When I do, I'm
19 normally at my office, which does have a
20 television so -- I generally sleep when I'm
21 there.

22 Q And I think you also indicated in the newspaper
23 article that that residence on Elmead had all
24 the creature comforts. What did you mean when
25 you said that?

1 A Well, I think the statement speaks for itself.
2 I don't know what more I'd want to add or
3 subtract from that.

4 Q Well, you, obviously, don't have a television so
5 that would be one creature comfort that you
6 don't have?

7 A I don't consider that a creature comfort. When
8 you get home at 1:00 or 2:00 o'clock in the
9 morning, there's generally not a lot of good
10 programs on so...

11 Q Do you have internet hooked up there and/or a
12 computer?

13 A No, I don't have a computer there. I have three
14 other computers hooked up and I'll normally get
15 my email and communication on line at an office
16 which I have which is about 1.5 to 2 miles from
17 my residence.

18 Q Do you ever spend the night at your parents'
19 residence?

20 A I have on occasion, yes.

21 Q How many times in the last year would you say
22 you've spent there, more than ten?

23 A I've never kept track. During January, they
24 went on vacation to Florida for a good part of
25 the month and they asked me to house sit there.

1 And I certainly oblige them to some extent. I
2 don't know how many nights that was. I picked
3 up the mail for them on a -- generally a daily
4 basis but I've never kept track of how many
5 nights I spent there.

6 Q And after you're done doing your usual course of
7 business say on a given day when the legislature
8 is not in session, is the Elmead address where
9 you usually spend and sleep at night?

10 A It will vary on a day by day or a week by week
11 basis. I do some traveling, and when I'm out of
12 state and out of town, I certainly don't stay
13 there.

14 MR. D. VIGH: I have nothing further.

15 MR. B. SPEAR: If it please the Commission, I
16 can probably do this on cross-examination or I can
17 wait to call him myself, whichever...

18 CHAIRMAN T. WHEELER: I appreciate it, if
19 it'll expedite the...

20 MR. B. SPEAR: Which I would hope so. He
21 asked many of the questions I intended to ask.

22

23

24

25

1 CROSS-EXAMINATION

2 QUESTIONS BY MR. ROBERT SPEAR:

3 Q Just to clarify a couple of things. You are
4 currently serving as a Indiana State Senator;
5 correct?

6 A Yes, sir.

7 Q And you were elected in 2004 from District 36?

8 A I was.

9 Q Now you normally sign your signature as D. Brent
10 Waltz; is that correct?

11 A That's my normal signature.

12 Q And if someone were to ask who Darryl -- Darryl
13 Waltz is, they would be referring to your
14 father; is that right?

15 A My father goes by Darryl. I go by Brent, my
16 middle name.

17 Q Right. And, in fact, your name appears on the
18 ballot as Brent Waltz; is that correct?

19 A Yes.

20 Q Okay. Now what county is 307 Elwood (sic) Court
21 #2010, Greenwood, Indiana, 46142 located in?

22 A Johnson County.

23 Q And do you know what precinct you live in?

24 A Pleasant 4.

25 Q And you live in a condominium on the second

1 floor; is that correct?

2 A I do.

3 Q And you rent it?

4 A I do.

5 Q When did you move to 307 Elwood Court?

6 A It was in October 2003.

7 Q And do you consider the condominium to be your
8 primary residence?

9 A I do.

10 Q I'll show you what has been marked as Exhibit A
11 and ask you if you can identify it?

12 A Judging by the bad picture, it looks --

13 CHAIRMAN T. WHEELER: Let me interrupt for a
14 moment. Can you use 1? The Challenger has used A,
15 B, C so if you can...

16 MR. B. SPEAR: Oh, I'll be happy to. Sorry.
17 With due respect, I just want to give counsel -- a
18 copy to counsel.

19 A Bureau of Motor Vehicles, the lousy photograph
20 seems to indicate that it's my driver's license
21 so...

22 MR. B. SPEAR: If you'd pass that around,
23 Mr. Chairman.

24 CHAIRMAN T. WHEELER: Do you have multiple
25 copies or is that...

1 MR. B. SPEAR: Unfortunately, I did not.

2 CHAIRMAN T. WHEELER: We'll use -- that'll be
3 the record copy.

4 VICE CHAIR A. LONG: We'll just look at it.

5 CHAIRMAN T. WHEELER: Rather than pass it
6 through.

7 VICE CHAIR A. LONG: If we have -- I have
8 written on mine, do you want me to use my copy of
9 this as a record copy of the (indiscernible).

10 CHAIRMAN T. WHEELER: We'll just use that as a
11 record copy.

12 VICE CHAIR A. LONG: I just won't write on it.
13 I'm going to keep it here until we get through the
14 hearing.

15 CHAIRMAN T. WHEELER: I appreciate that.

16 VICE CHAIR A. LONG: That'll save somebody
17 from...

18 CHAIRMAN T. WHEELER: Just -- are you going to
19 follow up on this exhibit or not?

20 MR. D. VIGH: Yes. I was going to move it to
21 admission because he just identified it and then
22 had him say -- it speaks for itself, but obviously,
23 it has the address on it.

24 CHAIRMAN T. WHEELER: I just look at the issue
25 date. The issue date was September 6th, 2006;

1 correct?

2 MR. D. VIGH: Right.

3 MR. B. SPEAR: I'll move the admission of
4 Exhibit 1.

5 CHAIRMAN T. WHEELER: Exhibit 1 is admitted.

6 VICE CHAIR A. LONG: (Indiscernible).

7 CHAIRMAN T. WHEELER: We're pretty informal.

8 VICE CHAIR A. LONG: We do not...

9 CHAIRMAN T. WHEELER: Apparently...

10 MR. B. SPEAR: Okay. Then I won't bother
11 moving to admit them after this.

12 VICE CHAIR A. LONG: We'll wad them up and
13 throw them back at you.

14 MR. B. SPEAR: All right.

15 CHAIRMAN T. WHEELER: You'll know if the Vice
16 Chair...

17 MR. B. SPEAR: All right.

18 Q I'll show you what's been marked as Exhibit 2
19 and ask you to identify that?

20 A Yes. This is my rental lease agreement between
21 myself and Pamela Ingalls.

22 Q Before you pass it over, I've got one question
23 to ask you about it?

24 A Yes, sir.

25 Q If you look at the top left, it says one-year

1 rental lease agreement?

2 A Uh-huh.

3 Q It's got two sets of initials there, is one of
4 those yours?

5 A DBW, yes, sir.

6 Q And then it says it's for 10-1-03 to 5-31-03,
7 which would be backwards, is that a
8 typographical error?

9 A Yes, it is.

10 Q Should that be 5/31/04?

11 A Yes, sir.

12 Q And the date of signature is 10/1/03?

13 A Yes, it is.

14 Q Pass that up to the commission, please?

15 CHAIRMAN T. WHEELER: Bob, let me -- if I
16 can -- I just want to ask a question.

17 MR. B. SPEAR: Sure.

18 CHAIRMAN T. WHEELER: I think it will be
19 expeditious if I (indiscernible) as your exhibits.
20 Senator Waltz, this is a copy of your driver's
21 license, and it shows as an address 307 Elmead --
22 is it E-L-M-E-A-D or A-L-M-E-A-D?

23 SENATOR D. WALTZ: E-L-M-E-A-D.

24 CHAIRMAN T. WHEELER: Thank you. Apparently,
25 the good commissioner from Northern Indiana

1 neglected to turn his cell phone off when I told
2 everybody.

3 COMMISSION MEMBER D. DUMEZICH: I am
4 correcting the deficiency as we speak.

5 CHAIRMAN T. WHEELER: I appreciate that. Your
6 prior -- this is an issue date of 9/6/06, prior
7 driver's license and address?

8 SENATOR D. WALTZ: Probably not. I would have
9 been 21, I believe, when my driver's license was
10 renewed -- I think that's right, and I would have
11 been a student at Wabash College, and my residence
12 would have been my mother and father's at the time.

13 CHAIRMAN T. WHEELER: Do you have more leases
14 coming?

15 MR. B. SPEAR: No, but I got a follow-up
16 question.

17 CHAIRMAN T. WHEELER: All right.

18 Q I take it that you and your landlord both signed
19 this lease?

20 A Yes.

21 Q And at the expiration of this lease, did you
22 continue on a month-to-month basis --

23 A We did.

24 Q -- at this location? So you continuously lived
25 there since October 1st, 2003, or whenever in

1 October you moved in?

2 **A** Yes, sir.

3 **CHAIRMAN T. WHEELER:** Let me -- let me follow
4 up and just ask a quick -- a quick question just so
5 I'm clear. So in October of '03, is when you moved
6 into this -- this address; correct?

7 **SENATOR D. WALTZ:** Yes.

8 **CHAIRMAN T. WHEELER:** And your driver's
9 license was renewed in '06, so either -- I don't
10 know if it's six years or -- but your prior
11 driver's license would have had to have been -- you
12 were still -- strike that. You're correct. Never
13 mind. I had the dates wrong. I'm sorry.

14 **MR. B. SPEAR:** I think you got his age wrong
15 but it's --

16 **CHAIRMAN T. WHEELER:** I was trying to figure
17 out.

18 **MR. B. SPEAR:** His driver's license would have
19 been either five or six years earlier which would
20 have not had that address.

21 **CHAIRMAN T. WHEELER:** Right. It would have
22 been prior to that address?

23 **SENATOR D. WALTZ:** Yes, sir.

24 **CHAIRMAN T. WHEELER:** I wanted to make sure.

25 **Q** All right. I'll show you what has been marked

1 as Exhibit 3, and ask if you can identify that?

2 A Yes, sir.

3 Q What is it?

4 A That is a voter registration card from Johnson
5 County.

6 Q Whose name's on it?

7 A That would be my name, Darryl Brent Waltz, Jr.

8 Q And what date was that signed?

9 A That was signed on the 6th of October, 2003.

10 Q Would you pass that up to the Commission,
11 please?

12 A (The witness complied.)

13 CHAIRMAN T. WHEELER: I'm unclear on a couple
14 of steps on it. I'm hitting them as the exhibits
15 are crossing me.

16 MR. B. SPEAR: Sure.

17 CHAIRMAN T. WHEELER: With respect to the
18 lease, and you may have asked this, and I was still
19 back on the driver's license, but with respect to
20 the lease, that has a hold-over or rollover
21 provision, and you're still operating under the
22 same lease?

23 SENATOR D. WALTZ: Yes.

24 CHAIRMAN T. WHEELER: So I assume it's a year
25 to year kind of thing?

1 **SENATOR D. WALTZ:** It's actually a month to
2 month basis, but for all intents and purposes...

3 **CHAIRMAN T. WHEELER:** But you've been paying
4 on month-to-month?

5 **SENATOR D. WALTZ:** Yes. Yes, sir.

6 **CHAIRMAN T. WHEELER:** So there's no -- there's
7 no additional formal lease. You've been staying on
8 a month-to-month basis pursuant to this particular
9 lease?

10 **SENATOR D. WALTZ:** Yes, sir.

11 **Q** I show you what has been marked as Exhibit 4,
12 and ask if you'd identify that?

13 **A** Yes, sir. It is a license to carry a handgun in
14 the State of Indiana.

15 **Q** And is that your license?

16 **A** It is.

17 **Q** And is there a typo on that, too, if you look at
18 the address?

19 **A** I see -- yes, it says 207 Elmead Court. It
20 should read 307.

21 **Q** If you'd pass that up to the commission?

22 **A** (The witness complied.)

23 **CHAIRMAN T. WHEELER:** Bob, I'm going to
24 continue to go backwards because --

25 **MR. B. SPEAR:** Sure. That's fine.

1 **CHAIRMAN T. WHEELER:** On your voter
2 registration which was the one you've given us, the
3 October 6th, 2003, and that's your current voter
4 registration, the 124 North Smart Street listed as
5 your prior address, what -- what address is that?

6 **SENATOR D. WALTZ:** That was my prior residence
7 before that. It was my grandmother's residence,
8 actually. She was suffering from Alzheimer's and I
9 was leaving my mother and father's home around that
10 time. And I was gone a great deal of the time, but
11 I was there quite a bit, too, to help care for her
12 and be with her so...

13 **CHAIRMAN T. WHEELER:** So that was at -- at
14 your grandmother's address; correct?

15 **SENATOR D. WALTZ:** Yes.

16 **CHAIRMAN T. WHEELER:** And I apologize,
17 Senator, but I'm doing this in kind of a delayed
18 fashion.

19 **SENATOR D. WALTZ:** Well, I -- it's fine.
20 Well, I apologize, again, to the Commission for not
21 having multiple copies.

22 **Q** Senator, I'm going to show you what has been
23 marked as Plaintiff's Exhibit 5 and ask if you
24 can identify that?

25 **A** Yes. This is my 2006 Indiana State tax return.

1 Q And addressing your attention to -- now you've
2 redacted this because you've taken out of the
3 numbers out of it; correct?

4 A Yes, I have.

5 Q In fact, I can't even tell from the first page
6 whose return it is, but whose signature is on
7 the second page?

8 A That would be mine.

9 Q And did you claim a renter's deduction?

10 A I did, of \$2,500.

11 Q What location?

12 A 307 Elmead Court in Greenwood, Indiana, 46142
13 with the name of the landlord being Pamela
14 Ingalls.

15 Q Pass that up to the Commission, please?

16 A (The witness complied.)

17 MR. B. SPEAR: And I apologize to the
18 Commission, but my photocopies of the 2005 were
19 illegible, but I have 2004 here.

20 Q I'll show you what has been marked as Exhibit 6
21 and ask if you can identify that?

22 A This is my 2004 Indiana State tax return.

23 Q Does that have the same signature on it?

24 A Yes, sir.

25 Q Same renter's deduction?

1 A Yes, sir, and the same address as well.

2 CHAIRMAN T. WHEELER: Senator Waltz, let me go
3 back. Is the -- there's a phone number listed on
4 here. I take it that's your cell phone number?

5 SENATOR D. WALTZ: Yes, sir. If it's (317)
6 435-0195...

7 CHAIRMAN T. WHEELER: 0195?

8 SENATOR D. WALTZ: Yes, sir.

9 Q At this point, Senator, I'm going to ask you to
10 briefly describe your condominium for the
11 purposes of asking the commission?

12 A Okay. Second floor, you go up the stairs, walk
13 inside, there's a kitchen, which being a
14 horrible cook, I never use. I'm generally on a
15 good first name basis with most of the fast food
16 restaurants in Greenwood, it seems.

17 But as you walk in, you're facing the kitchen.
18 there's an entryway. You turn to the right,
19 there's a living room, sofa, reclining chair, and
20 you go -- I guess the direction would be in a
21 southerly direction or left as you're facing that.

22 The bedroom is on the right. And then to the
23 left, I have a number of different areas and things
24 that I keep. And then bathroom is between the --
25 the other room and the living room.

1 Q Okay. I'm going to mark (sic) you what has
2 marked as Exhibit 7, which is multiple parts?

3 A Okay.

4 Q If you start with the first picture, you tell us
5 what that is?

6 A Yes. This is a photograph taken actually in the
7 entryway of my condominium facing the living
8 room and a sofa and my reclining chair are
9 visible.

10 Q Did you move those in when you moved in in 2003?

11 A I did.

12 Q So you've got the same furniture?

13 A Yes.

14 Q Do you have a kitchen table?

15 A I don't.

16 Q You don't cook, do you?

17 A Not a cook.

18 Q Pass that up?

19 A (The witness complied.)

20 CHAIRMAN T. WHEELER: Just for clarification
21 purposes, these are the pictures you referred to
22 previously as being taken within the last couple
23 of...

24 SENATOR D. WALTZ: Yes. Yes. These are
25 current photographs.

1 **CHAIRMAN T. WHEELER:** As I understood your
2 testimony, this represents the way it's been over
3 time?

4 **SENATOR D. WALTZ:** Some furniture is moved
5 here and there, but for all intents and purposes,
6 all the items that were moved in are -- are there,
7 yes.

8 **Q** What's the next picture?

9 **A** The picture is a photograph taken in my bedroom,
10 my closet, and part of my bed and dresser are
11 visible.

12 **Q** Another view of your living room?

13 **A** Yes.

14 **Q** What's that?

15 **A** A view taken in the entryway. If you were to
16 back up about 5 feet, you'd be in my bathroom,
17 but you can also see part of the bed as well.

18 **Q** What is it, which room?

19 **A** It's actually a hallway.

20 **Q** And what does it -- does it show at the end of
21 that hallway?

22 **A** At the end of the hallway is my bedroom.

23 **Q** And the bedroom?

24 **A** Yes, sir.

25 **CHAIRMAN T. WHEELER:** Bob, hold on just one

1 second.

2 MR. B. SPEAR: Sure.

3 CHAIRMAN T. WHEELER: We're marking these as
4 Group Exhibit 7, --

5 MR. B. SPEAR: Yes.

6 CHAIRMAN T. WHEELER: -- is that what you're
7 doing, --

8 MR. B. SPEAR: Yes.

9 CHAIRMAN T. WHEELER: -- rather than
10 individual exhibits?

11 MR. B. SPEAR: Yes.

12 CHAIRMAN T. WHEELER: Okay. So the
13 photographs will all be No. 7.

14 Q And finally?

15 A Yes, same location showing part of my bedroom.

16 CHAIRMAN T. WHEELER: Bob, just real quick.
17 The picture of the bedroom also includes -- I
18 assume that's intentionally to depict the
19 clothes --

20 SENATOR D. WALTZ: Yes.

21 CHAIRMAN T. WHEELER: -- in there as well?

22 SENATOR D. WALTZ: Yes.

23 Q You will stipulate, however, that those clothes
24 weren't necessarily hanging there in 2003?

25 A Some have been replaced in the last five years.

1 Some have not, by the way, which is a little
2 scary in and of itself.

3 CHAIRMAN T. WHEELER: I'm not going to comment
4 on the...

5 SENATOR D. WALTZ: No fashion.

6 Q I'll show you Exhibit 8, and ask you if you can
7 identify that --

8 A Yes.

9 Q -- briefly?

10 A This is an affidavit from my landlord Pamela
11 Ingalls that swears under oath signed and
12 notarized that her address, that she own as
13 condominium located at 307 Elmead Court, #2010,
14 and that she has continually leased the
15 aforementioned condominium to me since October
16 of 2003.

17 Q If you'd pass that up, please?

18 A (The witness complied.)

19 Q I show you what's been marked as Exhibit 9 and
20 ask if you can identify that?

21 A I can. It's an affidavit from Keith Thomas
22 who -- who stipulates, notarized and under pain
23 and penalty of perjury, that he is my cousin,
24 that -- and I will read this, that I am -- I
25 reside at 6980 South 125 West, Trafalgar,