

1           **CHAIRMAN T. WHEELER:** Given how this  
2 particular situation is operating. With respect  
3 to -- Ms. Wyly, did you indicate that -- there are  
4 witnesses here that...

5           **MS. B. WYLY:** There are people that I may call  
6 as witnesses that I don't believe were sworn in  
7 when there was the original swearing.

8           **CHAIRMAN T. WHEELER:** All right. Not unless  
9 they're swearing each other. We'll have Mr. King  
10 administer the oath.

11           **MS. B. WYLY:** It would be Mr. James Wyly and  
12 Mr. Thomas Blondell.

13           **MR. B. KING:** If those gentlemen could please  
14 stand?

15           *(The participants complied.)*

16           **MR. B. KING:** Please raise your hand and  
17 respond I do at the conclusion of the oath? I do  
18 solemnly swear that the testimony I will give in  
19 this cause before the Commission today will be the  
20 truth, the whole truth, and nothing but the truth,  
21 so help me, God?

22           **THE PARTICIPANTS:** I do.

23           **MR. B. KING:** Thank you.

24           **CHAIRMAN T. WHEELER:** Mr. Garner, you have the  
25 burden of proof.

1           **MR. D. GARNER:** Thank you. Mr. Chairman, what  
2 we have here is a challenge to the declaration of  
3 candidacy, the CAN-2 filed by Barbara Wyly on  
4 February 22nd -- February 21st for the Dearborn  
5 Superior Court Judge position.

6           She filed two declarations of candidacy in  
7 this matter. The first one was filed on  
8 February 21st. In that declaration she certified  
9 that she was affiliated with the Democratic Party  
10 based upon voting in the primary for the Democratic  
11 Party at the last time, she voted in the election.

12           That certification -- that declaration of  
13 candidacy was certified by the commission that same  
14 day. That declaration of candidacy was false. I  
15 filed the candidate filing challenge and attached  
16 to that -- I filed that on February 28th, and  
17 attached to that I got a certified copy from the  
18 clerk of the Dearborn Circuit Court which contained  
19 Ms. Wyly's voting record.

20           As you can see, attached as Exhibit A, she  
21 voted as a Republican in the 2004 primary election.  
22 She then -- she also filed, however, an amended  
23 declaration of candidacy, and that was filed on  
24 February 22nd.

25           **CHAIRMAN T. WHEELER:** Give me just a second.

1 When you say exhibit A, that's Exhibit A to --

2 MR. D. GARNER: To my CAN-1.

3 CHAIRMAN T. WHEELER: -- to your candidate  
4 challenge because you also have exhibits attached  
5 to (indiscernible); correct?

6 MR. D. GARNER: I just have a letter from the  
7 judicial nominated commission attached to my  
8 memorandum that I filed today. The filing of a  
9 false declaration for candidacy in a judicial race  
10 should cause that declaration to be denied.

11 Minimally, compliance with the law is filing a  
12 truthful candidate statement. This is not  
13 truthful.

14 CHAIRMAN T. WHEELER: And the basis for not  
15 being truthful is?

16 MR. D. GARNER: She says that she voted as a  
17 Democrat in the primary, in the last primary that  
18 she voted in, and the voting record attached to  
19 it -- a voting record attached to my challenge, a  
20 certified copy of the circuit court records shows  
21 that she didn't vote as a Democrat. She voted as a  
22 Republican.

23 CHAIRMAN T. WHEELER: And then she filed --  
24 instead filed an amended where she switched it?  
25 She -- on the original had x'ed the county chair

1 and then marked it out, apparently -- I assume  
2 those are her initials, B-A-W, and then switched it  
3 to the county chairman and provided a statement to  
4 the county chairman dated February 21st?

5 MR. D. GARNER: Right. And that's the second  
6 issue which is the filing of what she has titled an  
7 amended declaration of candidacy. However, Title 3  
8 does not permit -- there's nothing in Title 3 that  
9 permits the filing of an amended declaration of  
10 candidacy in this circumstance.

11 CHAIRMAN T. WHEELER: (Indiscernible)?

12 MR. D. GARNER: Well, yes, if you read the  
13 title in total, and of course your legal counsel  
14 can interpret it for you, but as I read it, there  
15 is a provision that allows for the amendment of a  
16 declaration of candidacy in 3-8 -- 3-8-2-12.5 if  
17 you are a write-in candidate.

18 CHAIRMAN T. WHEELER: Give me the cite again?

19 MR. D. GARNER: 3-8-2-12.5.

20 CHAIRMAN T. WHEELER: Because that only  
21 applies to write-in candidates.

22 MR. D. GARNER: That applies to write-in  
23 candidates.

24 CHAIRMAN T. WHEELER: Let me ask you this  
25 question: If -- if she is permitted to file an

1 amended declaration, does that resolve the issue?

2 MR. D. GARNER: If she's permitted to file an  
3 amended declaration, it resolves the issue except  
4 for the letter attached -- purported letter  
5 attached by the county chairman is not certified.  
6 There's no swearing under oath. There's no  
7 notarization of that particular letter. It's a  
8 letter.

9 I think the statute contemplates certification  
10 of the county chairman, not a letter from the  
11 county chairman. But other than that, yes, if  
12 she's permit to do file an amended declaration and  
13 the court accepts the letter as a certified  
14 statement of the county chairman, then that  
15 resolves the issue.

16 CHAIRMAN T. WHEELER: I appreciate being  
17 referred to as a court. Fortunately, we're not  
18 bound by this. Let me ask our legal counsel, a  
19 judge has to make these determinations, and either  
20 Leslie or Dale or either of the co-directors,  
21 is -- are they better to file an amended  
22 declaration?

23 MR. D. SIMMONS: Mr. Chairman, Members of the  
24 Commission, the sections I'm aware of, and I  
25 haven't been able to locate, we have it come up all

1 the time with respect to name changes -- people  
2 wanting to amend their declaration and change their  
3 name and is permissible -- matter of fact, it  
4 describes the procedure and code to do that prior  
5 to the deadline, and it is simply filing another  
6 declaration to amend the name.

7 Other than that particular section, unless you  
8 can remember another, I can't recall any other  
9 sections that do that, although, it's commonly  
10 done, especially, if it's before the deadline.

11 **MR. B. KING:** Mr. Chairman, if I could add  
12 quickly what Dale said. It's been our practice  
13 with this primary candidate filing season, in  
14 particular. We have at least one candidate who  
15 filed and indicated a precinct in Marion County  
16 that has subsequently been changed and so that  
17 candidate to become a state representative filed  
18 another declaration of candidacy, and as far as I  
19 know, only had that change, that correction on it,  
20 and we did process it.

21 **CHAIRMAN T. WHEELER:** And I would note the  
22 attempted -- both documents are actually dated  
23 February 21st of 2008. Now as I understand it, you  
24 also have a secondary or other concern relating to  
25 some filings that are required to be made before

1 the Indiana Commission on judicial qualifications?

2 MR. D. GARNER: Well, if I can just go back to  
3 finish up --

4 CHAIRMAN T. WHEELER: Oh, I'm sorry. I  
5 apologize.

6 MR. D. GARNER: -- the statute, how the  
7 statute applies here, how we think the statute or I  
8 think the statute applies? The amendment provision  
9 that allows for amendment of a declaration of  
10 candidacy is the one that I mentioned in the event  
11 after write-in candidate.

12 The legislature permitted and specifically  
13 outlined the procedure for filing an amendment in  
14 that particular circumstance but they didn't  
15 provide for amendment in this particular  
16 circumstance.

17 CHAIRMAN T. WHEELER: I will tell you from --  
18 I think there's probably unanimity on the  
19 commission that -- where somebody is trying to  
20 file -- to correct an error, particularly, on the  
21 same day it was filed, there is probably a tendency  
22 to permit that and not elevate -- and I think  
23 you've heard that all day today, only form over  
24 substance.

25 MR. D. GARNER: I understand. And the only

1 other issue I would mention is there is a procedure  
2 contemplated in the statute for dealing with this,  
3 which is you can withdraw your petition under  
4 3-8-20 -- 3-8-2-20 -- if you withdraw your petition  
5 and then refile, I think then you comply with the  
6 statute, but I understand what you're telling me.

7 With regard to the judicial candidacy, the  
8 only thing that was attached there was the CANs,  
9 that judicial conduct require a statement to be  
10 filed, Canon 5(4) within one week of announcing the  
11 candidacy and that also was not filed by Ms. Wyly,  
12 and that was -- that's included in my memorandum  
13 but not the primary basis of the challenge.

14 **CHAIRMAN T. WHEELER:** I mean that's your --  
15 you have a letter from an Amber Holland?

16 **MR. D. GARNER:** Right. The primary basis of  
17 the challenge is not filing the declaration  
18 properly. And just to be clear, how this started,  
19 my initial challenge was based upon the information  
20 I received, which was the first information that I  
21 received, which was the false declaration, and  
22 that's on this candidate filing challenge. I did  
23 not receive the second challenge until in fact Ms.  
24 Wyly faxed it to me I think Friday of last week.

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



1           MR. D. GARNER: Thank you.

2           CHAIRMAN T. WHEELER: Ms. Wyly.

3           MS. B. WYLY: Okay. Let me explain what's  
4 going on here. When I filed this, first of all, I  
5 have been a life-long Democrat -- I have been since  
6 I was a college student at Purdue University, and  
7 when I -- except for the period of time that I was  
8 in the military and could not be involved in any  
9 particular political party.

10           When I moved to Indiana, I had some friends  
11 that were involved in local politics here and I did  
12 vote in a Republican Primary to vote for them  
13 because the Democratic Party in Dearborn County is  
14 very weak.

15           And in 2004 -- I had the documents here that  
16 were researched by our local librarian -- there was  
17 no Democratic Primary candidate that I could vote  
18 for in the precinct in which I live. There was no  
19 party.

20           There were not Democrat -- there was no  
21 Democratic primary, period, where I lived in Logan  
22 Precinct 1 because there was no primary there. If  
23 I wanted to vote for a county commission candidate,  
24 I had to vote in the Republican Primary because  
25 there were no Democrats running.

1           The same was true in 2000. If I wanted to  
2 have a say who my county commissioner was, I had to  
3 vote Republican, if I wanted to have a say in  
4 Dearborn County. But as far as whether or not I'm  
5 a Democrat or Republican, I have a Democratic Party  
6 card.

7           And I had sent an amendment -- I had sent an  
8 email to the election commission asking if that  
9 would be sufficient, didn't get a response back,  
10 needed to reply -- needed to get up there, and  
11 there was a snowstorm that day.

12           I came up here, called to see, because I  
13 couldn't remember whether or not I had -- which  
14 party I had voted for in the primary. It was a  
15 long time ago. It was closed.

16           So I had originally said that -- I attached a  
17 statement because I thought the card would be  
18 sufficient -- the party card was not sufficient.  
19 So I changed it because I thought heck, I voted for  
20 Gore -- Gore's my cousin so I thought surely I  
21 voted for Gore in the last primary.

22           And apparently, I hadn't. When I checked the  
23 next day, when they finally opened again, I found  
24 out that I hadn't, but I did get the letter from  
25 Rick Richardson, and the letter was filed with an

1 amended report the next day.

2 CHAIRMAN T. WHEELER: What is your response to  
3 his argument that the statute uses the word"  
4 certifies?"

5 MS. B. WYLY: It does not say that it has to  
6 be notarized. He did certify and I have a copy of  
7 it and I also have it on letterhead. It was also  
8 file stamped that he stated -- he did certify and  
9 affirmed that I'm a member of the Dearborn County  
10 Democrat Party and that I have the permission of  
11 the Dearborn County Democrat Party to run for the  
12 Superior Court 1 Judge of Dearborn County. It's  
13 signed Richard L. Richardson.

14 VICE CHAIR A. LONG: Do we have...

15 MS. B. WYLY: Yes, you have a copy.

16 CHAIRMAN T. WHEELER: Yeah, we have a copy it.

17 MS. B. WYLY: You have the copy of it and I  
18 have an original that is also file stamped dated  
19 February 22nd at 11:00 a.m., and I have the  
20 individual with me who hand delivered that that  
21 day.

22 VICE CHAIR A. LONG: Well, we -- we're  
23 satisfied that it was filed at 11:22 a.m. on  
24 February 22nd.

25 MS. B. WYLY: There is nothing that I see in

1 the statute that says that it has to be notarized.  
2 That I believe is a form over substance situation.  
3 It is simply a matter of trying to kick me out of  
4 the -- this race because Mr. Garner is a law  
5 partner of the individuals running against me and  
6 on --

7 CHAIRMAN T. WHEELER: In the primary or the  
8 general?

9 MS. B. WYLY: In the primary election.

10 CHAIRMAN T. WHEELER: As a Democrat?

11 MS. B. WYLY: As a Democrat.

12 CHAIRMAN T. WHEELER: Where did all these  
13 Democrats come from?

14 MS. B. WYLY: That's what I'd like to know  
15 because I've been active in the Democratic Party in  
16 Dearborn County for a long time. This is the first  
17 I've ever seen Mr. Blondell.

18 CHAIRMAN T. WHEELER: Speaking -- speaking as  
19 a Republican, it strikes me that there are so few  
20 of you that you ought not to be fighting with each  
21 other.

22 MS. B. WYLY: That surprised me, too.

23 CHAIRMAN T. WHEELER: I made that comment  
24 late, too.

25 MS. B. WYLY: That surprised me, too, because

1 this was -- this was a huge surprise to all of us.  
2 We've been -- I've been very active in the  
3 Democratic Party in Dearborn County. We had no  
4 idea Mr. Blondell was out there.

5 CHAIRMAN T. WHEELER: Let me ask this  
6 question. He does say I certify and affirm that  
7 she's a member of the Democratic Party; is that  
8 sufficient?

9 MR. D. GARNER: I don't think that's  
10 sufficient.

11 CHAIRMAN T. WHEELER: Why not.

12 MR. D. GARNER: Because it doesn't contain any  
13 indication that he's -- that it is who it says it  
14 is. It's not sworn under.

15 CHAIRMAN T. WHEELER: Richard L. Richardson,  
16 Chairman of the Dearborn County Democratic Party.

17 MR. D. GARNER: Certification typically  
18 involves some sort of indication, a stamp.

19 CHAIRMAN T. WHEELER: Well, it doesn't say  
20 notarization or affirmation. It just says -- and  
21 the reason I say that is if you were here for the  
22 prior one, this is a form that the Division uses,  
23 that we give out to all the counties. It doesn't  
24 an affirmation. It doesn't say I swear. It  
25 assembly says I certify. That's the form that the

1 Division itself hands out.

2 MR. D. GARNER: Well, I think --

3 CHAIRMAN T. WHEELER: I think that is the  
4 Division interpreting its -- its own regulations as  
5 simply refining the word "certify."

6 MR. D. GARNER: I understand. I take it that  
7 both you and the Division then disagree with me and  
8 I -- I can appreciate that.

9 CHAIRMAN T. WHEELER: I'm telling you the form  
10 that the Division does give out only says  
11 certification and that's the one that we just spent  
12 an hour and a half fighting over a couple of  
13 minutes ago -- perhaps it wasn't that long. It  
14 just seemed that long.

15 COMMISSION MEMBER D. DUMEZICH: It just seemed  
16 that long.

17 CHAIRMAN T. WHEELER: All right. On the  
18 certification issue, the thing that troubles me is  
19 that something that was sworn to that you swore to  
20 said I voted as a Republican or I voted as a  
21 Democrat when you didn't.

22 MS. B. WYLY: But I actually believed that I  
23 did because I did vote in the general election as a  
24 Democrat. I distinctly remember voting for Al Gore  
25 and in 2\_\_\_ -- I did vote for Al Gore. I could not

1 remember who I voted for in the primary.

2 I had to actually -- we actually tried to  
3 call at -- it was -- there was a snowstorm on  
4 February 21st, and I actually tried to call and I  
5 called the -- and Brad King was with me, and we  
6 actually tried to call Dearborn County to see how I  
7 voted, and I could not...

8 **CHAIRMAN T. WHEELER:** When -- when was this?

9 **MS. B. WYLY:** This was February 21st. We  
10 called at 4:20 in the afternoon. Dearborn County  
11 Clerk's Office had closed down and so I signed off  
12 on that because I was not sure I'd be able to get  
13 back up again. I felt very uncomfortable with  
14 that.

15 I called the next -- I called -- it took me  
16 four hours to make a two-hour trip back to Dearborn  
17 County that night because --

18 **CHAIRMAN T. WHEELER:** And this is on the 21st?

19 **MS. B. WYLY:** On the 21st. The weather was  
20 that bad.

21 **VICE CHAIR A. LONG:** My town in Jasper was  
22 pretty bad that night.

23 **MS. B. WYLY:** It was nasty and I was --

24 **VICE CHAIR A. LONG:** She was in Indianapolis  
25 on the 21st then drive home.

1           **MS. B. WYLY:** It was -- it was a terrible  
2 night. It was a terrible night. And I really --  
3 to be truthful with you, I would have withdrawn my  
4 candidacy because I thought this just is not worth  
5 life and limb for. And I really did not -- and I  
6 had a hearing, I had a court hearing the next  
7 day --

8           **CHAIRMAN T. WHEELER:** On the 22nd?

9           **MS. B. WYLY:** On the 22 at 11:00 o'clock, and  
10 I knew there was no way I was going to make that  
11 trip back up here again if I had to. So I thought  
12 well, I probably did vote that way and I'll  
13 double-check the next morning. I got --

14           **CHAIRMAN T. WHEELER:** The next morning, being  
15 the 22nd?

16           **MS. B. WYLY:** The 22nd. I double-checked the  
17 next morning. I got -- I called. As soon as I got  
18 back, I talked to -- first of all, I could not get  
19 a hold of Rick Richardson. Rick Richardson is -- I  
20 had been calling Rick Richardson since and emailing  
21 him since September of last year.

22           I talked to the Democratic Party and made  
23 my --

24           **CHAIRMAN T. WHEELER:** This was on the 22nd?

25           **MS. B. WYLY:** Yeah, on the 21st I called,



1           could not get ahold.

2           **CHAIRMAN T. WHEELER:** The 21st or the 22nd?

3           **MS. B. WYLY:** On the 21st, I called.

4           **CHAIRMAN T. WHEELER:** The 21st, you made a  
5 bunch of calls, you couldn't figure it out so you  
6 just went ahead and signed the form and filed it?

7           **MS. B. WYLY:** I went ahead and signed it as my  
8 best guess that that's what I had done.

9           **CHAIRMAN T. WHEELER:** And then on the 22nd,  
10 you went and checked?

11           **MS. B. WYLY:** I called Rick as soon as I got  
12 back and ask him to do the letter for me because it  
13 was my understanding I could file an amended one  
14 the next day before noon if I was mistaken.

15           So I went back and I called Rick could not get  
16 ahold of Rick. I finally tracked Rick down about  
17 10:30 at night that night. Rick did the letter for  
18 me. I met him in a snowstorm the next morning at  
19 8:00 o'clock in the morning.

20           My husband hand carried this form back up here  
21 in another snowstorm and got it here at 11:00  
22 o'clock to make sure that we had this correct  
23 because I didn't want to make it -- to do it ill  
24 legally or wrongfully either.

25           I just really was not sure what I had done

1 because I didn't remember who I voted for. But I  
2 wanted to make sure I had it right. I knew who I  
3 voted for in the general election. I could not  
4 remember what -- how I voted in the primary.

5 CHAIRMAN T. WHEELER: So basically you  
6 filed -- you filed -- the concern I have is that  
7 your second filing was dated the same date as your  
8 first filing. They're both dated February 21st.

9 MS. B. WYLY: That's the day I filled out the  
10 paperwork.

11 CHAIRMAN T. WHEELER: That was the 21st.

12 VICE CHAIR A. LONG: They're both signed on...

13 CHAIRMAN T. WHEELER: It's signed the 21st.  
14 That's what I was trying to figure out, is I got  
15 two --

16 MS. B. WYLY: I went -- I went back home -- I  
17 went back home and pulled the form off the internet  
18 again, signed it the 21st because I was troubled by  
19 what I had done as far as whether I had voted.

20 CHAIRMAN T. WHEELER: Why did -- why did you  
21 check the county chairman and then uncheck it on  
22 your first one?

23 MS. B. WYLY: Why did I check it and then  
24 uncheck...

25 CHAIRMAN T. WHEELER: The county chairman box,

1 why did you check that the first time?

2 MS. B. WYLY: Can I take a look?

3 CHAIRMAN T. WHEELER: On your first petition,  
4 you have -- it's x'ed out with -- I assume those  
5 are your initials next to it.

6 MS. B. WYLY: I checked that one because I  
7 thought that my Democratic Party card would suffice  
8 as certification because I had A card saying I'm an  
9 active member of the Democratic Party, and they had  
10 told me --

11 VICE CHAIR A. LONG: It was signed by the  
12 chairman?

13 MS. B. WYLY: It has a signature on it but he  
14 was not at the party the day that -- he was not at  
15 the meeting the day that the party -- the card was  
16 handed out, so I'm not sure who exactly signed  
17 that.

18 CHAIRMAN T. WHEELER: All right. Anything  
19 else from the Commission or are we ready to take --  
20 take a vote?

21 COMMISSION MEMBER S. RIORDAN: I think we're  
22 ready to take a vote.

23 MR. D. GARNER: Can I just clarify the time  
24 line just -- just real briefly?

25 CHAIRMAN T. WHEELER: All right. Make it a

1 quick one, yeah.

2 MR. D. GARNER: You've -- I think this is  
3 correct -- correct me if I'm wrong, you came up  
4 here on the 21st. You filed this declaration which  
5 turned out to be untrue. You went back and you  
6 called the county chairman that night before you  
7 found out whether it was untrue?

8 MS. B. WYLY: Because I wanted to make  
9 sure -- I wanted to get the amendment done if it  
10 was not true because I really could not remember.

11 MR. D. GARNER: You didn't know -- you didn't  
12 know that it was untrue when you filed it?

13 MS. B. WYLY: I did not know it was untrue  
14 when I filed it. I did not know it was untrue.

15 MR. D. GARNER: But you asked the county  
16 chairman to prepare a letter for you before you...

17 MS. B. WYLY: In case -- in case it was not  
18 true.

19 MR. D. GARNER: You had a pretty good idea it  
20 wasn't true?

21 MS. B. WYLY: It was a possibility that it  
22 might not be. I could not remember.

23 CHAIRMAN T. WHEELER: I think that's,  
24 obviously, clear because you collected two  
25 different boxes.

1           **MS. B. WYLY:** Yeah. I could not remember. I  
2 couldn't remember. I knew that I -- I knew who I  
3 voted for in the general election. I could not  
4 remember what I had done in the primary.

5           **MR. D. GARNER:** Judge, I'll, or Chairman, all  
6 I'll say is you can't file, knowingly file a false  
7 declaration and not have some consequence. You --  
8 as a judicial candidate, you shouldn't be guessing.

9           **CHAIRMAN T. WHEELER:** I think -- I think her  
10 testimony was she didn't know it was wrong, that  
11 she thought what it was, and then she went back and  
12 fixed it that same evening, which my standpoint --  
13 again, you know, I prefer not to elevate form over  
14 substance and I prefer to allow the voters to have  
15 their will and take a swing at these things.

16           You guys -- if it's as bad as it sounds like,  
17 you guys would be voting for a -- for a judge, and  
18 that's about it -- (indiscernible) as Republicans.  
19 But in any event, I'm certainly inclined -- I guess  
20 I'm going beyond accepting a motion, but I'm  
21 definitely inclined to keep somebody on the ballot  
22 and let the voters decide and I think that's  
23 certainly the trend that this commission has  
24 attempted to do, particularly, when somebody's  
25 tried to fix it that same day. That's -- that's

1 what...

2 VICE CHAIR A. LONG: I don't disagree with  
3 that.

4 CHAIRMAN T. WHEELER: I'll accept a motion.

5 VICE CHAIR A. LONG: Does somebody want to  
6 make it. I don't want to make all the motions.

7 CHAIRMAN T. WHEELER: Why don't Dan make a  
8 motion?

9 COMMISSION MEMBER D. DUMEZICH: Nope.

10 CHAIRMAN T. WHEELER: No.

11 COMMISSION MEMBER D. DUMEZICH: No.

12 CHAIRMAN T. WHEELER: You mean you're making a  
13 motion to...

14 COMMISSION MEMBER D. DUMEZICH: No. I'm make  
15 a motion to dismiss the complaint against Barbara  
16 A. Wyly.

17 VICE CHAIR A. LONG: I'll second it.

18 CHAIRMAN T. WHEELER: The motion's made and  
19 seconded, any other discussion?

20 *(No response.)*

21 CHAIRMAN T. WHEELER: Hearing none, all in  
22 favor, signify by saying aye?

23 THE COMMISSION: Aye.

24 CHAIRMAN T. WHEELER: Those opposed, same  
25 sign?

1 (No response.)

2 CHAIRMAN T. WHEELER: Thank you very much.

3 MR. D. GARNER: Thanks for your time.

4 CHAIRMAN T. WHEELER: Good luck, guys.

5 MS. B. WYLY: Thank you.

6 CHAIRMAN T. WHEELER: All right. We are on...

7 COMMISSION MEMBER S. RIORDAN: Yes.

8 CHAIRMAN T. WHEELER: All right. Do you have  
9 your proxy?

10 COMMISSION MEMBER S. RIORDAN: Yes.

11 CHAIRMAN T. WHEELER: Do you want to me the  
12 call other one or you're going to sit here anyways  
13 so...

14 COMMISSION MEMBER S. RIORDAN: Yeah, I'll sit  
15 here.

16 CHAIRMAN T. WHEELER: All right. I'm going to  
17 call No. 08-177. It is my understanding that  
18 Commissioner Riordan -- Commissioner Riordan has  
19 recused herself. We do have a proxy taking her  
20 place, which is...

21 COMMISSION MEMBER S. RIORDAN: Matthew  
22 Hammond.

23 VICE CHAIR A. LONG: Good afternoon.

24 CHAIRMAN T. WHEELER: Here, you can have mine  
25 for the record so I can forge your credit cards.

1           **VICE CHAIR A. LONG:** Here, I'll give you -- I  
2 want you to sign one.

3           **CHAIRMAN T. WHEELER:** I've got it sign, by the  
4 way. All right. This is Commission No. 08-177.  
5 It is a challenge to -- we want to welcome Matthew  
6 to our board for the challenge to Kimberly J. Brown  
7 who is a candidate for Marion County Superior Court  
8 Judge running against the slate, I assume.

9           **MS. K. BROWN:** Yes, sir.

10          **CHAIRMAN T. WHEELER:** All right. And then we  
11 do have appearance from Steve Gray?

12          **MR. S. GRAY:** That's correct, Your Honor, or  
13 Mr. Chairman.

14          **CHAIRMAN T. WHEELER:** I like Your Honor.

15          **MR. S. GRAY:** That's all right.

16          **CHAIRMAN T. WHEELER:** Congruency of -- on this  
17 side we have?

18          **MR. K. QUINN:** Yes, Mr. Chairman. My name is  
19 Kevin Quinn on behalf of Terry Burns. And before  
20 we begin, Mr. Chairman, I just want to note that I  
21 have not been sworn in myself so...

22          **CHAIRMAN T. WHEELER:** Are you planning on  
23 testifying?

24          **MR. K. QUINN:** I'm making an argument but I  
25 don't know if...



1           **CHAIRMAN T. WHEELER:** If you're making an  
2 argument, that's fine.

3           **MR. K. QUINN:** Okay.

4           **CHAIRMAN T. WHEELER:** If you're planning on  
5 testifying, you'll be sworn in.

6           **MR. K. QUINN:** Very well.

7           **CHAIRMAN T. WHEELER:** We'll let you know if  
8 you...

9           **VICE CHAIR A. LONG:** I concur with you on  
10 that. If we, historically, swore lawyers in, that  
11 always made me uncomfortable.

12           **CHAIRMAN T. WHEELER:** That's -- that's why  
13 they don't do it.

14           **VICE CHAIR A. LONG:** And you're Mr. Quinn?

15           **MR. K. QUINN:** Yes, sir.

16           **VICE CHAIR A. LONG:** Mr. Gray; correct?

17           **MR. S. GRAY:** That is correct.

18           **CHAIRMAN T. WHEELER:** All right. The  
19 challenger has the burden in this particular case.

20           **MR. K. QUINN:** Mr. Chairman and Members of the  
21 Commission, thank you very much. As I said -- as I  
22 stated, my name is Kevin Quinn, and I'm here on  
23 behalf of Mr. Terry Burns. Some of you may know  
24 Mr. Burns. He is the executive director of the  
25 Marion County Democratic Party. He has filed this

1 challenge in his individual capacity as a  
2 registered voter here in Marion County.

3 CHAIRMAN T. WHEELER: I've been trying to get  
4 him to turn the damn thing off and...

5 VICE CHAIR A. LONG: Make it an executive  
6 order.

7 CHAIRMAN T. WHEELER: I want to make him -- I  
8 apologize --

9 COMMISSION MEMBER D. DUMEZICH: I apologize.

10 CHAIRMAN T. WHEELER: -- for Commissioner  
11 Dumezich.

12 COMMISSION MEMBER D. DUMEZICH: Dumezich.

13 CHAIRMAN T. WHEELER: Then went back to the  
14 old one.

15 COMMISSION MEMBER D. DUMEZICH: Yeah. Okay.

16 MR. K. QUINN: And it's been a long afternoon  
17 so I'll try and keep this brief. The basis for  
18 Mr. Burns's challenge is not terribly complex but  
19 its simplicity shouldn't be construed as -- meaning  
20 it's unimportant or insignificant in any -- in  
21 any -- by any stretch of the imagination because  
22 there are very real consequences to the other  
23 candidates in this race who have properly filed  
24 their declarations and would seek their Party's  
25 nomination at the May primary.

1           That being said, candidates for superior court  
2 judge are required by statute to fill out the  
3 declarations of candidacy with the Secretary of  
4 State, as the Commission is -- is well aware of,  
5 and those declarations must contain certain  
6 information, and among the items of information  
7 that must be included in the declaration are the  
8 candidate's precinct, the township, and complete  
9 residency.

10           The declarations also must be filed by a  
11 particular deadline as we've discussed or heard in  
12 the meeting earlier today, and that deadline for  
13 purposes of the May primary was February 22nd,  
14 2008, and the Indiana Code, as I believe staff has  
15 cited to earlier, in one of the hearing, prevents  
16 the Secretary of State and your -- and the Election  
17 Commission or Division from accepting a final  
18 that's made after the deadline, and that's Indiana  
19 Code 3-5-4-1.9, and that will become important as  
20 we move forward with it.

21           But on February 21st, 2008, Kimberly J. Brown,  
22 Judge Brown, she's a small claims court judge here  
23 in Washington Township. She filed a declaration in  
24 which she certified that she was a registered voter  
25 of Precinct 8 in Washington Township and that her

1           residency was on located at 1724 Kessler Boulevard  
2           West Drive.

3           **CHAIRMAN T. WHEELER:** All right. Let me --  
4           let me stop you there. It looks like you're kind  
5           of going into the exhibits. Are you going to go  
6           into the evidence right now or are you going...

7           **MR. K. QUINN:** I was going to highlight -- I  
8           submitted a memorandum in support of our challenge.

9           **CHAIRMAN T. WHEELER:** Well, let me do it this  
10          way just to speed things up.

11          **MR. K. QUINN:** Sure.

12          **CHAIRMAN T. WHEELER:** Brad, why don't you  
13          swear whoever else needs to be sworn, and that way  
14          we can do this (indiscernible). I think it's  
15          pretty straight forward.

16          **MR. B. KING:** Okay. If everyone who is  
17          planning to testify either in this or the remaining  
18          cause --

19          **CHAIRMAN T. WHEELER:** Who has not yet been  
20          sworn in?

21          **MR. B. KING:** -- who has not yet been sworn?

22          **CHAIRMAN T. WHEELER:** Has everybody been  
23          sworn?

24          **MR. K. QUINN:** I'm the only one that hadn't  
25          and I was preparing an argument so I wasn't in

1 attendance.

2 CHAIRMAN T. WHEELER: Who's going to present  
3 the evidence here?

4 MR. K. QUINN: I was. Mr. Chairman, I believe  
5 that the evidence is documentary.

6 CHAIRMAN T. WHEELER: They have to be  
7 produced -- you have to put them in through  
8 someone.

9 MR. K. QUINN: Okay.

10 CHAIRMAN T. WHEELER: So you can do that.

11 MR. K. QUINN: I can do that through Judge  
12 Brown and Mr. Burns, if necessary.

13 CHAIRMAN T. WHEELER: All right. In that case  
14 they've already been sworn.

15 MR. K. QUINN: And I'll just touch on some of  
16 the points that were made in the memorandum and  
17 then we can examine the witnesses, but Mr. Burns is  
18 challenging this declaration because Judge Brown  
19 has not complied with the requirements of filing a  
20 declaration, and therefore, her declaration is void  
21 and she is ineligible to be on the primary ballot  
22 in May.

23 CHAIRMAN T. WHEELER: Are you going anywhere  
24 rather than just the precinct issue? The only  
25 issue is the precinct issue?

1           MR. K. QUINN: That's correct, and the fact  
2           that she cannot (indiscernible) that deficiency in  
3           her declaration at this time. If we turn to  
4           Exhibit E, and I guess I could ask Mr. Burns these  
5           questions here now.

6

7           DIRECT EXAMINATION

8           QUESTIONS BY MR. KEVIN M. QUINN:

9           Q    Mr. Burns, could you, please, tell the  
10           Commission your occupation?

11          A    Yes. I'm Executive Director of the Marion  
12           County Democratic Party.

13          Q    And in that position, could you tell the  
14           Commission a little bit and some of your duties?

15          A    Certainly. I run the day-to-day operations of  
16           the party, work with candidates, work with  
17           potential candidates on (indiscernible).

18           Basically, the work we have for the county  
19           chairman.

20          Q    And you've had past experience with elections, I  
21           would presume?

22          A    Yes.

23          Q    And are you familiar with the Marion County  
24           voting -- voting precincts?

25          A    Yes, I am.

1 Q Okay. And are you aware that those precincts  
2 have recently changed?

3 A Yes.

4 Q Okay. And are you aware that they are -- the  
5 Marion County Clerk's Office has published maps  
6 which indicate the current voting precincts --

7 A Yes, I am.

8 Q -- for 2008? Have you seen those maps?

9 A I have.

10 Q I'm going to turn now to Exhibit E which is  
11 included in the materials with our memorandum,  
12 and I'm going to share it here with Mr. Burns as  
13 well.

14 CHAIRMAN T. WHEELER: Mr. Burns, as we -- as  
15 we flip through there, I'm just going to just flip  
16 through the exhibits real quick. B is the  
17 challenge you filed?

18 MR. T. BURNS: One moment. That is correct.

19 CHAIRMAN T. WHEELER: Okay. And then C and D  
20 and E are all -- involve the precincts for this as  
21 well?

22 MR. T. BURNS: Yes, that is correct.

23 CHAIRMAN T. WHEELER: Go ahead. I'm sorry.

24 Q I would just direct Mr. Burns' attention and the  
25 Commission's attention to Exhibit E, and could

1 you tell me what this exhibit is?

2 **A** This exhibit is a map produced by Indy GIS  
3 showing the precincts in Washington Township.

4 **Q** Now have you seen this map before?

5 **A** Yes, I have.

6 **Q** And you're familiar with it?

7 **A** Yes.

8 **Q** Could you tell me where Washington Township 8 is  
9 located?

10 **A** If you look at the map, Washington Township 8 is  
11 in kind of the upper right hand corner of the  
12 map, the northeast corner of Washington  
13 Township.

14 **Q** Okay. And have you --

15 **CHAIRMAN T. WHEELER:** It's off -- it's off 465  
16 up there in the corner?

17 **MR. T. BURNS:** Yeah.

18 **VICE CHAIR A. LONG:** It's just above the  
19 WS008?

20 **MR. T. BURNS:** Yeah, WS008.

21 **CHAIRMAN T. WHEELER:** It appears to be in the  
22 Castleton area for those of us familiar with Marion  
23 County.

24 **VICE CHAIR A. LONG:** Is it all the way...

25 **CHAIRMAN T. WHEELER:** It goes all the way to



1 river?

2 VICE CHAIR A. LONG: Yeah.

3 CHAIRMAN T. WHEELER: It goes to White River,  
4 it looks like?

5 MR. T. BURNS: Yeah. Basically on this map it  
6 looks like it goes north to 96th Street and west,  
7 or east, I should say -- well, that street's not  
8 marked there, but down south of 4\_\_ -- south of  
9 465 --

10 CHAIRMAN T. WHEELER: And 82nd.

11 MR. T. BURNS: -- and it appears west of  
12 Keystone.

13 CHAIRMAN T. WHEELER: It goes all -- it goes  
14 Keystone, 82nd, and then up Allisonville to 465 and  
15 around to White River?

16 MR. T. BURNS: That's what it appears, yeah.

17 VICE CHAIR A. LONG: Was this approximately  
18 it, do you agree?

19 CHAIRMAN T. WHEELER: Absolutely. That's what  
20 I just heard.

21 Q So that's Washington Precinct 8; correct?

22 A Correct.

23 Q And have you seen --

24 CHAIRMAN T. WHEELER: That is -- let me --  
25 that is the post -- that is the current Washington

1 Township 8?

2 MR. T. BURNS: Yes, that is the current  
3 Washington Township 8.

4 CHAIRMAN T. WHEELER: When was reprecincting  
5 done, included?

6 MR. T. BURNS: I believe --

7 CHAIRMAN T. WHEELER: When was the agreement  
8 reached?

9 MR. T. BURNS: I believe it was approved by,  
10 I believe the commission, was December 26th.

11 MS. P. POTEESTA: December 27th was the date.  
12 The 26th of December was the tenth day at noon, it  
13 hadn't come to the commission because  
14 (indiscernible) and there's no objections filed.

15 CHAIRMAN T. WHEELER: There were no  
16 observations filed so by operation, --

17 VICE CHAIR A. LONG: It never came before the  
18 commission.

19 CHAIRMAN T. WHEELER: -- it never came before  
20 the commission.

21 MR. T. BURNS: Correct. And we've been  
22 operating (indiscernible).

23 CHAIRMAN T. WHEELER: We thought -- we  
24 thought -- apparently, you guys worked it out?

25 MR. T. BURNS: Yes, we did.

1           MR. K. QUINN: And I'll direct the  
2 Commission's attention to Exhibit C which is,  
3 obviously a printout from the Marion County Clerk's  
4 Office, which is just a little bit of history  
5 behind the change in precincts.

6           VICE CHAIR A. LONG: I'm sorry, Exhibit?

7           MR. K. QUINN: C.

8           VICE CHAIR A. LONG: C.

9           MR. K. QUINN: It explains the change in  
10 precincts in Marion County.

11 Q Mr. Burns, have you ever seen the declaration of  
12 candidacy filed by Kimberly J. Brown?

13 A Yes, I have.

14 Q And is it attached to the memorandum in support  
15 of the (indiscernible) on Exhibit A?

16 A Yes, it is.

17 Q Okay. When you reviewed Exhibit A, did you  
18 determine if there was anything that appeared  
19 out of the ordinary or improper?

20 A Yes. I noticed that the precinct in question,  
21 Precinct 8, I had a question about because I  
22 knew under the new precincting maps that  
23 Precinct 8 was now in the northern tier of  
24 Marion County.

25           CHAIRMAN T. WHEELER: Where was it earlier?

1 MR. T. BURNS: Down a little further south,  
2 mid -- kind of mid township level.

3 CHAIRMAN T. WHEELER: Anywhere on Kessler?

4 MR. T. BURNS: Yes, it did include Kessler  
5 Boulevard.

6 CHAIRMAN T. WHEELER: Would it have included  
7 her prior address -- the 1724 Kessler, was that  
8 within 8 before?

9 MR. T. BURNS: I believe so, yes.

10 CHAIRMAN T. WHEELER: So basically this comes  
11 down to she wrote her old precinct, not her new  
12 precinct now?

13 MR. T. BURNS: Correct.

14 CHAIRMAN T. WHEELER: And we just went through  
15 reprecincting in December?

16 MR. T. BURNS: Uh-huh. Correct.

17 CHAIRMAN T. WHEELER: And that's the basis of  
18 the challenge?

19 MR. T. BURNS: Correct.

20 CHAIRMAN T. WHEELER: All right. Go ahead.

21 Q And Mr. Burns, obviously, you can see the  
22 residency information that was provided on the  
23 declaration of candidacy; is that correct?

24 A Correct.

25 Q And what is that address?

1 A 1724 Kessler Boulevard West Drive Indianapolis,  
2 46228.

3 Q And to your knowledge is 1724 Kessler Boulevard  
4 West Drive Indianapolis located in Precinct 8 of  
5 Washington Township?

6 A To the best of my knowledge, it is not.

7 Q Okay. Do you have any idea where it is located?

8 A I don't know the exact new precinct but I know  
9 it's not 8.

10 Q Okay.

11 MR. K. QUINN: Those are all the questions I  
12 have for Mr. Burns. If I may --

13 CHAIRMAN T. WHEELER: Oh, I'm sorry. Do  
14 you...

15 MR. S. GRAY: Thank you, Mr. Chairman.

16

17 CROSS-EXAMINATION

18 QUESTIONS BY MR. STEPHEN GERALD GRAY:

19 Q Mr. Burns, I'd like to direct your attention to  
20 your Exhibit C that was attached to your  
21 memorandum. Do you have that in front of you,  
22 sir?

23 A Yes, I do now.

24 Q Do you see where it says that on December the  
25 28th that new precinct boundaries were adopted;

1           you see that, don't you?

2   **A**    Yes, I do, in that first paragraph.

3   **Q**    You see the last sentence of that first  
4           paragraph where it says the voter registration  
5           board must update more than 630,000 records in  
6           the database in time for the election; do you  
7           see that?

8   **A**    Yes, I do.

9   **Q**    Do you have any knowledge of when that updating  
10          process began?

11   **A**    I don't know the exact date, but I know it was  
12          began I believe sometime in January.

13   **Q**    Do you have any knowledge of when that process  
14          ended?

15   **A**    I know it was in place before our special  
16          election.

17   **Q**    Okay. So just within the past few days?

18   **A**    No, it was earlier than that. They've -- they  
19          mailed out post cards but it had been completed  
20          prior to then.

21   **Q**    Okay. Tell me, do you have any firsthand  
22          knowledge of when the database with regard to  
23          Kimberly Brown's precinct would have been  
24          updated?

25   **A**    I have no firsthand knowledge of that.

1 Q So you cannot tell the Commission that her  
2 database was updated before she executed her  
3 declaration of candidacy, can you?

4 A I cannot say that, no.

5 Q And with regard to when these cards went out,  
6 you don't have any knowledge of when Ms. Brown  
7 may have received one of these cards, do you?

8 A I do not.

9 Q Now you don't contend that if somebody lives in  
10 Precinct No. 8 that they're ineligible if  
11 they're otherwise qualified to run pore superior  
12 court judge, do you?

13 A I can't make that determination.

14 Q Okay. And you're not contending that somebody  
15 who lives in the 43rd Precinct is ineligible to  
16 run for superior court judge, do you?

17 A Why make that determination.

18 Q But you're not contending that, though?

19 A No.

20 Q Okay. You're not -- you're not suggesting to  
21 the board that Ms. Brown had notice from the  
22 Marion County Election Board prior to filing her  
23 declaration of candidacy about the change, are  
24 you?

25 A I don't know whether she had notice or not

1 prior.

2 MR. S. GRAY: Mr. Chairman, I don't have any  
3 other questions of this witness.

4 CHAIRMAN T. WHEELER: Any redirect?

5 MR. K. QUINN: Yeah, if I could.

6 CHAIRMAN T. WHEELER: Sure.

7

8 REDIRECT EXAMINATION

9 QUESTIONS BY MR. KEVIN M. QUINN:

10 Q Mr. Burns, are you aware if other candidates had  
11 knowledge of changes in the precincts?

12 MR. S. GRAY: I'm going to object to the  
13 relevance of what other candidates may have known.  
14 The issue is what Ms. Brown knew.

15 CHAIRMAN T. WHEELER: You can go ahead and  
16 answer it.

17 A Can you repeat the question?

18 Q Are you aware if other candidates for the  
19 superior court judge position were aware of  
20 changes in the precincts?

21 A Yes.

22 Q And how are you aware of that?

23 A I've talked to several who had gone down to  
24 voter registration in the clerk's office to get  
25 information on their new precinct.



1           CHAIRMAN T. WHEELER: Did you offer to do that  
2 with Ms. Brown?

3           MR. T. BURNS: I was never asked.

4           CHAIRMAN T. WHEELER: All right. Did you do  
5 it with all slated candidates?

6           MR. T. BURNS: Only if they called.

7           CHAIRMAN T. WHEELER: All right. So this was  
8 only if someone called and asked you?

9           MR. T. BURNS: Right.

10 Q And --

11           CHAIRMAN T. WHEELER: And let me ask one more  
12 question. Why would you feel the need to do that?

13           MR. T. BURNS: Just wanted to make sure all  
14 the documents were proper and...

15           CHAIRMAN T. WHEELER: Wanted to make sure they  
16 did it right?

17           MR. T. BURNS: They got it right.

18           CHAIRMAN T. WHEELER: That they didn't  
19 (indiscernible)?

20           MR. T. BURNS: Correct.

21 Q And are you aware if other candidates in fact  
22 corrected their declarations of candidacy?

23 A Yes. I believe there were at least two.

24 Q Okay. And do you know who those two individuals  
25 were?

1 A I believe it was Judge Dreyer and Judge Tanya  
2 Walton Pratt.

3 Q Okay. And at this time I'll refer you to --

4 CHAIRMAN T. WHEELER: G, I believe.

5 Q To Exhibit G. Could you identify that document  
6 for me?

7 A Yeah. It appears to be a CAN-2 form for judge  
8 David J. Dreyer.

9 Q Could you tell me what the date stamp is on that  
10 document?

11 A January 23rd, 2008 at 1:12 p.m.

12 Q If I could now direct your attention to Exhibit  
13 H. Could you tell me what that document is,  
14 please?

15 A This appears to be again a CAN-2 form for Judge  
16 David J. Dreyer.

17 Q And is there a different time stamp, date stamp  
18 on that document?

19 A Yeah. This basically has two stamps. One at  
20 the bottom which appears legible, February 21st,  
21 2008, Indiana Secretary of State.

22 Q And if we were to compare these two exhibits,  
23 Exhibit G and Exhibit H side-by-side, is there  
24 any concern, the difference?

25 A Yes, the precinct numbers are changed.

1 Q So it appears to you that Judge Dreyer in fact  
2 corrected his declaration of candidacy?

3 A Correct, corrected it February 21st.

4 Q And are you aware that -- of the deadline for  
5 filing the declaration of candidacy?

6 A Yes. I believe it was February 21st at noon.

7 CHAIRMAN T. WHEELER: So you're telling me  
8 that Judge Dreyer filed a false statement in his  
9 precinct?

10 MR. T. BURNS: No. I say he came back and  
11 corrected it.

12 CHAIRMAN T. WHEELER: Well, his original was  
13 sworn under oath; correct?

14 MR. T. BURNS: I believe so, yes.

15 CHAIRMAN T. WHEELER: So you're telling me  
16 that he filed a false statement -- I mean that's  
17 the same argument we had in the preceding case?

18 MR. T. BURNS: Obviously, not intentionally.  
19 He did make the change before the deadline.

20 CHAIRMAN T. WHEELER: He made a mistake. He  
21 made a mistake and got it fixed; right?

22 MR. T. BURNS: Right.

23 Q And he was --

24 MR. T. BURNS: I would say that's inaccurate.

25 CHAIRMAN T. WHEELER: Inaccurate, that's the

1 first thing?

2 MR. T. BURNS: Inaccurate, yes, but prior --  
3 prior to the deadline.

4 CHAIRMAN T. WHEELER: It wasn't -- so it's  
5 okay with you that he corrected it before?

6 MR. T. BURNS: It was corrected prior to the  
7 deadline.

8 MR. K. QUINN: And if it pleases the  
9 Commission, I also have Exhibits I and J, which  
10 were not attached to our original memorandum, but I  
11 have enough here for all the members.

12 CHAIRMAN T. WHEELER: That's for Judge Walton,  
13 I assume?

14 MR. K. QUINN: Yes.

15 CHAIRMAN T. WHEELER: Out of curiosity, how  
16 much judges screw this up?

17 MR. T. BURNS: I have no idea. These were the  
18 two that I had talked to.

19 MS. P. POTESTA: I only --

20 CHAIRMAN T. WHEELER: Do you -- I mean I  
21 understand this, believe me. I mean it happened on  
22 both sides.

23 MS. K. QUINN: I only know the Democrat  
24 judicial candidates have only filed -- three file  
25 in the correct precincts. Everybody else filed

1 incorrect precincts.

2 CHAIRMAN T. WHEELER: Only three filed them  
3 correct?

4 MR. K. QUINN: Yes.

5 CHAIRMAN T. WHEELER: And everybody else got  
6 it corrected -- other than Judge Brown, everybody  
7 else got it corrected before the deadline?

8 MR. K. QUINN: No.

9 CHAIRMAN T. WHEELER: No. Who's -- who's  
10 currently a candidate that does not have it  
11 corrected?

12 MR. K. QUINN: I don't know that.

13 CHAIRMAN T. WHEELER: Would that not  
14 disqualify them?

15 MR. K. QUINN: They were not challenged.

16 COMMISSION MEMBER D. DUMEZICH: Based on?

17 MR. K. QUINN: No one challenged them  
18 (indiscernible).

19 CHAIRMAN T. WHEELER: And I take it the Party  
20 didn't want to challenge a slated candidate?

21 MR. T. BURNS: I did not, no. I was under the  
22 assumption that all of our candidates had filed it  
23 correct or that were amended CAN-2.

24 CHAIRMAN T. WHEELER: Given the fact that  
25 you've got slated candidates that have ones that

1 are on -- right now that swear under oath, swear  
2 under oath that they're in the wrong precinct. Are  
3 you interested in the (indiscernible) challenge or  
4 are you going to correct that one as well? I'd  
5 think real carefully about that.

6 MR. K. QUINN: Mr. Chairman, I would just  
7 point out that the candidates have -- that Judge  
8 Dreyer and Judge Pratt have corrected their  
9 declarations --

10 CHAIRMAN T. WHEELER: I understand that, but  
11 which.

12 MR. K. QUINN: -- prior to their...

13 COMMISSION MEMBER D. DUMEZICH: There are  
14 others that have not.

15 MR. K. QUINN: I understand that, but there's  
16 been no challenge in those declarations.

17 CHAIRMAN T. WHEELER: Yeah. But they've sworn  
18 under oath that that's the correct precinct and  
19 it's not. I'd think they'd be taken off the ballot  
20 for perjury. I mean that's an under oath  
21 declaration; correct?

22 VICE CHAIR A. LONG: I'd have to agree with  
23 the commissioner's banter apparently that it was  
24 entered -- that it's a mistake.

25 CHAIRMAN T. WHEELER: I agree -- I agree

1 completely.

2 VICE CHAIR A. LONG: I believe perjury is  
3 a -- is a rather harsh term to use.

4 CHAIRMAN T. WHEELER: I -- I agree a hundred  
5 percent.

6 VICE CHAIR A. LONG: I don't think you can  
7 perjure yourself by making a mistake.

8 CHAIRMAN T. WHEELER: And I -- I agree as  
9 well.

10 MR. K. QUINN: And I believe the statute  
11 states that it's when a candidate knowingly makes a  
12 false statement, something to that effect, and I  
13 don't think that the other candidates that have...

14 COMMISSION MEMBER D. DUMEZICH: And there's  
15 probably not a duty to correct also, which I would  
16 believe?

17 MR. K. QUINN: But...

18 COMMISSION MEMBER D. DUMEZICH: I think...

19 CHAIRMAN T. WHEELER: I'll get the  
20 (indiscernible).

21 VICE CHAIR A. LONG: I don't think -- they've  
22 probably got undisputable facts here.

23 CHAIRMAN T. WHEELER: I understand.

24 VICE CHAIR A. LONG: I think it would power  
25 down to a legal issue. I mean I -- I don't want to

1 preclude you all, but is that your position?

2 MR. S. GRAY: Well, --

3 VICE CHAIR A. LONG: I mean...

4 MR. S. GRAY: -- our position is slightly  
5 different. Our position is that the changing of a  
6 voter's precinct was a three-step process: The  
7 first step is for what happened on December the  
8 28th when the boundaries were changed. The second  
9 step is when the records are updated. And the  
10 third step is when the notice is given.

11 The Marion County Clerk's Office and the  
12 Marion County Election Board have adopted a format  
13 for notifying voters, and that particular format  
14 which I'm have as an exhibit here in just a minute  
15 says that you will be register to vote at this  
16 address when you receive this notice.

17 And it is our contention that legally she is  
18 not -- her precinct has not changed until she  
19 receives this notice. It says this office has  
20 received your application to be a registered voter.  
21 You appear to be eligible to vote. You will be  
22 registered to vote at this address, notifying her  
23 of the new precinct when you receive this notice.

24 So the change of her precinct is not effective  
25 until she receives the notice. So it is our



1           contention that on the date that she filed her  
2           candidacy, she had not received her notice yet, and  
3           that until she had, Precinct 8 was the correct one.

4           We don't even know for sure based on the  
5           evidence that the challenger has presented when  
6           that information was updated in the database at the  
7           clerk's office. If it was dated -- if it was  
8           updated on February the 25th, had Ms. Brown  
9           contacted the voter registration board on the 20th  
10          or the 21st, the day of the deadline, she may very  
11          well have been told that she was still in Precinct  
12          8.

13          So just to merely say that somehow there's a  
14          strict liability and everybody in Marion County is  
15          charged with notice on December the 28th, when the  
16          databases are not even updated, that makes no sense  
17          whatsoever, because anybody who called in to the  
18          election board on December the 29th, would -- would  
19          not be told that their precinct had been changed.  
20          So that's our position.

21          **MR. K. QUINN:** I'm sorry to interrupt. I was  
22          just wondering if you could ask counsel here if  
23          that's her interpretation of the statute?

24          **MS. L. BARNES:** Mr. Chairman?

25          **CHAIRMAN T. WHEELER:** Go ahead.

1           **MS. L. BARNES:** Thank you. According to  
2 3-11-1.5-24 and 25, they're the effective dates for  
3 when precinct changes take effect.

4           **CHAIRMAN T. WHEELER:** When -- keep going  
5 3-11-1.5...

6           **MS. L. BARNES:** Dash 24 and 25 on Page 258.  
7 The precinct establishment order becomes effective  
8 and then it refers to Section 25, so you have to  
9 read them in conjunction, but the precinct  
10 establishment order becomes effective...

11           **CHAIRMAN T. WHEELER:** On the first day of the  
12 declaration of candidacy to be filed which was...

13           **MS. L. BARNES:** May not. That says it may not  
14 become effective.

15           **CHAIRMAN T. WHEELER:** Oh.

16           **MS. L. BARNES:** Sorry. Becomes effective --  
17 Section 24, sorry. The precinct establishment  
18 order becomes effective on the first date permitted  
19 under Section 25 of this chapter -- oh, that's  
20 if -- sorry -- it is -- there are two processes by  
21 way the precincts can be effective. One is if it  
22 comes before the commission and one if there's a  
23 ten-day (10) notice -- I apologize -- is it Section  
24 18?

25           **COMMISSION MEMBER D. DUMEZICH:** Dale, do you

1 have...

2 MR. D. SIMMONS: I think the parties have  
3 already stipulated the effective date of the order.  
4 It was the date...

5 CHAIRMAN T. WHEELER: We're stipulating -- the  
6 effective date of the order -- I don't think  
7 there's any stipulation to the effective date of  
8 the order. The question is, as I understand it,  
9 Mr. Gray's argument is that's not enough. He's  
10 arguing there's a three part process.

11 The final portion of which -- No. 3 which is  
12 actual notice to the individual voters, and  
13 that's -- that's what I thought the question to you  
14 guys were.

15 MR. D. SIMMONS: Having -- having received one  
16 of those notices in the mail myself, I think it was  
17 my view it would be an error on the part of the  
18 Marion County Voter Registration. They sent  
19 acknowledgment notices out to folks to advise them  
20 of the precinct change. I don't know that that  
21 they did that or we advised them to do that.

22 An acknowledgment notice does advise the voter  
23 that when you receive --

24 CHAIRMAN T. WHEELER: Now you know?

25 MR. D. SIMMONS: Now -- you know, when you

1 receive this, you're now registered at that  
2 address, even though the voter may have been  
3 previously registered at another address -- the  
4 acknowledgment notice does say that. It says --

5 CHAIRMAN T. WHEELER: And I thought that's the  
6 one you were reading from a moment ago.

7 MR. D. SIMMONS: Because the notice issued  
8 under 3-7-33-5 it's required for new registrants  
9 and registrants that have changed their address.

10 CHAIRMAN T. WHEELER: And they just send them  
11 to everybody?

12 MR. D. SIMMONS: They send them to everybody.

13 MS. L. BARNES: Mr. Chairman, I think the  
14 question was when do the precincts become  
15 effective, and they became effective on  
16 December 27th, 2007, and then if any candidate  
17 called the county voter registration office, they  
18 were able to place a candidate in the precinct.

19 Then there was a question asked to which we  
20 had personal knowledge about, when did the  
21 counties -- when did the statewide voter  
22 registration database begin to reflect the new  
23 precincts? And it was shortly after -- voter  
24 registration closed shortly after February 7th, and  
25 so it was before the candidate filing deadline

1 ended.

2 When candidates would ask what precinct am I  
3 in, we have the authority under state statute to  
4 look up the candidate at their request, and we  
5 could tell them what new precinct they were in, and  
6 we did receive that request from several  
7 candidates.

8 **CHAIRMAN T. WHEELER:** Several we didn't,  
9 apparently?

10 **MS. L. BARNES:** And several we didn't.

11 **MR. S. GRAY:** Mr. Chairman, could I address  
12 that very point? The Exhibit C which was put out  
13 by the Marion County Election Board suggests that  
14 voters used a polling place locator to find out  
15 what their new precinct was.

16 And having done that, the polling place  
17 locator, which is what the election board suggested  
18 that you use, told Ms. Brown that her address of  
19 her polling place was the same. 5540 North  
20 Michigan Road is now the voting place for precinct  
21 No. 43, but previously, it was the same voting  
22 place for Precinct No. 8.

23 Nowhere on this polling place indicator, does  
24 it indicate that the precinct number has changed.  
25 The precinct number does not even appear.

1           **CHAIRMAN T. WHEELER:** So if she was going to  
2 go look at that, she'd say I'm voting in the same  
3 place?

4           **MR. S. GRAY:** And she had every reason to  
5 infer that her precinct had not changed because of  
6 that, and that was by -- information that was put  
7 out by the Marion County Election Board.

8           I'd like to also point out one other thing to  
9 the Commission, and that is this, under the statute  
10 it is not even required that you lists your  
11 precinct number in order to file your declaration  
12 of candidacy. If you --

13           **CHAIRMAN T. WHEELER:** Hold on. Hold on. Hold  
14 on.

15           **MR. S. GRAY:** 3-8-2-7. If you choose to lists  
16 your ward and city and town instead. It gives it  
17 in the alternative. The purpose behind the statute  
18 is to assure that whoever is a candidate is a  
19 registered voter in Marion County, not that they  
20 are reside in any particular precinct. So --

21           **CHAIRMAN T. WHEELER:** So you're relying on  
22 the -- the disjunctive, or ward or city or town?

23           **MR. S. GRAY:** That is correct. It says the  
24 location of the candidate's precinct and township  
25 (or ward and city and town.) So my view is --

1           **CHAIRMAN T. WHEELER:** But she didn't list the  
2 ward, did she?

3           **MR. S. GRAY:** She did not, but I think the  
4 Commission has to do a little bit of statutory  
5 interpretation here to determine what is the -- the  
6 intention of Indiana Code 3-8-2-7, it's not to  
7 exclude people who mistakenly put down 8 when  
8 they're in 43. The intention of the statute is to  
9 make sure that they're a registered voter in Marion  
10 County, which she clearly qualifies.

11           **MR. K. QUINN:** Mr. Chairman, I would point out  
12 that there's no distinction in the statute for a  
13 county wide seat or a seat in the locality. The  
14 CAN-2 provides that a -- a spot for the precinct  
15 number. The statute requires either precinct  
16 number for a ward and city or town.

17           Ms. Brown's information, Judge Brown's  
18 information as reflected in Exhibit A, contains  
19 inaccurate information, and therefore, does not  
20 comply with Indiana Code 3-8-2-7.

21           **CHAIRMAN T. WHEELER:** Anything further from  
22 you?

23           **MR. S. GRAY:** I do have one other thing, Your  
24 Honor. I hate to resort to the law in a case like  
25 this, but --

1           **CHAIRMAN T. WHEELER:** God help you. Mr. --  
2 Mr. Long is doing the same thing -- he hasn't  
3 figured it out yet, so if you can help him, that  
4 would be wonderful.

5           **MR. S. GRAY:** Well, there is precedent for  
6 what's occurred here. To give the Commission some  
7 guidance, the specific facts of this case are  
8 completely unprecedented that I could not find, but  
9 there's a case called *Mason versus Gohmann*. It's  
10 back from 1986. It's sort of a famous case.

11           You alluded to the Evan Bayh case earlier.  
12 This is the second case that jumps to my mind.  
13 This is a case that involves a challenge dispute to  
14 Stephen Goldsmith's candidacy. Mr. Goldsmith, if  
15 you'll remember, was a person who zealously guarded  
16 his privacy.

17           Somebody from the clerk's office apparently at  
18 some point in time took a piece of tape that  
19 said -- changed Stephen Goldsmith's name to L  
20 period, S period, Goldsmythe, spelled with a Y.  
21 There was a challenge by Mr. Mason then raised to  
22 Mr. Goldsmith's candidacy. It ended up in front of  
23 Judge Metz, and then reviewed by the Court of  
24 Appeals.

25           And the Court of Appeals gave some guidance, I



1 think, there, in terms of how the Commission should  
2 view something like this. And it says to allow any  
3 letters, words, or designation, including a name  
4 affixed by any other person other than the voter in  
5 a situation where the voter is unable to affix his  
6 own signature to affect the validity of the voter's  
7 registration is to provide a mechanism by way the  
8 integrity of the electoral process could easily be  
9 impaired.

10 Now the way -- why that applies in this  
11 situation is these changes and the notices and  
12 updating the database, these are all processes that  
13 are out of Ms. Brown's hands. These are all being  
14 done by employees of the clerk's office or the  
15 Marion County Election Board.

16 I'm not suggesting that it happened in this  
17 case, but one could easily see a situation in which  
18 a precinct is sort of changed late in the game or  
19 redistricting occurs, and that notice is not -- the  
20 information is not processed until after the  
21 candidate files their declaration of candidacy or  
22 that notice is purposely delayed via actions of a  
23 third party, which is what the court said, you  
24 should not deprive somebody of access to the ballot  
25 when the things were beyond their control.

1           And it's my view in this situation that Ms.  
2 Brown did everything that a reasonable person would  
3 do under the -- under these circumstances. She is  
4 eligible to be a candidate for superior court  
5 judge, whether she's in 8 or 43, and I think that  
6 the challenge should be denied.

7           **CHAIRMAN T. WHEELER:** Let me -- let me ask --  
8 if you don't mind, let me ask Judge Brown. Why  
9 didn't you call? Why didn't you check? I mean as  
10 I understand it, if you had called, for example,  
11 Leslie on the Democratic side, you would have found  
12 out from what she just said, that you're in  
13 Precinct 43 instead of Precinct 8?

14           **MS. K. BROWN:** I was aware that the number of  
15 polling places were decreasing. I was not aware  
16 that the precincts were changing. I relied on the  
17 voter registration card that I had, which  
18 registered me in 08, and that's what I relied on.  
19 It did not occur to me to place a call when I had  
20 before me a tangible piece of -- a document that  
21 was clear.

22           **CHAIRMAN T. WHEELER:** This is your voter  
23 registration card from '07?

24           **MR. S. GRAY:** Could we put that into evidence?  
25 I think we'd like to do that.

1 MS. K. BROWN: Yes, sir. It's my voter  
2 registration from '07.

3 MR. S. GRAY: This is Exhibit 2, and we have  
4 copies for all the...

5 CHAIRMAN T. WHEELER: Oh, you have copies?

6 MR. S. GRAY: That's the original that should  
7 be attached.

8 CHAIRMAN T. WHEELER: I don't want -- I don't  
9 want to steal your original.

10 MS. K. BROWN: Thank you.

11 CHAIRMAN T. WHEELER: So this is 2/2/07, and  
12 it lists you in 08, and there's no dispute she was  
13 in 08? She was -- she was in Precinct 8 in '07,  
14 there's no dispute? But you knew there were some  
15 changes; right?

16 MS. K. BROWN: I knew that there was talk  
17 about decreasing the number of polling places. I  
18 didn't know when they were going to do it, don't  
19 recall hearing that it had been decided.

20 VICE CHAIR A. LONG: Here's one for the record  
21 (indiscernible).

22 MS. K. BROWN: But I was also not under the  
23 impression that the precincts were changing  
24 necessarily.

25 CHAIRMAN T. WHEELER: But you didn't check

1 with --

2 MS. K. BROWN: No.

3 CHAIRMAN T. WHEELER: -- the county chair -- I  
4 know -- I know the county chair isn't here, we've  
5 got the county executive?

6 MS. K. BROWN: No.

7 CHAIRMAN T. WHEELER: You didn't check with  
8 any of those?

9 MS. K. BROWN: I relied on my voter  
10 registration card.

11 VICE CHAIR A. LONG: Can I ask counsel -- he  
12 raised an issue about the three step process. That  
13 intrigued me. Could you cite me your authority to  
14 that?

15 MR. S. GRAY: Well, I don't have a -- an  
16 appellate court case or a statute.

17 VICE CHAIR A. LONG: Okay. The statute says  
18 that -- the steps that I'm concerned with is the  
19 requirement for it to be effective that the clerk  
20 has to mail out a notice. I'm not -- and I'm not  
21 challenging you. I'm not that familiar with the  
22 fine tune parts of the statute. And is there  
23 something in the law that causes you to believe  
24 that that third step is necessary other than the  
25 passing of the ordinance and the entering it into

1 the database or whatever steps they go through?

2 MR. S. GRAY: What I'm relying on is the  
3 language that the Marion County Election Board  
4 chose to use when they sent out those notices. Now  
5 what you have in front of you in our Exhibit No. 2  
6 is the old notice that Ms. Brown had received, the  
7 one that told her that she was in Precinct 8.

8 And the language on that notice is identical  
9 to the language on the new notice that she's  
10 received, which says you will be registered to vote  
11 at this address when you receive this notice. And  
12 I believe that Ms. Brown or any other reasonable  
13 person has the right to take exhibit No. 2 and  
14 carry it around with them and think I received this  
15 notice, and until I receive another one, this is  
16 where I'm registered at, and she didn't receive  
17 this other notice until March the 6th. And so...

18 VICE CHAIR A. LONG: The new notice, March the  
19 6th?

20 MR. S. GRAY: The new notice was sent to her  
21 on March the 6th, is when she received it.

22 CHAIRMAN T. WHEELER: And do we have copies of  
23 those?

24 MR. S. GRAY: I do, and I'd like to have her  
25 swear to that, since she's under oath.

1 DIRECT EXAMINATION

2 QUESTIONS BY MR. STEPHEN GERALD GRAY:

3 Q Ms. Brown, on this new notice labeled Exhibit  
4 No. 1, would you tell the Commission when you  
5 received it?

6 A It was in my mailbox on March the 6th, 2008.

7 Q Now there's some handwriting that appears on the  
8 back of that, is that your handwriting?

9 A Yes.

10 Q And you put that notice on there received; is  
11 that correct?

12 A Yes.

13 MR. S. GRAY: We'd offer this.

14 COMMISSION MEMBER D. DUMEZICH: Is there a  
15 Pitney Bowes' stamp on that one as well?

16 MS. K. BROWN: No.

17 MR. S. GRAY: This is all we have, is what  
18 came. I have copies for everybody.

19 CHAIRMAN T. WHEELER: Identify the exhibit.

20 MR. S. GRAY: That's Exhibit 1.

21 MR. B. KING: Excuse me, Mr. Chair,  
22 (indiscernible) that the record would be --

23 CHAIRMAN T. WHEELER: Exhibits.

24 MR. B. KING: The exhibits offered by the  
25 parties.

1           VICE CHAIR A. LONG: All the exhibits offered  
2 received.

3           CHAIRMAN T. WHEELER: (Indiscernible).

4           MR. K. QUINN: Mr. Chairman, if I could. I  
5 think Mr. Long was onto a point there that it  
6 is -- that the notice is not required by statute.  
7 I don't know for a fact that that's the case, but  
8 it's my belief that there is no notice requirement  
9 for the Marion County Election Board to advise  
10 voters that their precinct has changed.

11          VICE CHAIR A. LONG: I just thought it was a  
12 natural response to this issue.

13          MR. K. QUINN: Right. I understand.

14          VICE CHAIR A. LONG: Hearing -- felt it was  
15 raised and I thought maybe I had missed something  
16 all the way and I wasn't trying to...

17          MR. K. QUINN: And certainly, Ms. Brown, Judge  
18 Brown has indicated that she was aware that the  
19 precincts were changing and that they were being  
20 reduced, I believe she testified. I think anyone  
21 who would -- could infer that when there's going to  
22 be a reduction in the number of precincts, there's  
23 probably going to be a change to the...

24          CHAIRMAN T. WHEELER: I'm good with you on  
25 that.

1 MR. K. QUINN: Okay.

2 CHAIRMAN T. WHEELER: Explain to me how all  
3 the other judges messed up, too?

4 MR. K. QUINN: Well, the point there, I think  
5 with respect, Mr. Chairman, is that there's no  
6 challenge made to those declarations.

7 CHAIRMAN T. WHEELER: It's hard for me to have  
8 a lot of sympathy to your position under that  
9 situation. I mean both -- as I understand it --  
10 Dale, correct me if I'm wrong, as I understand it,  
11 the Commission's -- kind of the Commission's goal  
12 here is to look to see if there's substantial  
13 compliance?

14 MR. D. SIMMONS: Actually...

15 CHAIRMAN T. WHEELER: Describe for me what  
16 our -- what our...

17 MR. D. SIMMONS: Not had an opportunity to  
18 discuss this, even though we've been through  
19 several challenges, but the -- the standard in  
20 3-8-1-2, Subsection G, which is on Page 155. At  
21 the bottom of the left-hand column -- it --

22 CHAIRMAN T. WHEELER: 3-8-1 -- hold on,  
23 3-8-1-2, Subsection?

24 MR. D. SIMMONS: G.

25 CHAIRMAN T. WHEELER: G, the commission or



1 election board shall, okay.

2 MR. D. SIMMONS: And -- yeah, that's the one,  
3 that deny a filing if -- if they determine that the  
4 candidate has not complied with the applicable  
5 requirements for the candidate set forth in the  
6 Constitution of the United States, the Constitution  
7 of the State of Indiana or this title.

8 I don't -- I don't know if that gets you  
9 anywhere closer to where you need to go with...

10 CHAIRMAN T. WHEELER: Well, it doesn't have  
11 the word "substantial compliance," I would note.  
12 It says comply.

13 VICE CHAIR A. LONG: And it -- and I don't  
14 think there's much wiggle room there.

15 MR. K. QUINN: Yeah. I believe that's a  
16 mandatory term, "there shall."

17 CHAIRMAN T. WHEELER: If that's a mandatory  
18 term, we need to go back and revisit several that  
19 we've already passed.

20 MR. S. GRAY: Well, the Goldsmith's case,  
21 Mr. Goldsmith's name did not appear as L. S.  
22 Goldsmythe on the ballot, and the Court of Appeals  
23 didn't have any trouble giving him access to the  
24 ballot.

25 CHAIRMAN T. WHEELER: Do you have a copy of

1 this case?

2 MR. S. GRAY: I do.

3 CHAIRMAN T. WHEELER: I hate to sound like a  
4 judge.

5 VICE CHAIR A. LONG: It's good practice.

6 CHAIRMAN T. WHEELER: (Indiscernible).

7 VICE CHAIR A. LONG: Well, you may be at some  
8 point appointed to the federal bench or something.

9 CHAIRMAN T. WHEELER: No. You know too much  
10 about me for me to become a judge.

11 MR. K. QUINN: If I may drive a station  
12 without having read in detail the Goldsmith case  
13 there, I believe counsel had stated that that case  
14 centered on something that was beyond the control  
15 of the voter.

16 I think Ms. Brown had well within her control  
17 the ability, the possibility of determining what  
18 precincts she was in, the correct precinct, and she  
19 was a registered voter. In fact, Judge Dreyer,  
20 Judge Pratt demonstrated that they were able to  
21 determine the correct precincts in which they were  
22 registered voters and they were able to file  
23 amended declarations.

24 MR. S. GRAY: Of course, we don't know when  
25 Judge Pratt and Judge Dreyer's information was

1 updated in the database, and that's the fallacy of  
2 the argument.

3 MR. K. QUINN: But I think the point has  
4 already been made that there is no notice  
5 requirement with respect to the change in the  
6 precincts. The precincts were changed  
7 immediately -- effective immediately at the end of  
8 2007.

9 VICE CHAIR A. LONG: What's the section again,  
10 Leslie or Dale, that refer to the contents of the  
11 declaration?

12 MS. L. BARNES: 3-8-2-7(a)(2), is what the  
13 Commission is being asked to look at, 3-8-2-7  
14 Subsection (a)(2) 2.

15 COMMISSION MEMBER D. DUMEZICH: If she had  
16 misspelled Washington or put Drive rather than  
17 Avenue, would your position be the same, in terms  
18 of her address?

19 MR. K. QUINN: I believe that the statute  
20 requires a complete address, and if the address was  
21 incomplete, then yes, I believe that she would fail  
22 to comply with that -- that section of the code.

23 VICE CHAIR A. LONG: It says candidate's  
24 complete residence address.

25 MR. K. QUINN: I mean I presume that there's a

1 Kessler Boulevard East Drive and a Kessler  
2 Boulevard West Drive. I think that there -- if she  
3 had left out the west, there could be confusion,  
4 and the address would be incomplete and fail to  
5 comply with that statute.

6 CHAIRMAN T. WHEELER: We've used the word  
7 "comply," and you've suggested a very strict  
8 definition. I would note that in this case that  
9 they specifically say in the absence of fraud  
10 election statutes generally will be liberally  
11 construed to guarantee to the electorate an  
12 opportunity to freely cast his ballot to prevent  
13 his disenfranchisement to uphold the will of the  
14 electorate, which I think is essentially what we've  
15 been saying about form over substance throughout at  
16 least the day today, which is that we're going to  
17 look at -- we're not going to trip people up on  
18 technicalities; particularly, something -- and  
19 again, I -- I have a real problem with -- with this  
20 particular situation, because it isn't just a  
21 situation, it's a game of got you, because you  
22 know, to me standing outside, it looks like that  
23 she won the slate of candidate, and you didn't  
24 challenge three other Democrats that apparently are  
25 on the ballot and (indiscernible) what the number

1 is.

2 MR. K. QUINN: I've been thinking about that,  
3 I'm thinking of the three that I looked at, one of  
4 many were the three that did not need to be amended  
5 because they got it right the first time so I  
6 apologize if (indiscernible).

7 CHAIRMAN T. WHEELER: There's none?

8 MR. T. BURNS: There were no Democratic judges  
9 I know of that had it wrong.

10 MR. K. QUINN: They originally did amend  
11 it -- remember, there's three that are not amended  
12 but those were the three that...

13 CHAIRMAN T. WHEELER: And I apologize in our  
14 prior -- I was relying on -- with all due respect  
15 Michelle -- I was relying on Michelle, and there  
16 may be a whole slate of Republican judges in the  
17 same boat -- who knows? I have no idea. Or other  
18 candidates for that matter.

19 MR. K. QUINN: And Mr. Chairman, if I could  
20 point to another case that calls for strict  
21 compliance with the statute, that would be *Brials*,  
22 (Phonetic) 530 N.E.2d 1187.

23 CHAIRMAN T. WHEELER: It says the election  
24 commission shall strictly construe?

25 MR. K. QUINN: It states that -- in the

1 court's holdings it state the petition was not  
2 timely filed with the Secretary of State in  
3 accordance with the applicable statutes.

4 CHAIRMAN T. WHEELER: I by the filing. It's  
5 clearly and untimely filed and it clearly is a  
6 strict construction. It is 1201 (indiscernible).

7 MR. K. QUINN: Okay.

8 CHAIRMAN T. WHEELER: I'm sorry, that was a  
9 legal term.

10 MR. K. QUINN: The cite -- this case actually  
11 cites to another case, the *Bodine* case -- *Bodine*  
12 and its prodigy have demanded strict compliance  
13 with the statutes, and they -- there's an excerpt  
14 from the *Bodine* case and it states in *Bodine* that  
15 this section does not purport to apply merely to  
16 declarations of candidacy.

17 So I think that it's clear from this case the  
18 *Briles* (Phonetic) case and the *Bodine* case the  
19 declaration of candidacy falls in strict compliance  
20 in interpretation of the statutes, and a strict  
21 compliance of the statute at issue here would  
22 require Judge Brown to have made a declaration of  
23 candidacy that contained fully accurate  
24 information, including the accurate identification  
25 of her precinct, rather.

1           **CHAIRMAN T. WHEELER:** Anything else from the  
2 commissioners?

3           *(No response.)*

4           **CHAIRMAN T. WHEELER:** Mr. Gray?

5           **MR. S. GRAY:** Just final thought, Your Honor,  
6 is I think it's pretty hard for counsel to get  
7 around the language in the Goldsmith case, and I  
8 heard one of the commissioners state earlier this  
9 afternoon that before we deny access to a  
10 candidate, we should err on the side of access if  
11 there's any question.

12           In this case, Ms. Brown is totally qualified  
13 to be a superior court judge by training, admission  
14 to the bar, and by residency. She's qualified  
15 whether she's in Precinct 8 or qualified in  
16 Precinct 43. Certainly, there was no knowing  
17 misrepresentation on her declaration of candidacy.

18           If anything, the Election, the Marion County  
19 Election Board chose the process of which they're  
20 getting notice out, which is certainly partly  
21 responsible for this, I'm going to ask the Board to  
22 err on the side of the benefit of the voters of  
23 Marion County and give an otherwise qualified  
24 candidate access to the ballot. Thank you.

25           **CHAIRMAN T. WHEELER:** All right. I'll accept

1 a motion or discussion or do you want to do a  
2 discussion on the motion?

3 VICE CHAIR A. LONG: I don't know. The --  
4 whatever you want to do.

5 CHAIRMAN T. WHEELER: Or do you want to talk  
6 first?

7 VICE CHAIR A. LONG: No. I'm -- I'm fully  
8 prepared to do either. I'm not going to make a  
9 motion at this point because I'm -- I'm torn here a  
10 little bit, which means the two statutes, I think  
11 we're entitled to interpret and enforce, I guess --  
12 that's our duty to enforce them, the election  
13 codes.

14 MR. M. HAMMOND: Mr. Chairman, could you point  
15 to the statute?

16 CHAIRMAN T. WHEELER: I'm certain you can ask  
17 Dale, if you want to give it to him.

18 MR. M. HAMMOND: You had mentioned earlier  
19 that there -- there is strict compliance and  
20 maybe...

21 CHAIRMAN T. WHEELER: The word use -- the word  
22 use was the word complies, and Dale, what was the  
23 cite?

24 MR. M. HAMMOND: Actually, I think I may be  
25 talking about something different.



1           VICE CHAIR A. LONG: 3-8-1-2 is what you're  
2 talking about?

3           MR. K. QUINN: You said there was a pending  
4 issue, 1201, it's -- it's...

5           VICE CHAIR A. LONG: Oh, it's legal.

6           CHAIRMAN T. WHEELER: (indiscernible).

7           MR. K. QUINN: Right.

8           CHAIRMAN T. WHEELER: And my legal basis for  
9 that?

10          MR. K. QUINN: Or the right statutory...

11          CHAIRMAN T. WHEELER: I relied upon my  
12 counsel.

13          VICE CHAIR A. LONG: You know, we have strict  
14 compliance that said certified mail notice, the  
15 statute says -- I mean we've dealt with that -- you  
16 know, because I think I disagree with the  
17 legislature, but you know, I think you put it in  
18 the mail, certified mail -- I mean we live -- we  
19 live our lives with that -- I mean you know  
20 (indiscernible) filed, but that's not filed here so  
21 that's -- you know, we're pretty strict on that.

22          CHAIRMAN T. WHEELER: Now on the other hand,  
23 though, with respect to campaign finance, for  
24 example, we've allowed filings.

25          VICE CHAIR A. LONG: County clerks.

1           CHAIRMAN T. WHEELER: County filings --

2           VICE CHAIR A. LONG: County filings.

3           CHAIRMAN T. WHEELER: -- upon the showing  
4 that...

5           VICE CHAIR A. LONG: But we can -- we can't  
6 accept a county clerk filing --

7           CHAIRMAN T. WHEELER: Like this  
8 (indiscernible).

9           VICE CHAIR A. LONG: -- of a declaration  
10 candidate, Mr. Fields -- I mean he filed clearly  
11 timely to be a state legislator, but he filed in  
12 the wrong place, and I mean that -- it appeared to  
13 me that was an ideal -- I mean an otherwise --  
14 well, I don't want to say, but we didn't get into  
15 the contents of his application, I don't guess.

16           COMMISSION MEMBER D. DUMEZICH: He didn't have  
17 any of his precinct information filled out.

18           VICE CHAIR A. LONG: Somebody did. I didn't  
19 want...

20           COMMISSION MEMBER D. DUMEZICH: And he didn't  
21 have his economic interest forms and he didn't have  
22 any...

23           CHAIRMAN T. WHEELER: He had a variety of  
24 other problems.

25           COMMISSION MEMBER D. DUMEZICH: He was more

1 wrong than right.

2 VICE CHAIR A. LONG: Well, and I agree, and I  
3 don't have any questions. This attorney is -- you  
4 know, meets the legal requirements, has been a  
5 practicing lawyer and lives in the right county and  
6 the town -- I don't know how your district is  
7 (indiscernible).

8 The question to me proposed under -- is very  
9 simple, and I'm not necessarily saying how I feel,  
10 but it seems that what I'm looking at, the statute  
11 requires -- wait, I'll find it here in a minute --  
12 3-8-2-7(a)(2), a statement that the candidate is a  
13 registered voter and the location of the  
14 candidate's precinct and township, then it says or,  
15 I guess that means if there's an alternative, the  
16 ward, city or town, county and state.

17 CHAIRMAN T. WHEELER: The word "of" -- the  
18 think the word "of" is in there.

19 VICE CHAIR A. LONG: I don't see an "of" in  
20 mine.

21 CHAIRMAN T. WHEELER: No. The word "ward" and  
22 the city or town.

23 VICE CHAIR A. LONG: No, ward and city.

24 CHAIRMAN T. WHEELER: Right. So you have to  
25 do -- you have to do ward and city, right. I was

1 reading from the form -- our form says ward. But  
2 the point is you can do either precinct or ward.

3 MS. L. BARNES: Mr. Chairman, if I might.  
4 Marion County legally does not use wards anymore.  
5 The political parties do.

6 CHAIRMAN T. WHEELER: Right.

7 MS. L. BARNES: And so that option that's in  
8 parentheses is not available to Marion County  
9 candidates.

10 VICE CHAIR A. LONG: How do they -- I'm  
11 confused.

12 MS. L. BARNES: Did I say that right?

13 CHAIRMAN T. WHEELER: (Indiscernible).

14 VICE CHAIR A. LONG: I asked for it,  
15 (indiscernible) in Evansville. How do wards -- we  
16 don't do wards, do we? We've never -- in my 11  
17 years I've been on the commission, we've never --  
18 that's a -- that's a --

19 CHAIRMAN T. WHEELER: That's a party.

20 VICE CHAIR A. LONG: -- apportionment within  
21 the -- at the county level; correct or, yeah, at  
22 the county level? The commissioners lay out the  
23 wards of, or the city, I guess -- it's the city --  
24 it would be the city.

25 COMMISSION MEMBER D. DUMEZICH: Yeah, the only

1 place (indiscernible) and Chicago.

2 VICE CHAIR A. LONG: That's (indiscernible) an  
3 academic discussion because neither one of them are  
4 here. The word's not here.

5 CHAIRMAN T. WHEELER: Right.

6 VICE CHAIR A. LONG: That's not there, and the  
7 precinct is wrong. It just says it has -- then the  
8 question is is this a forgivable mistake? Do we  
9 have the jurisdiction and the prerogative and the  
10 or the flexibility to say, you know, you made a  
11 mistake here but this mistake is understandable and  
12 we'll forgive that.

13 In light of 3-8-1-2(g), which we read earlier,  
14 the commission or election board shall deny a  
15 filing if the -- if it -- we determine, dah, dah,  
16 dah, has not complied with the applicable  
17 requirements of this title. And the question is  
18 does the title require the correct insertion of  
19 precinct number in order to sustain -- to withstand  
20 the challenge?

21 If that's a requirement of the law, I think  
22 it's -- I think the 3-8-1-2(g) is mandatory and I  
23 don't think she meets the requirement. If  
24 the -- if that is not the requirement, if the  
25 accurate precinct number is not a requirement of

1 the statute, then she probably does.

2 And I think that's the ultimate question,  
3 where I am in my mind, when the counsel, if they  
4 choose to address this issue, those are the --  
5 that's the question. In my mind, the only question  
6 is, is an accurate precinct number a requirement  
7 for a filing because I don't think -- there's  
8 nothing in here that says the oops or equity or  
9 mailing, it just says it has to have a precinct  
10 number on there.

11 And if that's -- and I don't know. I mean I  
12 don't know if there would be any authority. If  
13 counsel could enlighten me on the issue?

14 **MR. D. SIMMONS:** I don't know if this makes a  
15 different distinct between precinct number -- I  
16 don't read anything about precinct number in  
17 3-8-2-7. It does the location of a candidate's  
18 precinct, and I -- you know, I don't know if that  
19 makes it different, but it does require  
20 notification of a candidate's precinct. I'm not  
21 sure it requires a precinct number.

22 **MS. L. BARNES:** That's what our form requests  
23 of the commission, the form.

24 **MR. D. SIMMONS:** I'm not sure if we could  
25 trump a statute with forms but...

1           VICE CHAIR A. LONG: Location of the  
2 candidate's precinct.

3           CHAIRMAN T. WHEELER: And there's no doubt,  
4 that was your precinct?

5           MS. K. BROWN: Yes.

6           CHAIRMAN T. WHEELER: I mean we -- nobody  
7 disputes that. The only issue is...

8           VICE CHAIR A. LONG: Well, I think the dispute  
9 is -- I believe it's disputed (indiscernible) --

10          CHAIRMAN T. WHEELER: Precinct.

11          VICE CHAIR A. LONG: -- or when she filed, but  
12 it was her old precinct number which had been  
13 moved. you know, I -- I don't know -- the  
14 legislature, I'd be happy to sit down a while.

15          CHAIRMAN T. WHEELER: I'd rather not.

16          COMMISSION MEMBER D. DUMEZICH: They would  
17 look forward to that.

18          VICE CHAIR A. LONG: Yeah, that's -- we might  
19 have to do a whole session to clean up this  
20 quagmire and try to get...

21          CHAIRMAN T. WHEELER: Tony, you're -- you're  
22 far out. Where I am is I view us -- I view the  
23 work that applies, particularly, in light of the  
24 case law looking at the level of reading the  
25 statute, I don't believe that -- I believe we have

1 the authority as a commission to look at issues  
2 like this and resolve them in favor letting  
3 individuals go to the ballot.

4 I've certainly expressed that over and over  
5 today. I've read the case law. And it's not just  
6 the (indiscernible) case -- I have no reason to  
7 determine their cases, but I think that the intent  
8 of the general assembly is -- you know, words of  
9 close call, they're giving us the discretion to let  
10 somebody go to the ballot.

11 And that's where I am on this. You know, I  
12 think this is --

13 **VICE CHAIR A. LONG:** And I respect your  
14 position.

15 **CHAIRMAN T. WHEELER:** And this is a close  
16 call, agree, and if it's a close call, frankly, I'd  
17 rather see the person face the voters and let the  
18 voters decide rather than have us take people out,  
19 and that's just -- and I think I've been consistent  
20 since I've been on the commission that way.

21 **MR. K. QUINN:** I have one more comment. This  
22 goes back to the question I -- I asked earlier  
23 about the spirit that (indiscernible) if you  
24 don't --

25 **CHAIRMAN T. WHEELER:** All right. Well, stop



1 using legal terms.

2 MR. K. QUINN: I'm just -- and I guess my  
3 question is, is the precedent of this commission  
4 the only thing, because I'm reading Statute  
5 3-5-4-1.9 which is receiving late filings, and that  
6 to me, my interpretation of that, doesn't seem  
7 anymore or less strict or a --

8 VICE CHAIR A. LONG: What part is that?

9 MR. K. QUINN: 3-5-4-1.9.

10 VICE CHAIR A. LONG: Yeah.

11 MR. K. QUINN: Then those are requirements  
12 calling for a correct precinct, ward and township.  
13 And so I -- I just wanted to clarify that.

14 CHAIRMAN T. WHEELER: I read the word "may  
15 not" as being fairly definitive. The word  
16 "complies," I think could be substantial  
17 compliance, in that there is the document of  
18 substantial compliance of the law.

19 And the word that's used in our statute on  
20 review is does it comply? I read that as being we  
21 have the discretion to see if it substantially  
22 complies.

23 When it says may not, I don't think I have any  
24 discretion with the word may not.

25 COMMISSION MEMBER D. DUMEZICH: I think -- I

1 think, you know, everybody on the board, we know  
2 the facts and we know the law.

3 CHAIRMAN T. WHEELER: Yeah.

4 COMMISSION MEMBER D. DUMEZICH: I think it's  
5 time to just go to the vote.

6 CHAIRMAN T. WHEELER: You're exactly right.

7 COMMISSION MEMBER D. DUMEZICH: I'd like to  
8 make a motion to deny the challenge to the  
9 candidacy of Kimberly Brown.

10 VICE CHAIR A. LONG: Wait a second.

11 CHAIRMAN T. WHEELER: It doesn't matter either  
12 way.

13 VICE CHAIR A. LONG: Okay. That's all right.  
14 I just (indiscernible) failing, that's fine.

15 CHAIRMAN T. WHEELER: Failing to -- it looks  
16 like we're supposed to, obviously...

17 MR. S. GRAY: Could you repeat it because I  
18 didn't hear your motion, I'm sorry?

19 COMMISSION MEMBER D. DUMEZICH: I made a  
20 motion to deny the challenge of the candidacy of  
21 Kimberly Brown.

22 CHAIRMAN T. WHEELER: All right. Do I have a  
23 second for the motion -- I will second it -- the  
24 Chair will second the motion for the purpose of  
25 bring it to discussion. Any further discussion?

1 (No response.)

2 CHAIRMAN T. WHEELER: Any further public  
3 discussion?

4 VICE CHAIR A. LONG: No, I have none.

5 CHAIRMAN T. WHEELER: All right. All those in  
6 favor of the motion, signify by saying aye?

7 COMMISSION MEMBER D. DUMEZICH: Aye.

8 CHAIRMAN T. WHEELER: Aye. Those opposed,  
9 same sign?

10 VICE CHAIR A. LONG: No, or aye, whichever  
11 way...

12 MR. M. HAMMOND: Aye.

13 CHAIRMAN T. WHEELER: Either way. That's a  
14 2-2 split.

15 VICE CHAIR A. LONG: That motion failed.

16 CHAIRMAN T. WHEELER: That motion failed.

17 VICE CHAIR A. LONG: I think just for the  
18 record's sake, I'm going to make a motion we  
19 sustain the challenge, and if that gets second,  
20 then that gets you the same point that I think  
21 we've exhausted both alternatives and then the  
22 candidacy will survive as far as this board is  
23 concerned. That's my only reason for doing that.

24 CHAIRMAN T. WHEELER: And for the purposes of  
25 bringing it to vote, I will second the motion of

1 the Vice Chair. Any further discussion?

2 (No response.)

3 CHAIRMAN T. WHEELER: Hearing none, all in  
4 favor of sustaining the challenge, signify by  
5 saying aye?

6 VICE CHAIR A. LONG: Aye.

7 MR. M. HAMMOND: Aye.

8 CHAIRMAN T. WHEELER: Those opposed, same  
9 sign?

10 COMMISSION MEMBER D. DUMEZICH: Aye.

11 CHAIRMAN T. WHEELER: Aye. 2-2 split again.  
12 That means that the challenge is defeated for those  
13 purposes and maybe you can get somebody...

14 VICE CHAIR A. LONG: Thank you all for coming  
15 in.

16 MR. K. QUINN: I appreciate it.

17 MR. S. GRAY: I appreciate it.

18 MR. D. SIMMONS: We've got one more, Mr.  
19 Chairman.

20 CHAIRMAN T. WHEELER: All right. What we  
21 have -- Brad, what is this one?

22 MR. B. KING: Mr. Chairman is the very last  
23 tab, 08-178. And again, this is an odd situation  
24 where your declaration of candidacy has been filed  
25 with the Election Division. This is a situation to

1 this extent like Mr. Fields where a candidate has  
2 filed a request to be on the ballot, and this  
3 candidate actually only filed the CAN-2  
4 declaration.

5 CHAIRMAN T. WHEELER: What was -- what was the  
6 problem here? What was the problem with your  
7 filing?

8 MS. F. SCHWARTZ: If I may. I did send in the  
9 CAN-2 to the Election Division. I did send the FEI  
10 to the judicial qualifications committee. They  
11 just didn't get put together at the Election  
12 Division. That was the problem.

13 CHAIRMAN T. WHEELER: Brad, tell me...

14 MR. B. KING: Mr. Chairman, if I can refer the  
15 Commission to that statute, 3-8-1-33.

16 CHAIRMAN T. WHEELER: 3-8-11 --

17 MR. B. KING: No.

18 CHAIRMAN T. WHEELER: 3-8-1.

19 MR. B. KING: 3-8-1-33 which says that a  
20 candidate for an office listed must file a  
21 statement of economic interests, and then it lists  
22 candidate for -- I believe this is superior court  
23 judge --

24 MS. F. SCHWARTZ: That's correct.

25 MR. B. KING: -- in Elkhart County.

1 VICE CHAIR A. LONG: 3-8-1-33?

2 MR. B. KING: Yes, that's correct.

3 CHAIRMAN T. WHEELER: That's on Page 160. And  
4 then I'll defer to Dale, there was another statute  
5 which you just spoke out on, Dale.

6 MR. D. SIMMONS: 3-8 -- 3-8-2-11 which is on  
7 Page 166.

8 CHAIRMAN T. WHEELER: And there's...

9 MR. D. SIMMONS: There's a subsection C there  
10 that cross reference as requirement to file that  
11 statement of economic interests and actually  
12 requires us to receive a copy of the statement or a  
13 receipt showing that it was filed, and if it's not,  
14 present it by the filing, the last sentence of that  
15 section says the election division shall reject a  
16 filing that does not comply.

17 CHAIRMAN T. WHEELER: Shall reject?

18 MR. D. SIMMONS: Shall reject.

19 CHAIRMAN T. WHEELER: And so in this case, the  
20 Election Commission rejected the filing because the  
21 economic interests statement was not attached?

22 MS. P. POTESA: Mr. Chairman?

23 CHAIRMAN T. WHEELER: I'm sorry, Pam.

24 MS. P. POTESA: Ms. -- Mrs. Schwartz, is that  
25 how you say it?

1 MS. F. SCHWARTZ: Yes.

2 MS. P. POTESTA: We received her CAN-2 without  
3 her estimate of economic interests, and at that  
4 time we attempted to contact her before the  
5 deadline --

6 MS. F. SCHWARTZ: Correct.

7 MS. P. POTESTA: -- to let her know that she  
8 needed to get that to us before we could accept the  
9 filing, and I'll let you finish.

10 MS. F. SCHWARTZ: Okay. That is correct. I  
11 did write a letter, and do you each have my  
12 exhibits?

13 CHAIRMAN T. WHEELER: I hold the exhibits.

14 MS. F. SCHWARTZ: A through F.

15 CHAIRMAN T. WHEELER: I have a letter dated  
16 February 29th.

17 MS. F. SCHWARTZ: Okay. And the exhibits.  
18 While I did attempt to substantially comply with  
19 the requirement, I will ask this commission to take  
20 notice of Black's Law Dictionary, 8th Edition,  
21 Brian A. Gardener, editor-in-chief wherein shall is  
22 defined.

23 Shall under the first definition says has a  
24 duty to (indiscernible) is required to. However,  
25 under Definition 5, shall is defined as is entitled

1 to. So that we define shall as entitled to, it is  
2 not a requirement, but it is an option, and I would  
3 ask this commission to consider that definition to  
4 more broadly construe the qualification  
5 requirements.

6 CHAIRMAN T. WHEELER: You filed your economic  
7 interests statement with the state court  
8 administrator timely; is that correct?

9 MS. F. SCHWARTZ: That's correct. It was  
10 received --

11 CHAIRMAN T. WHEELER: Did you fail to attach  
12 it to your CAN-2?

13 MS. F. SCHWARTZ: Yes, sir.

14 CHAIRMAN T. WHEELER: So the issue is does the  
15 word shall in our statute or says shall reject.

16 MR. D. SIMMONS: Mr. Chairman?

17 CHAIRMAN T. WHEELER: We -- we -- we all  
18 (indiscernible) of practicing lawyers understand  
19 that the legislature has stopped using the word  
20 "shall" in a lot of places for exactly this reason.  
21 However...

22 MR. D. SIMMONS: We -- we -- I mean I do and  
23 have discussed this with Mr. King, it's sort of a  
24 jurisdiction. It's not like a challenge. It's  
25 something on the Election Commission, we were



1 required by statute.

2 CHAIRMAN T. WHEELER: And you read the shall I  
3 ask have to?

4 MR. D. SIMMONS: We -- we had to reject this  
5 as a filing.

6 CHAIRMAN T. WHEELER: And we did -- and you  
7 did reject it so this is currently a rejected  
8 filing?

9 MS. F. SCHWARTZ: It is currently rejected.

10 MR. D. SIMMONS: When we rejected it, we did  
11 not certify this as a CAN. So at this time I'm not  
12 sure what jurisdictional book there would be for  
13 the commission, unless it was like an earlier  
14 candidate who had come up and said well I want you  
15 to extend the deadline.

16 CHAIRMAN T. WHEELER: Right, this is -- this  
17 is -- this is similar to Mr...

18 MS. F. SCHWARTZ: Although distinguishable, if  
19 I may, because I did file the documents.

20 CHAIRMAN T. WHEELER: But their -- their  
21 contention is that we don't have any jurisdiction  
22 over this.

23 MS. F. SCHWARTZ: I believe you do.

24 MR. B. KING: Mr. Chairman, if I could add on  
25 what counsel said, in terms of our discussion, too,

1 this is a situation where in 2006 we had a couple  
2 of other candidate filings that were presented to  
3 us that the then co-directors refused to accept,  
4 not necessarily for a failure to attach economic  
5 interests statement, did not include it in various  
6 certifications, that candidate, they went to court  
7 to obtain (indiscernible) to compel the  
8 co-directors to issue certification, and I  
9 personally think that's the remedy for this  
10 candidate as opposed to the commission's...

11 **CHAIRMAN T. WHEELER:** So the recommendation --  
12 I've heard the right side, and Pam, I kind of took  
13 you as...

14 **VICE CHAIR A. LONG:** Closer to the right or  
15 the left?

16 **COMMISSION MEMBER D. DUMEZICH:** Left.

17 **CHAIRMAN T. WHEELER:** Literally to my right  
18 and now I'm going literally to my left -- it's not  
19 my fault you guys sit that way. From your side,  
20 you concur we had a jurisdictional -- there's a  
21 jurisdictional defect, we don't have jurisdiction  
22 over this?

23 **MS. P. POTESTA:** All I know is she attempted  
24 to file. She did not submit the proper paperwork.  
25 We also attempted to contact her and she received

1 the proper paperwork and we were unsuccessful in  
2 getting ahold of her until after the deadline. So  
3 I'm not a lawyer but --

4 CHAIRMAN T. WHEELER: Play one on TV.

5 MS. P. POTESTA: -- a lot of candidates missed  
6 the deadline and you've you voted on it so it's --  
7 it's not my decision.

8 VICE CHAIR A. LONG: Leslie, do you have an  
9 opinion?

10 MS. F. SCHWARTZ: If I may make a comment? I  
11 believe you do have jurisdiction under 3-6-4.1-14.

12 CHAIRMAN T. WHEELER: Hold on a minute.

13 MS. F. SCHWARTZ: 3-6:4.1-14.

14 CHAIRMAN T. WHEELER: Page 55, powers and  
15 duties?

16 MS. F. SCHWARTZ: Yes. It says that in  
17 addition to other duties prescribed by law, the  
18 commission shall do the following, that's under  
19 section 14(a) -- 2(a), govern the fair, legal and  
20 orderly conduct of elections. I believe it falls  
21 under there to look at the fair conduct of  
22 elections. Fair I would equate with equitable and  
23 so --

24 CHAIRMAN T. WHEELER: My -- my concern --  
25 thank you for doing that. My concern is you

1           construe our jurisdiction too broadly. I'm afraid  
2           if we were looking at the jurisdictional mandate  
3           over, quote, fair and legal and orderly conduct of  
4           elections, I believe that's premised by the  
5           immediately prior which says adopt rules to do the  
6           following -- I don't think it gives us discretion.

7                     If we have -- we're allowed to adopt rules  
8           governing a fair and legal and orderly conduct of  
9           elections. I don't think we're allowed to exercise  
10          jurisdictional over individual issues such as this  
11          in order to ensure the fair and legal and orderly  
12          conduct of elections. I mean I read that as being  
13          modified by (indiscernible).

14                    **MS. F. SCHWARTZ:** Okay.

15                    **CHAIRMAN T. WHEELER:** As much as I appreciate  
16          your attention, I think if we tried that, the  
17          general assembly would slap us down fairly --  
18          fairly vigorously. I mean what I heard from -- and  
19          I haven't heard anybody descending from this is  
20          that the appropriate place is a writ of mandamus  
21          seeking a mandate.

22                    **VICE CHAIR A. LONG:** Can we get to advice of  
23          counsel down there, I -- if she has any additional?

24                    **CHAIRMAN T. WHEELER:** She's got her fingers on  
25          two spots at least.

1           **MS. L. BARNES:** Well, a writ of mandamus may  
2 be one option. I wonder what the commission has  
3 set today by allowing substantial compliance to be  
4 adequate. You're right, that 3-8-2-11 does say  
5 that if a candidate does not file a copy of her  
6 statement of economic interests or receipt, the  
7 division shall reject the filing that does not  
8 comply with this subsection. So now we're back to  
9 the division to determine whether there's been  
10 substantial compliance.

11           **CHAIRMAN T. WHEELER:** I mean I -- I did make  
12 the vote as approving my substantial compliance  
13 argument, but I think that was my personal opinion  
14 on substantial compliance. I believe the  
15 Commission...

16           **COMMISSION MEMBER D. DUMEZICH:** And in that  
17 particular case, we have a split decision so there  
18 has been no ruling from the commission on  
19 substantial compliance.

20           **CHAIRMAN T. WHEELER:** Certainly...

21           **VICE CHAIR A. LONG:** It says that the division  
22 shall, and I'm not -- you know, this is a  
23 troublesome area, too, but the division shall  
24 reject the filing, and I guess the argument may be  
25 if the division, if it rejects the filings that it

1 never gets to -- before us, that there would have  
2 to be amended -- a mandamus to require the division  
3 to accept the filing.

4 **CHAIRMAN T. WHEELER:** And I think that's where  
5 we were, which is your -- I think the division has  
6 discretion to accept or reject that filing.

7 **VICE CHAIR A. LONG:** I don't think they have  
8 discretion. I think if it's not there, they can't  
9 accept it. I mean I read -- I'm old -- I'm old  
10 school. Shall means shall.

11 **CHAIRMAN T. WHEELER:** Shall means shall. I  
12 hear you.

13 **MS. L. BARNES:** Well, no. And I would agree  
14 that the word shall means shall, but under 3-8-1 --

15 **MR. D. SIMMONS:** 2, but this is not -- this is  
16 not a challenge again.

17 **MS. L. BARNES:** It's not a challenge.

18 **MR. D. SIMMONS:** It's not a challenge.

19 **MS. L. BARNES:** But the language says the  
20 commission shall deny a filing if it doesn't comply  
21 and this says the division shall reject a filing if  
22 it doesn't comply. I'm just going by...

23 **MR. D. SIMMONS:** Mr. Chairman, I think we can  
24 take that up as counsel with our individual  
25 co-directors and advise them accordingly. I think

1 they --

2 CHAIRMAN T. WHEELER: I think the point -- the  
3 point is this: Do we as the Commission have  
4 jurisdiction to do anything about the Division --  
5 the Division's made the decision to reject this  
6 filing, regardless of what the stand is, do we as  
7 the commission have the ability in this forum and  
8 this context to review that decision? That's the  
9 question I'm asking.

10 VICE CHAIR A. LONG: And I don't think I'll  
11 have to error that I don't think we do, but I think  
12 to protect Schwartz's position here, we shouldn't  
13 just turn it down, we should turn it down because  
14 of lack of jurisdiction.

15 CHAIRMAN T. WHEELER: Right. That gives her  
16 the ability to go...

17 VICE CHAIR A. LONG: Then -- then she's  
18 exhausted that remedy and apply for the -- apply to  
19 the court for a writ.

20 CHAIRMAN T. WHEELER: Is that a motion?

21 VICE CHAIR A. LONG: Yeah.

22 COMMISSION MEMBER D. DUMEZICH: Second.

23 CHAIRMAN T. WHEELER: The motion's been made  
24 and seconded that we deny it for lack of  
25 jurisdiction which will allow her to pursue a

1 different remedy as the co-directors have chosen.

2 VICE CHAIR A. LONG: If she chooses to.

3 CHAIRMAN T. WHEELER: If she chooses.

4 VICE CHAIR A. LONG: It would be nice to  
5 (indiscernible).

6 CHAIRMAN T. WHEELER: That, it would.

7 COMMISSION MEMBER D. DUMEZICH: We're going to  
8 find out.

9 CHAIRMAN T. WHEELER: All right, the motion's  
10 been made and seconded, any further discussion?

11 *(No response.)*

12 CHAIRMAN T. WHEELER: All in favor, signify by  
13 saying aye?

14 THE COMMISSION: Aye.

15 CHAIRMAN T. WHEELER: Those opposed, same  
16 sign?

17 *(No response.)*

18 CHAIRMAN T. WHEELER: I'll accept a motion to  
19 adjourn.

20 COMMISSION MEMBER D. DUMEZICH: Motion to  
21 adjourn.

22 VICE CHAIR A. LONG: We've got a --

23 MS. F. SCHWARTZ: Thank you so much.

24 VICE CHAIR A. LONG: I got on the agenda --

25 CHAIRMAN T. WHEELER: Oh, cool.



1 VICE CHAIR A. LONG: -- to set meetings.

2 CHAIRMAN T. WHEELER: Yes.

3 VICE CHAIR A. LONG: I don't want to do that  
4 necessarily today.

5 CHAIRMAN T. WHEELER: No, I agree 100 percent.

6 VICE CHAIR A. LONG: I would suggest that we  
7 direct staff to outline what we have to have  
8 meetings and get with our respective calendars and  
9 let's get our meetings, mandatory meetings set for  
10 the rest of the year, and then that way we won't  
11 have these nightmares trying to...

12 CHAIRMAN T. WHEELER: Absolutely. And I --  
13 I -- I agree with that a hundred percent. As I  
14 said to you when you asked about it, Sarah and I,  
15 it's easy for us.

16 COMMISSION MEMBER S. RIORDAN: I know.

17 VICE CHAIR A. LONG: We used to do this. We  
18 used to set them, then we can always take -- if we  
19 set them, then we can always take them off because  
20 we don't need them.

21 CHAIRMAN T. WHEELER: And the only reason, my  
22 general policy is not to have meetings if we don't  
23 need meetings.

24 VICE CHAIR A. LONG: Yep.

25 CHAIRMAN T. WHEELER: There's no reason to

1 drag you guys down here.

2 VICE CHAIR A. LONG: Then if we set some  
3 meetings, then I can refer to them to my calendar,  
4 then I get an extra workday.

5 CHAIRMAN T. WHEELER: Well, mean I  
6 (indiscernible).

7 VICE CHAIR A. LONG: Well, it's all right if  
8 we don't have the meeting. I can get some work  
9 done in the office. I would move that counsel,  
10 that the co-directors proceed to set up meetings  
11 scheduled for the balance of the year with our  
12 respective calendars.

13 CHAIRMAN T. WHEELER: Keeping in mind --  
14 keeping in mind the deadlines, the form deadlines.  
15 If the clerks need anything -- if we're going to do  
16 those, maybe do a -- schedule a short one for the  
17 clerks (indiscernible). All right. I've got a  
18 motion to adjourn.

19 VICE CHAIR A. LONG: Motion to do that and  
20 adjourn.

21 COMMISSION MEMBER D. DUMEZICH: Second.

22 COMMISSION MEMBER S. RIORDAN: Second.

23 CHAIRMAN T. WHEELER: Seconded, all in favor,  
24 signify by saying aye?

25 THE COMMISSION: Aye.

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VICE CHAIR A. LONG: Thank you all.

CHAIRMAN T. WHEELER: Thanks guys.

*(At this time the proceedings were concluded.)*