

Indiana Election Commission
Minutes
February 26, 2014

Members Present: Bryce H. Bennett, Jr., Chairman of the Indiana Election Commission (“Commission”); Jennifer Wagner, proxy for S. Anthony Long, Vice Chairman of the Commission; Adam Dickey, proxy for Suzannah Overholt, member; Zachary E. Klutz, member.

Members Absent: S. Anthony Long, Vice-Chairman of the Commission; Suzannah Wilson, member.

Staff Attending: Trent Deckard, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); J. Bradley King, Co-Director of the Election Division; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Rhonda J. Hobbs, RPR, Notary Public, Stenographic Reporter, Connor Reporting.

Others Attending: Dr. Jay Bagga; Mr. Tenley Drescher; Ms. Lisa Dunham; Mr. William Eggleston; Mr. Jarred Eib; Mr. Roger L. Eib; Ms. Sheila Eib; The Honorable Mark Florence, Grant County Circuit Court Clerk; Mr. Don Gallaway; Mr. Steve Hogan; Mr. Thomas John; Mr. Paul Ogden; Dr. Raymond Scheele; Ms. Sandra A. Stewart.

1. Call to Order

The Chair called the February 26, 2014 meeting of the Commission to order at 10:30 a.m. EST in Conference Room B, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana.

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

2. Transaction of Business

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

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

Page 9, line 5, replace “?” with “.”.

Page 19, line 19, delete “the”.

Page 31, line 23, replace "we error, we error" with "we err, we err".

Page 31, line 24, replace "valid" with "ballot".

Page 34, line 22, replace "believe" with "believed".

Page 71, line 8, replace "Bowman" with "Bowen".

3. Adjournment

There being no further items on the Commission's agenda, Ms. Wagner moved, seconded by Mr. Dickey, that the Commission do now adjourn. The motion was adopted, with four members voting "aye" (Mr. Bennett, Mr. Dickey, Mr. Klutz, and Ms. Wagner), and no Commission member voting "no."

The Commission meeting was then adjourned at 12:03 p.m.

Respectfully submitted,



Trent Deckard
Co-Director



J. Bradley King
Co-Director

APPROVED:



Bryce H. Bennett, Jr.
Chairman

ORIGINAL

In the Matter Of:

Indiana Election Commission Public Session Agenda

February 26, 2014



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INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

Conducted On: Wednesday, February 26, 2014

Location: Indiana Government Center South
Conference Room B
402 West Washington Street
Indianapolis, Indiana 46204

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

Connor Reporting, Inc.
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A P P E A R A N C E S

INDIANA ELECTION COMMISSION:

Mr. Bryce Bennett - Chairman

Ms. Jennifer Wagner - (Proxy for Vice
Chairman Anthony Long)

Mr. Adam Dickey (Proxy for Commission Member
Suzannah Overholt)

Mr. Zachary Klutz - Commission Member

INDIANA ELECTION DIVISION STAFF:

Mr. Dale Simmons - Co-Legal Counsel

Ms. Leslie Barnes - Co-Legal Counsel

Mr. Bradley King - Co-Director

Mr. Trent Deckard - Co-Director

1 CHAIRMAN B. BENNETT: Okay. The court
2 reporter is ready, and we will now call this
3 meeting to order of the Indiana Election
4 Commission Public Session. Thank you all for
5 being here and for your patience on a very brief
6 delay in starting this morning.

7 I'd like to start by introducing the Members
8 of the Commission. I am Bryce Bennett. I am the
9 current Chair of the Commission and pleased to
10 assume that role in my first meeting of the Chair.

11 We have with us today, Jennifer Wagner, the
12 proxy for Vice Chairman Anthony Long, and Adam
13 Dickey, the proxy for Member, Suzannah Wilson
14 Overholt. And we also have the distinction of a
15 new member of the Commission who is a commissioner,
16 and this is Zachary Klutz, and it is my privilege
17 and honor this morning to present to Mr. Klutz his
18 commission from the Governor of the State of
19 Indiana as a new commissioner.

20 COMMISSION MEMBER Z. KLUTZ: Thanks, Bryce.

21 CHAIRMAN B. BENNETT: Thank you, and
22 welcome. We have the Indiana Election Division
23 staff, which fortunately, is not turning over as
24 fast as the Board, the Commission. And many of
25 you know, but we want to introduce for the

1 record, Co-Directors Trent Deckard and Brad
2 King. Co-General Counsels are Leslie Barnes and
3 Dale Simmons. The court reporter is Rhonda
4 Hobbs from Connor & Associates.

5 I want to welcome our proxies who are
6 participating in today's meeting, and we have
7 welcomed our newest Commission Member, Zach Klutz,
8 but before we actually begin the proceedings today,
9 I want to remind everyone on behalf of the court
10 reporter to identify yourself when you're beginning
11 to speak, spell your name, when identifying
12 yourself, speak clearly, and do not speak at the
13 same time as others, particularly, the commission
14 members.

15 We would request at this time that Mr. Deckard
16 and Mr. King confirm that the commission meeting
17 has been properly noticed as required under
18 Indiana's Open Door Law.

19 MR. B. KING: Mr. Chairman and Members of
20 the Commission, this meeting was properly
21 noticed in compliance with the Indiana Open Door
22 Law.

23 CHAIRMAN B. BENNETT: Thank you, Mr. King.
24 I recognize Mr. Deckard and Mr. King to present
25 minutes of the December 17th, 2013 Indiana

1 Election Commission Meeting.

2 MR. B. KING: Mr. Chairman and Members of
3 the Commission, Mr. Deckard and myself prepared
4 the minutes for the December 17th, 2013 meeting
5 and have submitted them for your review and
6 would recommend their approval.

7 CHAIRMAN B. BENNETT: Is there a motion to
8 approve these minutes?

9 PROXY J. WAGNER: So moved.

10 CHAIRMAN B. BENNETT: We have a motion. Is
11 there a second?

12 COMMISSION MEMBER Z. KLUTZ: Second.

13 CHAIRMAN B. BENNETT: Motion is seconded.
14 Any discussion?

15 (No response.)

16 CHAIRMAN B. BENNETT: Hearing none, all in
17 favor say aye?

18 THE COMMISSION: Aye.

19 CHAIRMAN B. BENNETT: Opposed, say nay?

20 (No response.)

21 CHAIRMAN B. BENNETT: The ayes have it and
22 the motion is approved and the minutes are
23 adopted. In the past the Commission has
24 followed certain procedures for conducting
25 candidate challenge hearings, and I move that

1 the Commission use the following procedures
2 today.

3 When each candidate challenge is called, the
4 hearing will begin by recognizing Election Division
5 staff to provide information about the documents
6 provided to the Commission Members, including
7 candidate challenge forms and the notice given to
8 the candidate and the challenger.

9 Unless there is an objection, the documents
10 provided to the Commission by the Election Division
11 will be entered into the record of this meeting.
12 After the Election Division staff completes its
13 presentation, the challenger will be recognized
14 first.

15 The challenger or the challenger's authorized
16 representative, if written authorization has been
17 filed with the Election Division, may present their
18 case for no more than seven minutes unless the
19 Commission votes to allow additional time for the
20 presentation.

21 The Commission Members may ask questions
22 during the presentation, but the time spent
23 answering these questions, will not be counted
24 against a presenter's time. The Election Division
25 may signal the Chair when a presenter's time is up.

1 If the presenter offers additional documents
2 or other physical evidence not previously received
3 by the Commission, then the original must be
4 provided to the Election Division, and that would
5 be Dale, to preserve for the record.

6 The candidate or the candidate's authorized
7 representative, if written authorization has been
8 filed with the Election Division, will be
9 recognized following the last presentation by a
10 challenger. The candidate may present their case
11 for no more than seven minutes unless the
12 Commission votes to allow additional time for the
13 presenter.

14 Following presentation by a challenger, the
15 candidate may cross-examine the challenger.
16 Following the presentation by a candidate, a
17 challenger may cross-examine the candidate. The
18 cross-examination in all cases is limited to two
19 minutes unless the Commission votes to allow
20 additional time. The cross-examination must be
21 limited to questions regarding statements made by
22 the presenter.

23 Following presentation by a candidate, the
24 challenger may present a rebuttal of no more than
25 two minutes. The Commission may dismiss the cause

1 of any challenger who has failed to appear or
2 testify before the Commission. If there is a
3 second to my motion for the Commission to adopt
4 these procedures -- is there a second to my motion
5 to adopt these procedures for today's candidate
6 challenge hearings?

7 COMMISSION MEMBER Z. KLUTZ: So moved.

8 CHAIRMAN B. BENNETT: We have a motion. Do
9 we have a second?

10 PROXY J. WAGNER: Second.

11 CHAIRMAN B. BENNETT: Any discussion?

12 (No response.)

13 CHAIRMAN B. BENNETT: Hearing none, the
14 motion is so -- is there any objection from the
15 Commission Members or any individual present to
16 these procedures?

17 (No response.)

18 CHAIRMAN B. BENNETT: Seeing none and
19 hearing none, all in favor of adopting the
20 procedures as described, say aye?

21 THE COMMISSION: Aye.

22 CHAIRMAN B. BENNETT: All opposed, same
23 sign?

24 (No response.)

25 CHAIRMAN B. BENNETT: Motion carried.

1 Procedures are adopted. Everyone present here
2 today who plans to testify before the Indiana
3 Election Commission regarding any matters,
4 including voting system matters, please stand
5 for administration of the oath?

6 (Participants complied.)

7 MR. D. SIMMONS: Stand and raise your right
8 hand. Say I do after the administration of the
9 oath. Do you solemnly swear or affirm under the
10 penalties of perjury that the testimony you are
11 about to give the Indiana Election Commission is
12 the truth, the whole truth, and nothing but the
13 truth, say I do?

14 THE PARTICIPANTS: I do.

15 MR. D. SIMMONS: Thank you.

16 CHAIRMAN B. BENNETT: We'll now begin
17 consideration of candidate challenges. I'll
18 remind everyone to identify yourself, please,
19 before you begin speaking. We will start with
20 the Jarred Eib challenge. We'll begin hearing
21 Cause No. 2014-01, In The Matter Of The
22 Challenge to Jarred Eib, Candidate for the
23 Republican Party Nomination for Judge of the
24 Grant County Superior Court No. 3.
25 The Election Division has provided a copy of

1 the Candidate Filing Challenge form with
2 attachments and a copy of notice given in this
3 matter. I would like to recognize Jerry Shull,
4 challenger for presentation.

5 MR. D. GALLAWAY: Mr. Chairman, my name is
6 Don Gallaway, G-A-L-L-A-W-A-Y. I submitted my
7 appearance on behalf of the Grant County
8 Republican Party and Mr. Shull. The -- I guess
9 I want to confirm for the record that
10 Mr. Shull's affidavit is part of the record for
11 these proceedings. It was included with the
12 attachments.

13 CHAIRMAN B. BENNETT: We have the
14 affidavit. It is part of the record.

15 MR. D. GALLAWAY: Okay. Thank you very
16 much.

17 MR. J. EIB: Sorry to interrupt, Jarred
18 Eib, the candidate. I would move to dismiss on
19 the grounds that Mr. Shull is not here. I have
20 received no appearance of Mr. Gallaway and was
21 unaware of anything that had been filed with the
22 Commission.

23 CHAIRMAN B. BENNETT: Mr. Gallaway, have
24 you filed an appearance in this case?

25 MR. D. GALLAWAY: I believe we did, Mr.

1 Chairman. We faxed it. I don't have a copy of
2 it with me, but my staff faxed it a couple of
3 weeks ago. Mr. Simmons requested that we send a
4 copy for contact purposes, and so we did that,
5 but I'm not sure. I don't have any proof that
6 it was actually received by the Commission.

7 CHAIRMAN B. BENNETT: What evidence do you
8 have to demonstrate that you are in fact
9 authorized to represent the challenger?

10 MR. D. GALLAWAY: I have Mark Florence, who
11 is the Grant County Clerk, who was present when
12 Mr. Shull asked me to represent him in this
13 particular case. He is present and has taken
14 the oath. He could come and testify as to a
15 conversation that he heard in which Mr. Shull
16 made that request.

17 CHAIRMAN B. BENNETT: And who was present
18 during that meeting?

19 MR. D. GALLAWAY: Mark Florence.

20 CHAIRMAN B. BENNETT: Anyone else?

21 MR. D. GALLAWAY: Mr. Florence is the only
22 one that I brought today. He was actually going
23 to testify on other matters.

24 CHAIRMAN B. BENNETT: Mr. Florence, you're
25 under oath; is that correct?

1 MR. M. FLORENCE: Yes, sir.

2 CHAIRMAN B. BENNETT: And what evidence or
3 testimony do you have pertinent to these
4 matters?

5 MR. M. FLORENCE: My name is Mark Florence.
6 I'm the Clerk of the Circuit Court in Grant
7 County, Indiana. The last name is spelled
8 F-L-O-R-E-N-C-E. I was present when Jerry
9 Shull, saw who is the Republican County
10 Chairman, asked his vice chairman, who is also
11 my chief deputy, Carolyn Mowery, M-O-W-E-R-Y, if
12 Don Gallaway would represent him in this
13 challenge, as he is out of state at this time
14 during this -- during these proceedings, and
15 Mr. Gallaway accepted the request representing
16 him here in the action that was brought by Jerry
17 Shull, the voter.

18 CHAIRMAN B. BENNETT: Do you know anything
19 about Mr. Florence's -- I'm sorry, the
20 appearance of Mr. Gallaway?

21 MR. M. FLORENCE: I do not. I do know that
22 I've been in contact with the Indiana Election
23 Division, and they said that they wanted an
24 appearance entered by Mr. Gallaway.
25 Mr. Gallaway's office is in completely a

1 different building than where we're at. I
2 wouldn't have any personal knowledge of that
3 being said. I don't have the personal knowledge
4 of Jerry Shull, the voter, asking him to
5 represent him during his absence.

6 CHAIRMAN B. BENNETT: Any other questions
7 of this witness?

8 COMMISSION MEMBER Z. KLUTZ: Mr. Chairman,
9 is an appearance required for testimony before
10 the Commission?

11 CHAIRMAN B. BENNETT: My understanding is
12 it is not, but I would ask legal counsel to
13 confirm that.

14 MR. D. SIMMONS: Mr. Chairman, it's my
15 understanding as well under the Administrative
16 Orders and Procedures Act, which the Commission
17 is operating under, parties may appear by
18 counsel or in person. We do request -- it is
19 not an requirement in the Administrative Orders
20 and Procedures Act, but we do request that
21 counsel do file an appearance.

22 CHAIRMAN B. BENNETT: Leslie, do you have
23 anything to add to that?

24 MS. L. BARNES: No, Mr. Chairman. My
25 understanding is the same. The body operates

1 under the Administrative Orders and Procedures
2 Act and a written appearance is not necessary.
3 In the past we've had counsel appear in person
4 and enter their appearance orally as well.

5 CHAIRMAN B. BENNETT: Okay.

6 PROXY J. WAGNER: Can I ask a quick
7 question because I want to make sure I've got
8 this right. Regarding Mr. Eib's request to
9 dismiss, that is not an order, because we take
10 the written filing if there's no one here to
11 actually speak on behalf -- is that -- is that
12 right? There's still a sworn affidavit, that's
13 what's required under the law, that's what we
14 will be considering today, absent any testimony
15 on behalf of or from Mr. Shull?

16 CHAIRMAN B. BENNETT: Is that a motion to
17 deny the motion to dismiss?

18 PROXY J. WAGNER: Yes, that is a motion to
19 deny the motion to dismiss.

20 CHAIRMAN B. BENNETT: Is there a second
21 speak for that?

22 MR. A. DICKEY: Second.

23 CHAIRMAN B. BENNETT: Okay, a motion and a
24 second. All in favor of the motion to deny the
25 motion to dismiss, say aye?

1 THE COMMISSION: Aye.

2 CHAIRMAN B. BENNETT: All opposed, same
3 sign?

4 (No response.)

5 CHAIRMAN B. BENNETT: The motion to dismiss
6 is denied. You may proceed based on the oral
7 appearance on the record.

8 MR. D. GALLAWAY: Thank you, Mr. Chairman.
9 The affidavit that Mr. Shull submitted is pretty
10 self-explanatory. Mr. Eib filed a declaration
11 of candidacy on January the 14th, and in that
12 declaration of candidacy, he claimed that the
13 most recent primary election in Indiana, which
14 he voted in the primary held by the Party, which
15 he claims affiliation above, which is the
16 Republican Party.

17 Attached to the challenge is a copy, and I
18 believe it's certified, of the -- and it would be
19 the fourth page of that, I believe, the Statewide
20 Voter Registration System, and I would draw the
21 Commission's attention to the 2008 primary election
22 in which the ballot type was Democratic. That is
23 the last primary in which -- it's the last page in
24 that packet, and I apologize, it wasn't the fourth
25 page, that is the last primary that Mr. Eib is

1 recorded to have participated in.

2 So first of all, his declaration of candidacy
3 is inaccurate, and according to IC 3-8-2-7, Section
4 4 Subsection A and B, in order for him to be
5 affiliated under this set of circumstances, he
6 would have to have the chairman of the local county
7 affirm that he is in fact a valid candidate for the
8 Republican Party, since the last primary was a
9 Democratic primary that he voted in.

10 Part of the affidavit that Mr. Shull
11 submitted, Paragraph 12 says that he declined Mr.
12 Eib's request to run in the Republican primary. As
13 a result, it's Mr. Shull's position that Mr. Eib
14 has been disqualified from running as a Republican
15 candidate for judge in Superior Court 3 in the
16 upcoming Republican primary.

17 Should the Commission wish, and I'll leave it
18 totally with the Commission's discretion, it's our
19 belief that Mr. Eib may assert that there was some
20 sort of mistake made during the process of the 2008
21 primary that reflected him voting as a Democrat.

22 I can offer testimony from Mr. Florence as to
23 the procedures that are laid out, the safeguards
24 that are laid out in Grant County. Obviously, it's
25 a big deal to make sure that the vote is accurate

1 and the integrity of the process is safeguarded. I
2 will leave that to the Commission's discretion as
3 to whether the Commission would like to hear that.

4 CHAIRMAN B. BENNETT: At this time you'll
5 reserve that for rebuttal?

6 MR. D. GALLAWAY: Yes.

7 CHAIRMAN B. BENNETT: Any cross-examination
8 of this witness?

9 MR. J. EIB: Jarred Eib.

10 CHAIRMAN B. BENNETT: Would you like to
11 cross-examine?

12 MR. J. EIB: Yes, I want to cross-examine
13 the witness.

14 CHAIRMAN B. BENNETT: You may.

15

16 CROSS-EXAMINATION

17 QUESTIONS BY MR. JARRED L. EIB:

18 Q Mr. Gallaway, just a point of clarification.
19 When you initially came up, you indicated that
20 you were representing Mr. Shull and the
21 Republican Party of Grant County; is that
22 correct?

23 A Well, I misspoke. Actually, it's Mr. Shull as a
24 voter. That's how this was filed.

25 Q Thank you. Do you have any personal knowledge,

1 or to your knowledge, does your client, who's
2 not here, have any personal knowledge regarding
3 which ballot I requested in the 2008 election?

4 A Only what's reflected in the State Voter
5 Registration, which reflects a Democratic
6 ballot.

7 Q So for clarification, that's -- you do not have
8 personal knowledge?

9 A If you're asking if my client saw you personally
10 witnessed you at the ballot?

11 Q Yes.

12 A I don't believe he did.

13 MR. J. EIB: Thank you. No further
14 questions.

15 CHAIRMAN B. BENNETT: Any further witnesses
16 at this time?

17 MR. D. GALLAWAY: No. Just reserve the one
18 for rebuttal.

19 CHAIRMAN B. BENNETT: Good. Mr. Eib, am I
20 pronouncing your name right?

21 MR. J. EIB: Yes, that's correct. I have
22 some materials, if I may. What I've given you
23 are materials to which I will potentially be
24 referring to during my speaking today.

25 Foremost and briefly, I would like to

1 challenge the constitutionality of the statute. In
2 1973, in the case *Kusper v. Pontikes*, the Supreme
3 Court heard a challenge of a very similar Illinois
4 election law, which barred voters from
5 participating in a primary held by one political
6 party if they voted in a primary held by another
7 party in 23 calendar months.

8 The Illinois statute was stricken down on the
9 grounds that it unconstitutionally infringed on the
10 First and Fourteenth Amendment rights of free
11 political association. The court held that
12 "Freedom to associate with others for the common
13 advancement of political beliefs and ideas is a
14 form of "orderly group activity" protected by the
15 First and Fourteenth Amendments, and the right to
16 associate with a political party of one's choice is
17 an integral part of this basic constitutional
18 freedom.

19 In the dicta on that same case, the Supreme
20 Court denounced the Illinois statute, stating as
21 follows: "The effect of the Illinois statute is
22 thus to 'lock' the voter into his pre-existing
23 party affiliation for a substantial period of time
24 following participation in any primary election,
25 and each primary vote extends this period of

1 confinement.

2 Now, the statute in question today, IC 3-8-2-7
3 has the same effect of locking voters who wish to
4 run for partisan elected office into his or her
5 pre-existing party affiliation for a substantial
6 period of time following participation in a primary
7 election. And like the Illinois law, each primary
8 vote extends that period of confinement.

9 Proponents of the Illinois statute claimed
10 that the 23-month rule served a legitimate state
11 interest preventing "raiding" or the practice of
12 strategic voting in the primary of another party to
13 disrupt that party's chances in the general
14 election.

15 However, argument was rejected with the court
16 stating that significant encroachment upon
17 associated freedom cannot be justified upon a mere
18 showing of a legitimate state interest, for even
19 when pursuing a legitimate interest, a State may
20 not choose means that unnecessarily restrict
21 constitutionally protected liberty.

22 Similarly, the purpose of IC 3-8-2-7 as put
23 forth by Chairman Wheeler on page 81 of the minutes
24 of the March 5th, 2010 commission meeting is for
25 the legitimate state interest of preventing

1 "stealth" candidates from filing in a majority
2 district.

3 And for the same reasons that the legitimate
4 state interest cited in the Illinois statute, is
5 insufficient to justify the encroachment on the
6 First and Fourteenth Amendment rights of the
7 individual, the state interest advanced by the
8 statute is insufficient to justify its encroachment
9 onto the rights of citizens of Indiana.

10 Now, a similar argument against the
11 constitutionality of this statute was brought
12 before the commission on the 24th of February, 2012
13 in Cause No. 2012-74, challenging the candidacy of
14 Leonard Compton. Chairman Dumezich stated as
15 follows on pages 68 and 69 of the minutes of that
16 meeting, at the end of the day there is a remedy,
17 and the remedy is fairly simple, and for whatever
18 reason, faulty memory, he did not take that remedy
19 that he had, and that is why I think the statute is
20 constitutional as well.

21 While this case and by the very affidavit
22 presented by Mr. Shull, I attempted to avail myself
23 of that remedy and was refused. After discovering
24 that Mr. Shull had obtained information from my
25 entry in the Statewide Voter Registration List and

1 that it contained information that I knew to be
2 inaccurate, I endeavored to rectify the matter the
3 matter without the necessity of this hearing.

4 I contacted Mr. Shull, County Chairman of the
5 Republican Party, and the challenger in this case,
6 and explained the situation to him, that the
7 information contained in the Statewide Voter
8 Registration List is inaccurate and requested that
9 he certify my affiliation with the Republican Party
10 as permitted in the statute, and he refused.

11 I then contacted Mr. Mark Florence, the Grant
12 County Clerk, on the advice of the Election
13 Division of the Secretary of State, again
14 explaining that the Statewide Voter Registration
15 List is inaccurate and asked if there was a way to
16 amend the information on the list, and he indicated
17 that there was not.

18 Without the ability to avail myself of the
19 remedy that Chairman Dumezich referred to, the
20 statute is clearly unconstitutional by the finding
21 of the Supreme Court in *Kusper v. Pontikes*.

22 Completely separate and insufficient, the
23 argument is the record is factually incorrect. For
24 every primary election I've participated in, it has
25 been held by the Republican Party. Grant County is

1 a predominantly Republican county, and as a result,
2 most of the elections are practically decided in
3 the Republican primary, and for that reason, the
4 candidates I've been involved in and have supported
5 have always been Republicans.

6 The primary election of 2008 was no different.
7 I requested and I returned a Republican ballot.
8 And to support those claims, I'd like to call my
9 first witness, Sheila Eib.

10 CHAIRMAN B. BENNETT: You have about two
11 and a half minutes left.

12 MR. J. EIB: Thank you.

13

14 DIRECT EXAMINATION

15 QUESTIONS BY MR. JARRED L. EIB:

16 Q Please state your name.

17 A Sheila Eib, E-I-B.

18 Q And what is your relationship to me?

19 A I'm your mother.

20 Q As my mother, are you particularly aware of my
21 political affiliations?

22 A Yes.

23 Q What political party am I affiliated with?

24 A The Republican Party.

25 Q Have you been aware of my political affiliations

1 during the entirety of the time I've been
2 permitted to vote under the laws of Indiana?

3 A Yes.

4 Q Since I've been permitted to vote under the law,
5 have I routinely made statements regarding my
6 intention regarding what candidates I would vote
7 for?

8 A Yes.

9 Q Have you ever known me to express an intention
10 to vote for a Republican candidate during a
11 primary?

12 A Yes.

13 Q You ever you ever know me to express an
14 intention to vote for a Democratic candidate
15 during a primary?

16 A No.

17 MR. J. EIB: No further questions for this
18 witness. I now call Roger Eib.

19 CHAIRMAN B. BENNETT: Any cross-examination
20 of the witness?

21 (No response.)

22 MR. J. EIB: I call Roger Eib.

23

24

25

1 DIRECT EXAMINATION

2 QUESTIONS BY MR. JARRED L. EIB:

3 Q Please state your name.

4 A Roger L. Eib.

5 Q And what is your relationship to me?

6 A I'm your father.

7 Q Did you hear the questions I asked Mrs. Eib?

8 A Yes.

9 Q Would your answers to those questions be
10 substantially the same?

11 A Yes.

12 Q During the election in question, the 2008
13 primary election, and elections prior to that,
14 who lived in your home?

15 A You did.

16 Q Did you vote in the 2008 primary election and
17 elections prior to that?

18 A Yes.

19 Q During that election and elections prior to
20 that, did you attend the polls with me?

21 A Yes.

22 Q When you attended the polls with me during a
23 primary, were in a position to hear which ballot
24 I requested?

25 A Yes.

1 Q On the occasions, when you attended the polls
2 with me during a primary election, what ballot
3 did I request?

4 A Republican.

5 MR. J. EIB: Thank you. No further
6 questions.

7 CHAIRMAN B. BENNETT: Any
8 cross-examination?

9 (No response.)

10 MR. J. EIB: I now call Lisa Dunham.

11 CHAIRMAN B. BENNETT: Sixty seconds.

12 MS. L. DUNHAM: I'm Lisa Dunham,
13 D-U-N-H-A-M.

14

15 DIRECT EXAMINATION

16 QUESTIONS BY MR. JARRED L. EIB:

17 Q Please state your name for the record -- sorry.
18 What is your relationship to me?

19 A Friend.

20 Q Have you ever been a witness -- have you ever
21 been in a position to witness first hand
22 political activity by me?

23 A Yes, I have.

24 Q What was that political activity?

25 A Working the polls.

1 Q Was I a poll inspector?

2 A Yes, you were.

3 Q What party was I affiliated with as a poll
4 inspector?

5 A The Republican Party.

6 Q What year was that?

7 A 2004.

8 MR. J. EIB: Thank you. No further
9 questions.

10 CHAIRMAN B. BENNETT: Cross-examination.

11 (No response.)

12 MR. J. EIB: I would ask the commission for
13 additional time. A few minutes would be
14 sufficient.

15 CHAIRMAN B. BENNETT: Two minutes.

16 MR. J. EIB: Two minutes. The only
17 evidence that Mr. Shull has offered --

18 CHAIRMAN B. BENNETT: We have --

19 MR. J. EIB: Sorry.

20 CHAIRMAN B. BENNETT: The Commission
21 consents to that request.

22 MR. J. EIB: Excuse me?

23 CHAIRMAN B. BENNETT: The Commission has
24 consented to your request for --

25 MR. J. EIB: All right. Thank you.

1 CHAIRMAN B. BENNETT: -- an additional two
2 minutes.

3 MR. J. EIB: The only evidence that Mr.
4 Shull has offered is the deputy of the clerk,
5 Sharyn Sherron who enters the data in the
6 Statewide Voter Registration List, indicated in
7 the poll book, indicated that I requested a
8 Democratic ballot.

9 I discussed the process by which the
10 information is recorded, with an employee of the
11 Grant County Clerk, and was told that upon entering
12 the polling location, a poll worker asks the voter
13 if they are requesting a Republican or a Democrat
14 ballot, and that request is marked in the poll book
15 by checking a box labeled R or a box labeled D.

16 After the polls close, the book is then taken
17 to the clerk's office where the voter's demographic
18 information is scanned into the system, but the
19 ballot requested is entered manually, an employee
20 of the clerk reads the checkmarks and manually
21 clicks a box in the Statewide Voter Registration
22 List portal labeled R or a box labeled D.

23 According to the clerk's office and
24 confirmed by the clerk section of the county
25 website at grantcounty.net, 17,058 machine votes

1 were cast in the 2008 primary election. This
2 represents the greatest number of machine votes
3 in any primary election and the online records
4 in the Grant County Clerk's Office. The next
5 greatest being in 2004, with 4,598 fewer votes
6 than registered in 2008.

7 Given the potential for human error and the
8 sheer number of voters' information being
9 entered, particularly in 2008, there is a near
10 certainty that the list will contain some
11 errors.

12 It is impossible to verify the content of
13 the poll book for the election in question as it
14 has been destroyed in accordance with applicable
15 law.

16 I do not dispute that the content of the
17 documents provided to you by Mr. Shull are
18 accurate. They indicate that I voted as a
19 Democrat in the last Indiana primary in which I
20 participated in May of 2008, but the information
21 contained in the Statewide Voter Registration
22 List is inaccurate.

23 The committee has a history of removing the
24 candidate from the ballot in cases with similar
25 challenges. The difference being here the

1 record is accurate in their cases. The law
2 states that the last Indiana primary that the
3 candidate participated in must have been
4 conducted by the party he or she is claiming
5 affiliation with.

6 In those cases they did not meet that
7 requirement, nor did they claim they did.
8 Irrespective of an erroneous entry in the
9 Statewide Voter Registration List, I meet the
10 criteria set forth by the law because I did, in
11 fact, vote in the 2008 Republican Primary
12 Election.

13 In my review of the minutes of the meeting
14 of this commission, I have not found a single
15 precedent to support the idea that the content
16 of the information in the Statewide Voter
17 Registration List is to held as the final
18 arbiter of the voting history of the candidate,
19 over the sworn testimony of the candidate
20 himself.

21 In Wyatt v. Wheeler, the court of appeals
22 found that a candidate who had mistakenly stated
23 that she had voted in the last Republican
24 primary was not barred from taking office after
25 winning the election, noting that "statute

1 governing declarations did not provide that
2 compliance with its provisions was essential to
3 a valid election."

4 The court cited the policy concern of not
5 disenfranchising the voters by disregarding the
6 results of the election based solely on an
7 actual -- albeit unintentional -- violation of
8 the statute.

9 The same disenfranchisement would occur in
10 the case at hand -- removing the voter's choice
11 before or after the election has the same effect
12 of removing the voter's choice.

13 CHAIRMAN B. BENNETT: Any -- any final
14 words -- you've used your final time, and I have
15 a couple of questions for cross exam.

16 MR. J. EIB: Yes, just very quickly. I
17 have showed that the potential for human error
18 exists within the system -- I do not think that
19 any reasonable person can disagree with that --
20 which creates, at a minimum, ambiguity.

21 Chairman Dumezich, in 2012, addressed the
22 manner in which the commission should deal with
23 ambiguity, stating, "When we error, we error to
24 give people valid access because the idea is that
25 we don't ever want to be the people that take away

1 or disenfranchise somebody."

2 To remove me from the ballot would have the
3 effect of disenfranchising myself as well as any
4 voter who would vote for me based solely on an
5 alleged violation of the statute which has been
6 determined by the Indiana Court of Appeals to
7 not be essential to a valid election, evidenced
8 only by a single entry in the record which
9 clearly lacks the level of reliability that
10 would warrant it being considered even nearly
11 conclusive and which is contradicted by my sworn
12 statement both on my Declaration of Candidacy
13 reaffirmed here today and the sworn statements
14 of my witnesses.

15 CHAIRMAN B. BENNETT: Cross-examination of
16 the witness?

17 (No response.)

18 CHAIRMAN B. BENNETT: I have a question.
19 When did you first discover what you alleged to
20 be an error in the Statewide Voter Registration
21 System?

22 MR. J. EIB: I do not know the exact date.
23 It was a few days after my filing.

24 CHAIRMAN B. BENNETT: How did you discover
25 that?

1 MR. J. EIB: I received a phone call from
2 Mr. Jerry Shull.

3 CHAIRMAN B. BENNETT: Did you know
4 Mr. Shull before that?

5 MR. J. EIB: I have had brief contact with
6 him as the Republican Party Chair in the county.
7 I had, as a courtesy, called to inform him that
8 I intended to file for candidacy as the
9 Republican nominee for the position.

10 My conversation with him was very brief. He
11 informed me that the incumbent was a loyal party
12 supporter and instructed me not to file.

13 CHAIRMAN B. BENNETT: Who did you vote for
14 at the top of the ticket in the Republican
15 Primary in 2008?

16 MR. J. EIB: In the Republican Primary in
17 2008?

18 CHAIRMAN B. BENNETT: Yes.

19 MR. J. EIB: I'm sorry. I don't
20 understand.

21 CHAIRMAN B. BENNETT: Who did you cast your
22 ballot for?

23 MR. J. EIB: I casted my ballot -- I do not
24 believe I voted in the Republican Primary for
25 president. My interests were for local parties,

1 local candidates. The candidate that I was
2 interested in supporting was Mark Bardsley who
3 was running for county commissioner at that
4 time.

5 CHAIRMAN B. BENNETT: It's your testimony
6 that you voted for him in the 2008 Republican
7 Primary?

8 MR. J. EIB: 2008 Republican Primary,
9 that's correct.

10 CHAIRMAN B. BENNETT: Were you working for
11 him in any capacity in his campaign?

12 MR. J. EIB: I was not working in any
13 capacity in his campaign but I did publicly
14 support him.

15 CHAIRMAN B. BENNETT: When you approached
16 the county chairman and asked him to approve
17 your candidacy for judge, despite the fact that
18 the records show that you voted in the
19 Democratic Primary in 2008, what was his
20 response?

21 MR. J. EIB: His response was no, he would
22 not do that. He believe that had I voted in the
23 Democratic Primary. It was a very short
24 conversation. I didn't expect him to certify me
25 as a result of the conversation I previously

1 referenced when he instructed me not to run.

2 CHAIRMAN B. BENNETT: Any further
3 cross-examination?

4 COMMISSION MEMBER Z. KLUTZ: Mr. Eib, were
5 you in the State of Indiana during the 12012
6 election?

7 MR. J. EIB: I was in the State of Indiana
8 during the 2012 election.

9 COMMISSION MEMBER Z. KLUTZ: Did you vote
10 in the 2012 primary?

11 MR. J. EIB: I did not vote in the primary,
12 the primary was held in May, and in May of 2012,
13 I was graduating from law school so I was in the
14 process of moving everything from Monroe County
15 to Grant County, back where I live. I did vote
16 in the 2012 general election.

17 CHAIRMAN B. BENNETT: Any further
18 cross-examination of this witness?

19 (No response.)

20 CHAIRMAN B. BENNETT: Do you have any
21 further evidence to present?

22 MR. J. EIB: No.

23 CHAIRMAN B. BENNETT: Very well. Rebuttal,
24 Mr. Gallaway.

25 MR. D. GALLAWAY: Mr. Chairman, I would ask

1 Mr. Florence to re-approach the commission to
2 give testimony.

3 CHAIRMAN B. BENNETT: Very well.

4

5 DIRECT EXAMINATION

6 QUESTIONS BY MR. DON GALLAWAY:

7 Q You are Mark Florence; is that correct?

8 A That is correct.

9 Q You are the current clerk of the courts for
10 Grant County; is that correct?

11 A That is correct.

12 Q And a chief election officer in Grant County?

13 A That is correct.

14 Q And you've been involved in Grant County
15 elections for approximately 35 years in some
16 capacity other than clerk?

17 A That's correct.

18 Q You've been on the election board?

19 A For 13 years, prior to being the Clerk, I was
20 the chairman.

21 Q And you served as a mechanic on various machines
22 and you have a lot of experience with the way
23 that the voting process works in Grant County;
24 is that correct?

25 A Back to the old lever machines, yes.

1 Q Okay. In that 35 years of experience, how many
2 times have you witnessed or been involved in a
3 situation where there was human error involved
4 in the declaration of a party affiliation in a
5 primary?

6 A One that I know of.

7 Q And was that resolved?

8 A Yes.

9 Q Can you briefly explain how that was resolved?

10 A Yeah. It's my understanding that the records
11 were still intact at the time that the
12 individual challenged the party affiliation and
13 it was reviewed on the records from the precinct
14 and it was incorrect.

15 Q Okay. So you were able to confirm what the
16 voter had said through documentation?

17 A Correct.

18 Q Okay. Now, can you briefly explain -- I'm going
19 to walk you through -- when someone goes to
20 vote, they go up to the table and they declare
21 which party; is that correct?

22 A They declare their name, show their ID, and ask
23 for their potential ballot that they want in the
24 primary election.

25 Q And they are -- they are required to sign; is

1 that correct?

2 A They're required to sign their name and also
3 circle which party ballot they choose.

4 Q So the voter is the one who actually designates
5 which ballot they're choosing?

6 A That's what we instruct our poll workers, to
7 have the voter do that.

8 Q So the poll worker is not the one who checks
9 party affiliation as a matter of course?

10 A We do not instruct them to do it that way.

11 Q Okay. Once that declaration is made, is it
12 correct that there is a small paper tab that is
13 given to the voter that either has an R or a D
14 on it?

15 A That is correct.

16 Q And then they take that to the booth in which a
17 panel at the voting booth is placed in front of
18 them either with Republican candidates or
19 Democrat candidates?

20 A The ballot is set to whatever their card shows
21 that they choose to vote on in presence of the
22 voter.

23 Q Now, there is a bar code that's also associated
24 with the signature; is that correct?

25 A That has to do with the SVRS system.

1 Q Okay. And that's --

2 CHAIRMAN B. BENNETT: Your two minutes have
3 expired. Do you have a request additional time?

4 MR. D. GALLAWAY: I would request just two
5 more minutes, if I might, Mr. Chairman.

6 CHAIRMAN B. BENNETT: By consent of the
7 commission, two more minutes.

8 Q Now, this is a post-election process that you go
9 through that involves the bar code; is that
10 correct?

11 A That's correct.

12 Q Can you briefly explain that to the commission?

13 A The poll book comes back to the voter
14 registration office at the completion of the
15 election. On the front page is the precinct on
16 it and there's a bar code there that we take the
17 bar code scanner and it kicks up in the state
18 system for the precinct, that we're looking to
19 match it up to what the state system shows and
20 what we show on the page is exactly the same
21 precinct.

22 Then they start down through the poll list on
23 the voters that have signed, which also has a bar
24 code on it, and it kicks up the individual's name
25 in the system, and then we can look at how they

1 voted in the primary. And then on the sheet that
2 has either a D or an R or another under a bar code,
3 we scan that, and it pops it up, and then they
4 place it, the D or the R on there, and check it for
5 that. This is a process, and it's all done
6 electronically. It is not a fast process, so it's
7 not like boom boom boom down through this list.

8 In our office we're in a unique position to a
9 lot of other counties because we have one person
10 that's designated full time that works voter
11 registration and I have one person that does
12 nothing but elections.

13 They don't go around to the rest of the
14 clerk's office and work the rest of the year. So
15 this is solely their job that they do and our voter
16 registration person has been doing this since 2004.

17 Q And accuracy of the election process is a
18 paramount importance in your office; is that
19 correct?

20 A Most sincerely.

21 MR. D. GALLAWAY: No further questions.

22 CHAIRMAN B. BENNETT: Cross-examination by
23 the Commission?

24 PROXY J. WAGNER: Just real quick. What is
25 the -- I'm sorry, I lost my voice, what is your

1 retention schedule on poll books?

2 MR. M. FLORENCE: The process is 22 months.

3 PROXY J. WAGNER: Okay.

4 CHAIRMAN B. BENNETT: When did your office
5 first learn of the alleged error on the
6 Statewide Voter Registration?

7 MR. M. FLORENCE: Shortly after the filing
8 that was brought in.

9 CHAIRMAN B. BENNETT: And how is that
10 brought to your attention?

11 MR. M. FLORENCE: We look at the party
12 affiliations, when people file, to make sure
13 that they have the correct information.

14 CHAIRMAN B. BENNETT: And when you looked,
15 it said Democrat; correct?

16 MR. M. FLORENCE: In the state system, it
17 shows -- Democrat was the most recent one, which
18 was in 2008.

19 CHAIRMAN B. BENNETT: So when did you first
20 learn that there was an allegation by the
21 candidate that the records were incorrect?

22 MR. M. FLORENCE: Shortly after, he was
23 notified, I believe by the chairman of the
24 party.

25 CHAIRMAN B. BENNETT: And what did you do

1 at that point in time?

2 MR. M. FLORENCE: He came in and said that
3 he did not vote that way, and we looked back
4 through our records and we didn't have anything
5 to show how he voted, and we just went with what
6 the system shows itself that was entered.

7 CHAIRMAN B. BENNETT: And was -- was it a
8 function of the normal records retention process
9 that there were not any records to verify or
10 confirm?

11 MR. M. FLORENCE: No, there were not. They
12 were destroyed under the retention statutes.

13 CHAIRMAN B. BENNETT: Further
14 cross-examination by the Commission?

15 (No response.)

16 CHAIRMAN B. BENNETT: Any cross-examination
17 by the candidate?

18 PROXY A. DICKEY: Real quick, real quick.
19 Was there a commissioners' primary in 2008, the
20 Republican primary?

21 MR. M. FLORENCE: Yes, two of them.

22 PROXY A. DICKEY: Two individuals. And
23 those individuals were -- their names?

24 MR. M. FLORENCE: John Austin and Mark
25 Bardsley, and also David Glickfield, who was the

1 incumbent commissioner.

2 PROXY A. DICKEY: Thank you.

3 MR. J. EIB: I have some cross-examination.

4 CHAIRMAN B. BENNETT: Okay.

5

6 CROSS-EXAMINATION

7 QUESTIONS BY MR. JARRED L. EIB:

8 Q You testified, if I'm correct, that a similar
9 situation where a voter has challenged the
10 accuracy of the records kept by the clerk's
11 office regarding voting history, that's happened
12 on one occasion in the past?

13 A Correct.

14 Q And on that occasion it was found that the
15 clerk's office did error?

16 A It was voter registration at that time. The
17 clerk's office didn't take over voter
18 registration until 2004, when the county
19 abolished the Board of Commission for Voter
20 Registration and stuck it under the auspice of
21 the clerk's office.

22 Q I'm sorry. So voter's registration was
23 incorrect?

24 A Board of Commission for Voter Registration, yes.

25 Q Okay. And you talked about bar codes being

1 entered, being scanned into the system. Is it
2 correct that the bar codes contain demographic
3 information but that the voter -- excuse me, the
4 political party that ballot is requested in the
5 primary is manually entered by an individual?

6 A Correct.

7 Q And you testified that there is one person who
8 does that?

9 A Correct.

10 Q So in 2008, that was also the case, that there
11 was one person doing that?

12 A No, there was not --

13 Q There were two people doing that?

14 A -- but it shows on the list which individual
15 made the entry.

16 Q Okay.

17 A We had a Sharyn Sherron and a Kim Holinger, were
18 our voter registration people at the time, and
19 this one had indicated that it was done by
20 Sharyn Sherron.

21 CHAIRMAN B. BENNETT: Was she ever
22 consulted with regard to this issue?

23 MR. M. FLORENCE: Yes. She -- I mean, she
24 doesn't remember anything. She has to refer
25 back to her records that she has, but she

1 indicated that it's a thing where she goes
2 through them and she'll go through them later on
3 after the election is over and just scan over a
4 percentage of them to check to make sure that
5 she does it right.

6 Sharyn is very astute to making sure that she
7 does things correctly in voters registration.
8 She's been dedicated since she's been put down
9 there.

10 CHAIRMAN B. BENNETT: How long has she been
11 in voters registration?

12 MR. M. FLORENCE: She went down there -- in
13 2005, was her first election that she worked in
14 there. She did work in the clerk's officer
15 prior to that. We just moved her -- the prior
16 clerk moved her down there.

17 CHAIRMAN B. BENNETT: And she has a record
18 of accuracy?

19 MR. M. FLORENCE: Yes.

20 CHAIRMAN B. BENNETT: Anything further on
21 cross-examination?

22 MR. J. EIB: No cross-examination, but I
23 will ask for a brief closing statement before
24 you consider.

25 MR. M. FLORENCE: Thank you.

1 CHAIRMAN B. BENNETT: Does the Challenger
2 have any closing statement to make?

3 MR. D. GALLAWAY: Just briefly,
4 Mr. Chairman.

5 CHAIRMAN B. BENNETT: Sixty seconds, if you
6 can.

7 MR. D. GALLAWAY: Yeah, it'll be just real
8 quick. The issue before the Commission is, is
9 the information valid? Is it accurate?
10 Obviously, elections are extremely important.
11 Mr. Florence testified to the safeguards put in
12 place. So we would ask that the records stand
13 for themselves and for the Commission to uphold
14 the challenge. Thank you.

15 CHAIRMAN B. BENNETT: Thank you. Sixty
16 seconds, closing statement.

17 MR. J. EIB: I feel I've shown certainly an
18 error is potentially in the system.

19 Mr. Florence testified that an error has
20 occurred in the past, that the only time that
21 this has occurred and been challenged, it was
22 found that that was in fact an error.

23 Of the challenges that have been made to the
24 voters registration system, a hundred percent of
25 them have found to be in error. Now, while that is

1 only is one, that shows clearly an error can be
2 made, and to disenfranchise a candidate with no
3 other evidence than there was potentially an error,
4 it goes against the purpose of election law.

5 Furthermore, I would like to make a point for
6 the Commission, that under Indiana law, an
7 administrative agency's decision cannot be based
8 solely on hearsay and that the only evidence
9 they've presented here today is the voters
10 registration -- Statewide Voters Registration List
11 which is a hundred percent hearsay.

12 CHAIRMAN B. BENNETT: All right. Thank
13 you. The public hearing is Cause No. 2014-01 is
14 now closed. Any discussion among the commission
15 members?

16 COMMISSION MEMBER Z. KLUTZ: I appreciate
17 your presentation. I thought it was well
18 researched, but I guess in my opinion, the most
19 persuasive evidence that I have before me is the
20 voting record.

21 You alleged error, but all of the evidence
22 presented, to me, was the most persuasive, is your
23 vote record that you haven't disputed. In terms of
24 this being your record, you've alleged an error.
25 It shows that in 2008 you voted -- which is the

1 last primary election, you voted as a Democrat, and
2 in my mind, would be ineligible to run as a
3 Republican in this election.

4 CHAIRMAN B. BENNETT: This would be a
5 public record that would be an exception to the
6 hearsay rule as far as I know.

7 MR. D. SIMMONS: I would agree.

8 MR. J. EIB: Mr. Chairman, I have a
9 question that this is considered a public
10 record. The Indiana code is clear, that the
11 information contained in the Statewide Voter
12 Registration List and particularly --

13 CHAIRMAN B. BENNETT: The public hearing
14 has been closed at this time. This is a
15 discussion amongst the commissioners. Is there
16 a motion?

17 COMMISSION MEMBER Z. KLUTZ: I'd make a
18 motion that the challenge is sustained.

19 CHAIRMAN B. BENNETT: Is there a second?

20 PROXY J. WAGNER: Seconded.

21 CHAIRMAN B. BENNETT: We have a motion and
22 a second that the challenge is sustained, any
23 further discussion?

24 (No response.)

25 CHAIRMAN B. BENNETT: Hearing none, all in

1 favor of the motion, say aye?

2 THE COMMISSION: Aye.

3 CHAIRMAN B. BENNETT: All opposed, same
4 sign?

5 (No response.)

6 CHAIRMAN B. BENNETT: The challenge is
7 sustained. Thank you. Thank you for your
8 presentations.

9 We will now take up the consideration of Cause
10 No. 2014-02, In The Matter of Challenge to Teaparty
11 Trenton Feuerbach, candidate for the Republican
12 Party Nomination, for the United States
13 Representative, District 9.

14 The Election Division has provided a copy of
15 the candidate filing challenge form, a copy of
16 notice given in this matter, and an appearance
17 entered by Mr. Ogden, who's an attorney for the
18 candidate.

19 At this time I would like to recognize the
20 Challenger, William Eggleston for presentation.

21 MR. W. EGGLESTON: Is there any election
22 presentation?

23 MR. B. KING: Mr. Chairman, just to confirm
24 that the documents referred to by the Chair,
25 Mr. Ogden's appearance, the notes of the

1 hearing, and the original candidate filing
2 challenge have been included in the binders and
3 therefore will be part of the record.

4 CHAIRMAN B. BENNETT: Very good. Thank
5 you. Counsel.

6 MR. T. JOHN: First of all, a housekeeping
7 detail. I was -- just literally met my client
8 outside so I have not had a chance previous to
9 this to actually file an appearance. I'll get
10 something on file, but part of our presentation
11 we can confirm that I'm acting on his behalf as
12 counsel.

13 CHAIRMAN B. BENNETT: Have you stated your
14 name for the record?

15 MR. T. JOHN: Thomas John, Ice Miller,
16 representing William Eggleston. So this is a
17 pretty straight forward challenge. At the end
18 of the day, the requirements for filing, when
19 you fill out your candidate forms, among those
20 requirements are filling out your name, and
21 there are particular ways in which that is to be
22 done.

23 That includes that compliance with 3-5-7-5
24 which requires that names be used in a particular
25 way. You can only use commonly known nicknames,

1 you can only use legal names, and you cannot just
2 essentially make up advertising for your candidacy.

3 Also, in looking at the candidacy declaration
4 of Mr. Feuerbach, what we find is that he even uses
5 inconsistent names in the candidacy. In some,
6 we'll show you that in fact he should be struck as
7 a candidate, or at the bare minimum, that the name
8 used in the candidacy should remove the offending
9 nickname that is not actually in general use.

10 So initially, what I will do is I have some
11 testimony here from my client, Mr. Eggleston.

12

13 DIRECT EXAMINATION

14 QUESTIONS BY MR. THOMAS A. JOHN:

15 Q Would you identify yourself?

16 A Bill Eggleston Bloomington, Indiana.

17 Q And I will hand you a document here. Can you
18 tell me what this is?

19 A This is a voter search of my status as an active
20 voter of Monroe County.

21 Q Okay. In what Congressional District?

22 A In Congressional District No. 9.

23 Q Now, I'll hand you another document. Can you
24 identify that, please.

25 A Yes. This is Mr. Feuerbach's status in Monroe

1 County as an active voter, and his address.

2 Q And what's the name on that?

3 A Trenton L. Feuerbach.

4 Q Okay. Any reference on there to Tea Party?

5 A No, none that I see.

6 Q So now, are you familiar with a Trenton L.
7 Feuerbach?

8 A Only -- I met him only by seeing his name on
9 various documents.

10 Q But you were aware of him in the community;
11 correct?

12 A Yes.

13 Q And do you hear him referred to as Tea Party
14 Trent?

15 A Never. I've never heard of that, no.

16 Q Okay. How often have you heard his name?

17 A Oh, occasionally. I'm a candidate myself for a
18 position in the township, and in just glancing
19 at the various things, I've seen his name, but
20 never a Tea Party name.

21 Q And I do not have copies of this, but I assume
22 that the Commission and counsel do. This is the
23 Declaration of Candidacy I'm handing to
24 Mr. Eggleston; correct?

25 A Right.

1 Q So a couple of different things. At the top of
2 the candidacy where it says, name of candidate,
3 what does it say there?

4 A Trenton Lee Feuerbach.

5 Q And then you go down further where it says the
6 candidate's name, what's it say?

7 A It says I request that my name be put on the
8 ballot as Teaparty Trent Feuerbach.

9 Q So everything --

10 CHAIRMAN B. BENNETT: If you're done with
11 that, could you pass that to the Commission?

12 MR. T. JOHN: I literally just got that.

13 Q So based on that, based on the law, we have
14 specific requirements that 3-5-7-5 sets forth
15 that the only nickname that can be used is one
16 that is used in common parlance, that people are
17 identified as that, that people are recognized
18 as that, i.e using the name Tom rather than
19 Thomas, which is on my voter record.

20 In this case, we're dealing with somebody
21 who is actually using essentially their own
22 micro-party affiliation which distorts the rules
23 of our elections and distorts what the intent of
24 the law is, which is to allow people to be
25 identified in a way that the community

1 recognizes them. And in this case, this is not
2 what this is, and so the candidacy should be
3 stricken.

4 MR. P. OGDEN: Your Honor, I'll have to
5 object to this. I don't think we're on closing
6 argument yet. I think counsel is engaging in
7 closing argument.

8 CHAIRMAN B. BENNETT: Any further questions
9 of this witness?

10 MR. T. JOHN: No.

11 CHAIRMAN B. BENNETT: Cross-examination.

12 MR. P. OGDEN: Sure, actually.

13

14 CROSS-EXAMINATION

15 QUESTIONS BY MR. PAUL K. OGDEN:

16 Q I appreciate everyone coming in today.

17 Mr. Eggleston, you signed the candidate filing
18 challenge, and I'll read from that, which is
19 before the Commission: To the best of my
20 knowledge, Mr. Feuerbach is not commonly known
21 as Tea Party Trent and therefore this is
22 invalid. You said that; correct?

23 A Yes.

24 Q And your testimony today was that you've never
25 met the man?

1 A I've not met him personally.

2 Q You've not met the man.

3 A No.

4 Q So have you socialized with him at all?

5 A No.

6 Q Been to his home?

7 A No.

8 Q Know any of his friends?

9 A Probably, but I don't know them by name.

10 Q Okay. You ever been to any Tea Party meetings?

11 A No.

12 CHAIRMAN B. BENNETT: Mr. Ogden, did you
13 state your name for the record?

14 MR. P. OGDEN: I'm sorry. Paul Ogden. I
15 represent Mr. Feuerbach.

16 CHAIRMAN B. BENNETT: You may proceed.

17 MR. P. OGDEN: Thank you.

18 Q And just to clarify, you said that you've not
19 met him, only seen his name. Only seen his name
20 where?

21 A On various party documents of one kind or
22 another, that he was going to run, had the
23 intent to run.

24 Q Various party documents, like what?

25 A I don't know specifically what they were, but

1 I've seen his name printed, and it's common
2 knowledge that he was running.

3 Q Okay. But you have never met the man?

4 A No.

5 Q Do you know what he even looks like?

6 A No.

7 Q Okay.

8 A Never seen a picture of him.

9 Q I'm sorry?

10 A I've not seen a picture of him.

11 Q You've not seen a picture. Okay.

12 Do you know Mr. Steve Hogan?

13 A Yes.

14 Q Did he ask you to file this challenge?

15 A No.

16 Q He didn't ask you to file this challenge?

17 A No.

18 Q And I was going to ask you about the
19 notarization, too. Where did you have this
20 notarized and who is the notary?

21 A The notary is Donald -- Don's Insurance there on
22 the highway.

23 Q Okay. And is the last name, Fuller, because
24 it's very difficult to read?

25 A Yes, it's Fuller, I believe. Yes, sir.

1 Q Did he stamp this at all because I don't see any
2 stamp on this?

3 A Yes, he did. He had the seal out, and in my
4 presence, he sealed it. This copy doesn't show
5 the impression, but he did that.

6 MR. P. OGDEN: I have no further questions.

7 MR. T. JOHN: The Challenger would like to
8 call Steve Hogan.

9 CHAIRMAN B. BENNETT: Very well.

10

11 DIRECT EXAMINATION

12 QUESTIONS BY MR. THOMAS A. JOHN:

13 Q Could you state your name for the record?

14 A Steve Hogan.

15 Q And what is your involvement with politics?

16 A I'm the Monroe County Republican Chairman.

17 Q Are you familiar with the candidate in question,
18 Trenton Feuerbach?

19 A Yes. I've known him for some time.

20 Q Okay. Have you met him?

21 A Yes, I've met him. He's one of our -- part of
22 our precinct committeeman.

23 Q To your knowledge, does he go by the nickname
24 Tea Party -- like when you see him, do you say
25 Tea Party?

1 A Not at all. Never.

2 Q Have you heard him referred to in that way in
3 public parlance?

4 A No.

5 Q Okay.

6 MR. P. OGDEN: Thank you. That'll be it.

7 CHAIRMAN B. BENNETT: Cross-examination by
8 the Commission?

9 (No response.)

10 CHAIRMAN B. BENNETT: Cross-examination by
11 the opposing party?

12 MR. P. OGDEN: Actually, I don't think I
13 have any questions at this time.

14 CHAIRMAN B. BENNETT: Okay. Any further
15 witnesses? 2.

16 MR. P. OGDEN: No, sir.

17 CHAIRMAN B. BENNETT: The Challenger rests.

18 MR. T. JOHN: Yes.

19 MR. P. OGDEN: And I didn't know if you
20 were ready for argument or not.

21 CHAIRMAN B. BENNETT: Do you have any
22 witnesses?

23 MR. P. OGDEN: No. Mr. Feuerbach is not
24 here.

25 CHAIRMAN B. BENNETT: Mr. Feuerbach is not

1 here?

2 MR. P. OGDEN: Correct. We believe -- I
3 should point out the fact that the Challenger in
4 this case, who is the only Challenger, did
5 not -- doesn't even know Mr. Feuerbach --

6 CHAIRMAN B. BENNETT: Is this closing
7 argument?

8 MR. P. OGDEN: I'm ready for closing.

9 CHAIRMAN B. BENNETT: The Challenger may
10 proceed with any closing argument.

11 MR. T. JOHN: So we believe that we have
12 demonstrated that in fact there is no evidence
13 that Mr. Feuerbach goes by the name of Tea
14 Party. Under 3-5-7-5, there's a clear
15 requirement that you must actually be commonly
16 known as a nickname in order to use it on the
17 ballot, the candidate declaration form.

18 And so because of that, we have a candidate
19 declaration form that does not comply with the
20 actual requirements of 3-8-2-7, and thus, should be
21 stricken -- he should be removed from the ballot,
22 or at least at the bare minimum, the phrase Tea
23 Party should be removed from the listing of the
24 candidacy and it should be just Trent Feuerbach.

25 We would argue that there was any compliance

1 with 3-8-2-7 so he should be stricken from this
2 ballot. The Challenger rests.

3 CHAIRMAN B. BENNETT: Thank you.

4 MR. P. OGDEN: A very brief argument.

5 Mr. Eggleston filed this. Mr. Hogan did not
6 file this. Mr. Eggleston made the accusation
7 that he -- that Mr. Feuerbach is not commonly
8 known as Tea Party Trent, yet he doesn't even
9 know the man. He's never been to his house. He
10 doesn't socialize with him. He wouldn't know
11 him if he walked in the door.

12 If Mr. Hogan wanted to challenge, he should
13 have filed this challenge. He did not file this
14 challenge. Mr. Eggleston filed it. He, obviously,
15 doesn't know him -- he doesn't even know him so I
16 don't know how he could say what Mr. Feuerbach is
17 commonly known as. So we would say that -- we
18 would ask that the challenge be denied. Thank you.

19 CHAIRMAN B. BENNETT: Thank you. We will
20 now close the hearing in Cause No. 2014-02. It
21 is appropriate now for discussion by the
22 Commission. One question I have of legal
23 counsel is whether the law would allow simply
24 striking the name Tea Party from the ballot or
25 whether the candidate must be removed?

1 MR. D. SIMMONS: Mr. Chairman, Members of
2 the Commission, there's a very specific statute
3 and subsection that applies here. It's 3-5-7-7,
4 Subsection C, and it's on Page 114 of the Code
5 book, but it indicates that if the commission
6 finds that the candidate used a designation not
7 permitted by the statute that's been argued here
8 today, that the candidate's considered to have
9 withdrawn the candidate's candidacy.

10 So the finding is essentially that the
11 candidate is off the ballot if the finding is that
12 the candidate used a designation not authorized by
13 state law.

14 CHAIRMAN B. BENNETT: Thank you. Ms.
15 Barnes, do you have any -- do you agree with
16 that?

17 MS. L. BARNES: I agree, yes. Thank you.

18 CHAIRMAN B. BENNETT: Thank you. So any
19 other comments, questions, thoughts by the
20 Commission?

21 (No response.)

22 CHAIRMAN B. BENNETT: Is there a motion?

23 PROXY J. WAGNER: A motion to sustain the
24 challenge?

25 PROXY A. DICKEY: Second.

1 CHAIRMAN B. BENNETT: Motion and seconded,
2 any discussion?

3 (No response.)

4 CHAIRMAN B. BENNETT: Hearing none, all in
5 favor of the motion to sustain the challenge,
6 say aye?

7 THE COMMISSION: Aye.

8 CHAIRMAN B. BENNETT: All opposed, same
9 sign?

10 (No response.)

11 CHAIRMAN B. BENNETT: Motion carried.
12 Challenge sustained.

13 MR. T. JOHN: Thank you.

14 MR. P. OGDEN: Thank you.

15 CHAIRMAN B. BENNETT: We will now hear the
16 William Bryk, Cause No. 2014-03 In the Matter of
17 the Challenge to William Bryk, Candidate for the
18 Democratic Party Nomination of United States
19 Representative, District 8. The Election
20 Division has provided a copy of the candidate
21 filing challenge form, a copy of notice given in
22 this matter, and in answer to the challenge
23 filed by this candidate earlier this morning.

24 MR. B. KING: Just to confirm,

25 Mr. Chairman, the binders provided to commission

1 members do contain the notice of the hearing,
2 the original candidate filing challenge, and the
3 answer to candidate challenge filed by Mr. Bryk
4 at 9:29 a.m.

5 CHAIRMAN B. BENNETT: Thank you, Mr. King.
6 Is the Challenger ready to proceed?

7 MS. S. STEWART: Yes. I am Sandra A.
8 Stewart at 11073 East Hamlin Chapel Road, Monroe
9 City, Indiana, Harrison Township, Knox County,
10 and I am challenging the candidacy of William
11 Bryk for the U.S. House of Representative
12 Congressional District, and I've acquired an
13 attorney to help in these proceedings.

14 MS. T. DRESCHER: Yes. My name is Tenley,
15 T-E-N-L-E-Y, Drescher, which D as in David,
16 R-E-S-C-H-E-R, and I'm with the firm of Faegre
17 Baker Daniels.

18 CHAIRMAN B. BENNETT: Is it Descher?

19 MS. T. DRESCHER: Drescher.

20 CHAIRMAN B. BENNETT: Drescher.

21 MS. T. DRESCHER: Yes.

22 CHAIRMAN B. BENNETT: Okay.

23 MS. T. DRESCHER: If it's okay, I'll go
24 ahead. As Ms. Stewart stated, she on
25 February 12th filed the C-A-N 1, CAN-1 form

1 challenging the candidacy of William Bryk.
2 Mr. Bryk on January 16th of 2014 filed a C-A-N
3 2, CAN-2 form declaring his candidacy for the
4 U.S. House of Representatives, in Indiana's 8th
5 District.

6 On the CAN-2 form which Mr. Bryk filed -- I
7 assume you all have a copy in front of you -- he
8 stated his address as 578 74th Street, Brooklyn,
9 New York. He stated that he was a registered voter
10 of Election District 85 and Assembly District 64 in
11 Kings County, New York.

12 He then checked in Box 2 that he was
13 requesting to be placed on the Democratic Party
14 ballot as a candidate in Indiana's 8th District.
15 As you see on the form, which is the official state
16 form that must be filed to declare candidacy in
17 Indiana --

18 CHAIRMAN B. BENNETT: We don't have it.

19 MS. T. DRESCHER: Oh, you don't have it?

20 CHAIRMAN B. BENNETT: Do you have copies
21 for the Commission?

22 MS. T. DRESCHER: Absolutely. Sorry. I've
23 also -- a copy has his cover letter. So I
24 apologize. I have six.

25 PROXY J. WAGNER: We can share.

1 MS. T. DRESCHER: Sorry. I apologize for
2 that. So again, he in the box, in the middle of
3 the form, stated his residency as 578, 74th
4 Street, Brooklyn, New York. He, then going back
5 up to the top, stated he is a registered voter
6 of Election District 85 and Assembly District 64
7 in the County of Brooklyn, County of Kings,
8 State of New York.

9 He checked Box 2 requesting that he be placed
10 as a candidate on the Democratic ballot for
11 Indiana's 8th District, but you'll see in Box 3,
12 however, which is where the form asks the candidate
13 to comply with the requirements of IC 3-8-2-7
14 regarding party affiliation.

15 That statute that I just mentioned requires a
16 candidate to show party affiliation or prove party
17 affiliation in one of two ways: One, as we've
18 heard about earlier this morning, is to attest and
19 certify that the last primary in Indiana in which
20 you voted was a primary of the Party in which
21 you're now seeking nomination, or there is another
22 option, you can also receive a certification from
23 the county chairman of the county in which you
24 reside stating that you are affiliated with that
25 Party, and the form provides for the candidate to

1 designate which of those options they are choosing.

2 Mr. Bryk did not check either box, and in
3 addition, as you'll see, I've provided his full
4 filing, including his cover letter, he did not
5 include a certification from a county chairman. So
6 I argue that on its face the form is incomplete and
7 therefore should be rejected, but even going beyond
8 that, I also argue that Mr. Bryk should not be
9 allowed to be a candidate and his candidacy should
10 be rejected because he has not shown any way in
11 which he meets the requirements of IC 3-8-2-7 to
12 be -- to appear on the Democratic ballot.

13 And I will point out, just to kind of head
14 this off, this is -- you know, we're talking now
15 about a party primary. We're not talking about
16 candidacy for a general election. So if Mr. Bryk's
17 candidacy is rejected today, to be in the
18 Democratic Party primary, that does not mean we are
19 stopping him from being a candidate in a general
20 election. There are other avenues. This is today
21 talking about -- and this is a challenge to a
22 candidacy for a Party primary.

23 CHAIRMAN B. BENNETT: As opposed to
24 qualifications for an office?

25 MS. T. DRESCHER: Correct.

1 COMMISSION MEMBER Z. KLUTZ: Is your
2 position that he could have still completed this
3 form by providing a statement from his county
4 chairman in the county of Kings County and
5 fulfilled this form completely?

6 MS. T. DRESCHER: I'll say that that is an
7 interesting question, and one which hasn't been
8 presented to us today, and one which I
9 don't -- I don't know -- I will say I was
10 elections director in Marion County and I've
11 been an elections lawyer for a while and that is
12 question that I've never considered. I don't
13 know if anybody has. I don't know the answer to
14 that today.

15 But I do know -- I would argue -- for a party
16 primary, I would still argue no, that that would
17 not be valid, but I will say that is not the
18 question presented before us today, although it
19 would be an interesting one to consider, but he did
20 not attach a certification from a party chairman.?

21 CHAIRMAN B. BENNETT: Any other questions?

22 (No response.)

23 CHAIRMAN B. BENNETT: Do you have any other
24 witnesses or presentation to make?

25 MS. T. DRESCHER: I do not. The only thing

1 is I did forget to have Ms. Stewart certify that
2 she is a registered voter in the 8th District.

3 MS. S. STEWART: I am a registered voter in
4 the 8th District in the precinct of Harrison in
5 Knox County.

6 CHAIRMAN B. BENNETT: Thank you. Anything
7 else?

8 (No response.)

9 CHAIRMAN B. BENNETT: The record is now
10 closed in this matter, and discussion of the
11 Commission -- I would ask legal counsel whether
12 you have an opinion with regard to the question
13 asked by our commissioner with regard to whether
14 the chairman of the county in New York could
15 have authorized, or certified that the
16 candidate's a member of the political party?

17 MR. D. SIMMONS: Certainly, on the face of
18 the statute, it would appear so. It just says
19 the county chairman of the political party which
20 the candidate claims affiliation in the county
21 in which the candidate resides.

22 This candidate does reside in the county of
23 Kings as indicated on his declaration. It's in
24 Brooklyn. I mean, they did -- they did amend the
25 statute last session to change the first part of

1 the test -- the most recent primary election in
2 Indiana, so they did amend that, but they did not
3 amend this particular section to say the county in
4 Indiana in which the individual resides.

5 CHAIRMAN B. BENNETT: Okay. Ms. Barnes, do
6 you have an opinion on that, any different
7 opinion or not?

8 MS. L. BARNES: Just a slightly -- just an
9 additional -- since you asked the question
10 about, you know, could the party chairman
11 have -- in Kings County have certified him as a
12 candidate? Yes, that does seem to be what the
13 General Assembly did last year when they amended
14 the Statute 3-8-2-7. They wanted to tighten up
15 the nomination process.

16 The U.S. Supreme Court has permitted states to
17 regulate the nomination process. They do not see
18 it as an additional qualification to office, in
19 violation of the qualifications clause, and I would
20 be happy to answer any questions any other
21 commission member has.

22 CHAIRMAN B. BENNETT: Thank you. Any other
23 question, discussion?

24 (No response.)

25 CHAIRMAN B. BENNETT: Is there any

1 representative of Mr. Bryk here today?

2 (No response.)

3 CHAIRMAN B. BENNETT: Seeing no response,
4 we will conclude there is not a representative
5 of Mr. Bryk here today. Any further discussion?

6 (No response.)

7 CHAIRMAN B. BENNETT: Is there a motion?

8 COMMISSION MEMBER Z. KLUTZ: I make a
9 motion to sustain the challenge.

10 CHAIRMAN B. BENNETT: Is there a second?

11 PROXY J. WAGNER: Second.

12 CHAIRMAN B. BENNETT: We have a motion and
13 second to sustain the challenge, all in favor
14 say aye?

15 THE COMMISSION: Aye.

16 CHAIRMAN B. BENNETT: All opposed, same
17 sign?

18 (No response.)

19 CHAIRMAN B. BENNETT: Motion carried and
20 the challenge is sustained. Thank you for your
21 presentation.

22 MS. T. DRESCHER: Thank you.

23 CHAIRMAN B. BENNETT: We will now move onto
24 the VSTOP report, and I would recognize Dr.
25 Raymond Scheele and Dr. Jay Bagga, and other

1 representatives from the VSTOP to provide us the
2 report regarding voting system issues.

3 The first item on the agenda is
4 recommendations from VSTOP concerning engineering
5 change orders requested by Unisyn Voting Solutions.

6 DR. R. SCHEELE: Welcome again. My name is
7 Ray Scheele. I co-direct the VSTOP Program
8 under the Bowman Center at Ball State
9 University. Of course, I think most of you know
10 my colleague, Dr. Jay Bagga, who's also a
11 professor of computer science at Ball State and
12 co-director of VSTOP.

13 We have a very brief report today. The -- I'm
14 not sure if you received this, but this is the --
15 you should have in front of you then the very short
16 report with respect to ECOs, which are engineering
17 change orders, on the voting systems that have
18 currently been, or are currently certified in the
19 state of Indiana.

20 The one voting system that you are looking at
21 today was the Unisyn voting system that's certified
22 and they have submitted some engineering change
23 orders to the voting systems. As you know,
24 technology moves rapidly, so there's always changes
25 made for our voting equipment.

1 And today, we are recommending to the
2 Commission that you approve two de minimis ECOs for
3 the Unisyn Voting System 1.1. You'll see on the
4 back on the second page, the -- we say it's a de
5 minimis change rather than a major modification. A
6 de minimus change does not go to the core
7 functionality of the voting system. A de minimis
8 change is a minor one. It could be something like
9 a cable. It could be something like a USB port or
10 what have you. There's all kinds of examples of de
11 minimis ones.

12 We look at those, each one of them, and make a
13 determination as to whether or not it is a major
14 modification, and if so, it has to go to a lab and
15 be tested to make sure that the functionality is
16 going to remain or be improved by a more major
17 modification, or in the case of de minimis, we
18 determine that it is -- it does not go to that core
19 functionality.

20 So the two, ECO 1014 and ECO 16911 are the two
21 de minimis ones that we recommend that the
22 Commission approve.

23 CHAIRMAN B. BENNETT: Okay. Any questions
24 by the Commission?

25 (No response.)

1 CHAIRMAN B. BENNETT: Any further
2 testimony, Dr. Bagga, or otherwise?

3 DR. R. SCHEELE: No, but we'll have a very
4 quick summation as to what we've done this week
5 with regard to the testing of the new system of
6 Unisyn.

7 CHAIRMAN B. BENNETT: Okay. That's
8 separate from the motion on the table now;
9 right?

10 DR. R. SCHEELE: Right.

11 CHAIRMAN B. BENNETT: Is there a motion to
12 accept the engineering change recommended by the
13 VSTOP representatives?

14 PROXY J. WAGNER: So moved.

15 CHAIRMAN B. BENNETT: We have a motion, is
16 there a second?

17 COMMISSION MEMBER Z. KLUTZ: Second.

18 CHAIRMAN B. BENNETT: Motion and seconded,
19 is there any discussion?

20 (No response.)

21 CHAIRMAN B. BENNETT: All in favor of the
22 motion to accept the recommendations, say aye?

23 THE COMMISSION: Aye.

24 CHAIRMAN B. BENNETT: All opposed, nay?

25 (No response.)

1 CHAIRMAN B. BENNETT: So the motion
2 carries. Recommendation accepted.

3 DR. R. SCHEELE: Thank you. Earlier, this
4 week on the campus of Ball State, we tested a
5 Unisyn voting system, which is the new 1.2, and
6 the ECOs that you just approved were for 1.1, so
7 this is a newer system that is in addition at
8 Unisyn, and I'll turn it over to Jay Bagga for a
9 quick report.

10 DR. J. BAGGA: Thank you. Jay Bagga,
11 B-A-G-G-A, last name Bagga. Unisyn has applied
12 for certification of their new voting system
13 called OpenElect 1.2, and we have been reviewing
14 and evaluating that system, and we wanted Unisyn
15 to be at the Ball State campus on Monday,
16 February 24th, and we computer tested that
17 system.

18 This system, OpenElect 1.2, is a modification
19 of OpenElect 1.0 and 1.1, both of which are
20 currently certified in Indiana. We are evaluating
21 the results of the test, and once that is complete,
22 we would send it forth to the Commission.

23 CHAIRMAN B. BENNETT: Okay.

24 DR. R. SCHEELE: That's our update.

25 CHAIRMAN B. BENNETT: Thank you. Anything

1 else?

2 DR. R. SCHEELE: No, that's our report.

3 CHAIRMAN B. BENNETT: We appreciate your
4 report. Thank you.

5 DR. R. SCHEELE: Thank you.

6 CHAIRMAN B. BENNETT: The Indiana Election
7 Commission has finished its business for today.
8 Is there a motion for the Commission to adjourn?

9 PROXY J. WAGNER: So moved.

10 PROXY A. DICKEY: So moved -- second.

11 CHAIRMAN B. BENNETT: Motion and seconded,
12 any discussion?

13 (No response.)

14 CHAIRMAN B. BENNETT: Hearing none, the
15 motion is carried, the ayes, have it, and all in
16 favor of approving the motion, say aye?

17 THE COMMISSION: Aye.

18 CHAIRMAN B. BENNETT: All opposed, same
19 sign?

20 (No response.)

21 CHAIRMAN B. BENNETT: The meeting is
22 adjourned.

23 (Time noted: 12:03 p.m.)

24 (At this time the proceedings were adjourned.)

25

1 STATE OF INDIANA)
) SS:
 2 COUNTY OF MARION)

3

4 I, Rhonda J. Hobbs, RPR, and a Notary Public
 5 and Stenographic Reporter within and for the County
 6 of Hendricks, State of Indiana at large, do hereby
 7 certify that on the 26th day of February, 2014, I
 8 took down in stenograph notes the foregoing
 9 proceedings;

10 That the transcript is a full, true and
 11 correct transcript made from my stenograph notes.

12 IN WITNESS WHEREOF, I have hereunto set
 13 my hand and affixed my notarial seal this 12th
 14 day of March, 2014.

15

16

17



NOTARY PUBLIC

18

19 My Commission Expires:
 August 24, 2017
 20 County of Residence:
 Hendricks County

21

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25