

Indiana Election Commission
Minutes
September 4, 2012

Members Present: Thomas E. Wheeler, II, proxy for Daniel A. Dumezich, Chairman of the Indiana Election Commission ("Commission"); Liane Groth Hulka, proxy for Commissioner Long, Vice Chairman of the Commission; Joseph C. Chapelle (proxy for Commissioner Bennett); Suzannah Wilson Overholt, Commission member.

Members Absent: Dan Dumezich, Chairman of the Commission; S. Anthony Long, Vice-Chairman of the Commission; Bryce Bennett, Commission member.

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division.

Also Attending: Reverend Mmoja Ajabu; Ms. LaDonna Freeman; Mr. Raphael Howard; Ms. Cindy Mowery; Mr. Nicholson Davey Neal; Mr. Paul Ogden; Ms. Irene Parson; Mr. Ralph Parson.

1. Call to Order

The Chair called the September 4, 2012 meeting of the Commission to order at 1:40 p.m. in Indiana Government Center South Conference Room 22, 402 West Washington Street, Indianapolis, Indiana.

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

2. Transaction of Business

The Commission transacted the business set forth in the Transcript of Proceedings prepared by Deborah J. Pearce 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 by the Commission:

Page 5, line 23, replace "SIMMONS" with "KING".

Page 6, line 22, replace "UNIDENTIFIED SPEAKER" with "MS. OVERHOLT".

Page 8, line 2, replace "SIMMONS" with "KING".

Page 9, line 3, replace "CHAPELLE" with "NEAL".

Page 9, line 6, replace "CHAPELLE" with "NEAL".

Page 11, line 7, replace "count" with "county".

Page 44, line 9, replace "codirectors" with "co-directors".

Page 44, line 23, replace "codirector's" with "co-directors".

Page 45, line 14, replace "codirectors" with "co-directors".

Page 46, line 2, replace "codirectors" with "co-directors".

Page 47, line 24, replace "codirectors" with "co-directors".

Page 49, line 4, replace "codirectors" with "co-directors".

Page 50, line 21, replace "Voter's" with "Voter".

Page 66, line 9, replace "Indiana" with "the Indiana Election Division".

Page 69, line 3, replace "resident's" with "residence"

Page 69, line 4, replace "resident's" with "residence"

Page 89, line 1, replace "codirectors" with "co-directors".

Page 93, line 4, replace "codirectors" with "co-directors".

Page 93, line 9, replace "Barnes" with "Barnes's".

Page 93, line 15, replace "codirectors" with "co-director" in both instances.

Page 93, line 21, replace "codirector" with "co-director".

Page 93, line 23, replace "codirector" with "co-director".

Page 93, line 25, replace "codirector" with "co-director".

Page 94, line 2, replace "codirectors" with "co-directors".

Page 94, line 3, replace "codirectors and cocounsel" with "co-directors" and "co-counsel".

Page 97, line 18, replace "cocounsel" with "co-counsel".

Page 97, line 19, replace "codirectors" with "co-directors".

Page 97, line 23, replace "Kernen" with "Kernan".

Page 99, line 5, replace "codirectors" with "co-directors".

3. Adjournment

There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Ms. Chapelle moved, seconded by Ms. Overholt, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting "aye" (Mr. Wheeler; Ms. Hulka, Mr. Chapelle, and Ms. Overholt), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 3:34 p.m.

Respectfully submitted,

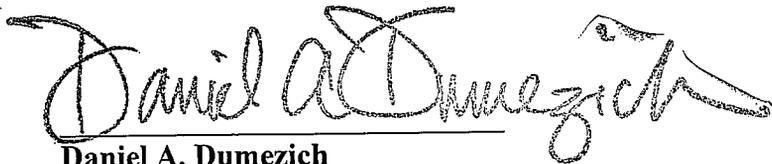


Trent DeCard
Co-Director



J. Bradley King
Co-Director

APPROVED:



Daniel A. Dumezich
Chairman

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BEFORE THE INDIANA ELECTION COMMISSION

IN THE MATTER OF THE APPEAL
OF DENIAL OF PETITION CANDIDATE

Mmoja Ajabu,)	CAUSE NO.
Appellant / Petition Filer)	2012-243
United States Representative)	
District 7)	

PUBLIC HEARING

The public hearing of appeal from the denial of certification with respect to petitions filed by Mmoja Ajabu for United States Representative, District 7, was held before the Indiana Election Commission at 1:30 p.m., on Tuesday, September 4, 2012, and the Indiana Government Center South, 402 West Washington Street, Conference Center, Room 22, Indianapolis, Marion County, Indiana, with written notice as to time and place thereof.

Connor Reporting, Inc.
1650 One American Square
Indianapolis, Indiana 46282
(317) 236-6022

A P P E A R A N C E S

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Chairman Thomas E. Wheeler, II
Joseph Chapelle
Suzannah Wilson Overholt
Liane Groth Hulka
J. Bradley King
Leslie Barnes
Dale Simmons
Nicholson Davey Neal
Mmoja Ajabu
Paul Ogden
Ralph Parson
Irene Parson
Rapheal Howard
Abbey Taylor
Michelle Brzycki
LaDonna Freeman
Cindy Mowery

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1 CHAIRMAN WHEELER: I'll call the meeting of
2 the Indiana Election Commission to order. The
3 Indiana Election Commission is meeting pursuant to
4 public notice and agenda which has previously been
5 disseminated. Today's date is
6 September 4th, 2012, it's approximately 1:40 p.m.
7 here in room 22 of the conference center.

8 Looking around the head table, we do have a
9 quorum of commission members. I would note that
10 my name is Tom Wheeler. I have been appointed
11 proxy for Dan Dumezich, current chair. I'll be
12 sitting as chair. I spent five years as chair
13 prior to Commissioner Dumezich taking this chair.
14 I'm glad to have my gavel back -- which I did not
15 receive until the end of my term.

16 But in any event, pursuant to proxy, I will
17 be sitting for Chairman Dumezich. Bryce Bennett
18 has appointed by proxy Joe Chapelle, who is
19 sitting on my right -- who will be sitting as
20 Bryce Bennett's proxy.

21 And then the vice chair, Commissioner
22 Anthony Long, has appointed as his proxy
23 Liane Groth Hulka --

24 Is that right?

25 MS. HULKA: Uh-huh.

1 CHAIRMAN WHEELER: -- as his proxy for vice
2 chair, and then the one current member of the
3 commission is Suzannah Overholt, the most recent
4 commission member. So we appreciate you helping
5 in this matter.

6 With that being said, we'd like to call to
7 order -- and with respect to quorum, I will also
8 introduce our staff members. We have Brad King,
9 who is the Republican codirector.

10 Trent is not here.

11 Leslie, does that mean you will be sitting in
12 as proxy and as codirector?

13 MS. BARNES: I would wear two hats today,
14 Mr. Chairman, both as Trent's replacement and
15 counsel. He expressed his regrets he couldn't be
16 here.

17 CHAIRMAN WHEELER: And then we also have
18 Dale Simmons who is counsel to the Republican
19 codirector.

20 With that, pursuant to our agenda, we have
21 the compliance -- documentation in compliance with
22 the open-door law.

23 MR. SIMMONS: Mr. Chairman, Members of the
24 Commission, the election division can certify that
25 proper notice of this meeting was given in

1 conformity with the open-door law.

2 CHAIRMAN WHEELER: And I will note that each
3 of the commission members has a notebook in front
4 of them which contains the agenda, the appointment
5 of the proxies, and the candidate challenge that
6 has been filed, as well as the notice that
7 Mr. King just referred to.

8 With that, the next item of the agenda is an
9 approval of the Indiana Election Commission
10 minutes from the last commission meeting. I would
11 note that, on a personal level, I am uncomfortable
12 with approving commission minutes from a meeting I
13 did not attend and, in fact, that three of the
14 four of us did not attend.

15 I would ask forbearance to remove that from
16 the agenda and allow the regular commission
17 members to approve their meeting, albeit how brief
18 it was.

19 MR. CHAPELLE: So moved.

20 CHAIRMAN WHEELER: So moved. Do I have a
21 second?

22 UNIDENTIFIED SPEAKER: Second.

23 CHAIRMAN WHEELER: Motion made and seconded
24 to remove the approval of the Indiana Election
25 Commission minutes from the agenda.

1 Any further discussion?

2 Hearing none, all in favor signify by saying,
3 "Aye."

4 THE COMMISSION MEMBERS: Aye.

5 CHAIRMAN WHEELER: Those opposed by the same
6 sign.

7 Motion carries.

8 That moves us to agenda item No. 4,
9 "Candidate Challenges." In this case I've
10 indicated to both parties we will allow 30 minutes
11 a side. It is my understanding that the
12 petitioner wishes to reserve 10 minutes for
13 rebuttal. So the petitioner gets to go first,
14 twenty minutes, inclusive of called witnesses.

15 I don't -- I will generally hold you to 20
16 minutes of chair time. Commission members can
17 extend your time by questioning. Same thing for
18 you, Mr. Neal, from the Secretary of State's side.
19 But you will have the full 30-minute block.

20 With that, I would ask Mr. King to administer
21 the oath to all the individuals who know
22 themselves to be witness in this matter.

23 MR. KING: Please stand. Raise your right
24 hand and respond, "I do," at the conclusion of the
25 oath.

1 (Witnesses sworn.)

2 MR. SIMMONS: Thank you.

3 CHAIRMAN WHEELER: With that, as I understand
4 it -- just to lay the framework for the commission
5 members, as I understand it, this process, the
6 petitioner filed a certain number of petitions
7 with the Marion County Clerk's Office, and the
8 clerk's office and the petitioner have a dispute
9 over how many were properly counted; is that a
10 fair summary?

11 And as I understand it, the petitioner
12 believes that he's tendered somewhere in the area
13 of 4,500, well in excess of the 3,000 or so
14 needed. And the Marion County Board of Voter
15 Registration certified only about 1,300 of those,
16 well short of the number.

17 Is that a fair report as you understand it?

18 MR. OGDEN: Mr. Chairman, I can kind of
19 clarify that --

20 CHAIRMAN WHEELER: Let me just set the
21 framework, and then can you go at it.

22 MR. OGDEN: Okay.

23 CHAIRMAN WHEELER: And then as I understand
24 it from the information that we have, as a
25 consequence of the failure to get the required

1 numbers, the Secretary of State has certified the
2 denial of his petition; is that correct?

3 MR. CHAPELLE: That is correct.

4 CHAIRMAN WHEELER: And this is an appeal from
5 Mr. Ogden?

6 MR. CHAPELLE: That is correct.

7 CHAIRMAN WHEELER: I said we'd give you a
8 couple of minutes for opening statements.

9 MR. OGDEN: Hopefully not that long.

10 Thank you, Chairman Wheeler, members of the
11 commission, and members of the Secretary of State
12 staff. My name is Paul Ogden, I'm an attorney
13 here in Indianapolis. I represent to my right,
14 Mmoja Ajabu, spelled M-M-O-J-A, last name,
15 A-J-U-B-A --

16 MR. AJABU: A-J-A-B-U.

17 MR. OGDEN: I'm sorry. I've been misspelling
18 it, I think, for a while. To my right -- behind
19 me is a potential witness, Rafael Howard, and then
20 we have a couple of voters who have come in -- I
21 doubt I'll have to call either of them because of
22 the time limitations -- Ralph Parson and
23 Irene Parson.

24 This case actually concerns two sets of
25 petitions, which I refer to as the "first batch"

1 and the "second batch."

2 On or about March 3rd, 2012 -- in fact, I
3 think they were stamped March 3rd, 2012, the
4 petitioner -- I shouldn't call him the petitioner.
5 The candidate turned in the approximately 4,700
6 signatures to the Marion County Board of Voter
7 Registration. Of those 4,700, 1,300 were
8 certified, and that's not in dispute, I don't
9 believe.

10 And what is in dispute is the second batch of
11 petitions that the candidate, again to my right,
12 turned in consisting of 443 pages. One page only
13 had one signature on it, approximately 4,421
14 signatures.

15 He received a letter back from the Marion
16 County Board of Registration saying it contained
17 no valid signatures. So there wasn't a count done
18 on the second batch.

19 My candidate's testimony -- the candidate's
20 testimony will be that he did go through using
21 public databases. That his count on the second
22 batch was 2,418.

23 Yours truly went through and made a very,
24 very painful count -- because it's a very
25 time-consuming process -- and I came up with

1 2,434, which includes about 2,200 from the 7th
2 District and over 200 from the 5th District which
3 takes in the northern part of Marion County.

4 And if you look at the statute, it doesn't
5 say they have to be from that particular
6 congressional district. It just says they have to
7 be in the count.

8 Regardless, by the count, you add that to the
9 1,300, he is 700 over what is necessary.
10 According to the Marion County Board of Voter
11 Registration, the number he needed to hit was
12 3,010, and we could certainly say that he's at
13 least 700 over that count.

14 I don't know if that was two minutes.

15 CHAIRMAN WHEELER: That's short and sweet.

16 Mr. Neal, do you want to respond at this
17 point?

18 MR. NEAL: No.

19 MR. OGDEN: The first witness I'd like to
20 call is Reverend Mmoja Ajabu.

21 Please state your name for the record.

22 MR. AJABU: My name is Reverend Mmoja Ajabu,
23 M-M-O-J-A A-J-A-B-U.

24 MR. OGDEN: Did you file to run for office
25 this year?

1 MR. AJABU: Yes, I did.

2 MR. OGDEN: What office did you file to run
3 for?

4 MR. AJABU: Congress for the 7th District of
5 Indiana.

6 MR. OGDEN: Was that as a Republican or a
7 Democrat?

8 MR. AJABU: Independent.

9 MR. OGDEN: As an independent candidate for
10 congressman.

11 Were you aware of a requirement to obtain
12 signatures?

13 MR. AJABU: Yes, I was.

14 MR. OGDEN: Who did you talk to about that?

15 MR. AJABU: I talked to Beth White's office.

16 MR. OGDEN: And who is Beth White?

17 MR. AJABU: Marion County Clerk. I talked to
18 her and other people there in her office whose
19 names I can't speak to.

20 MR. OGDEN: Was that in the election board
21 area?

22 MR. AJABU: No, that's in the City-County
23 Building. But I also talked to Dale Simmons.

24 MR. OGDEN: So you talked to people from the
25 office as well?

1 MR. AJABU: Yes.

2 MR. OGDEN: Did you find out how many
3 signatures you needed?

4 MR. AJABU: Yes, 3,010.

5 MR. OGDEN: Did someone tell you that?

6 MR. AJABU: Actually I was told initially I
7 only needed 2,000 signatures, and then when I
8 talked to Dale, he said that that sounded a little
9 low, so I went back to the Marion County Voter
10 Registration and shared with them what he had
11 shared with me, and they recalculated and said
12 it's 3,010.

13 And then I went to Dale and verified that,
14 and he verified that 3,010 is the correct number.

15 MR. OGDEN: So 3,010.

16 Now, what did you do to go about collecting
17 the signatures? Did you go someplace in
18 particular?

19 MR. AJABU: I went a number of places, but
20 primarily I went to the traffic court that's
21 out on --

22 MR. OGDEN: Which traffic court?

23 MR. AJABU: That's out on East Washington
24 Street. Washington and Franklin.

25 MR. OGDEN: Would that be the Marion County

1 traffic court?

2 MR. AJABU: Yes.

3 MR. OGDEN: So you took the blank petitions
4 out there?

5 MR. AJABU: Yes, sir.

6 MR. OGDEN: Did you have people sign them?

7 MR. AJABU: Yes, I did.

8 MR. OGDEN: Tell the commission what your
9 speech, for lack of a better term, was as someone
10 walked toward you.

11 MR. AJABU: Initially I would ask a person,
12 "Are you a registered voter?" And if they
13 responded, "Yes," I would ask them, "Is that in
14 the Marion County?"

15 And if they responded, "Yes," then I told
16 them, "I am running for Congress as an independent
17 and I need 20,000 signatures to get on the
18 ballot."

19 And I used 20,000 to have a number to let
20 them know that I needed a number. In fact, when I
21 first started, I didn't really know what I needed,
22 but my goal was to get 20,000. So I figured that
23 would be enough in order to satisfy in
24 requirements. I needed 20,000 signatures to get
25 on the ballot, "Is it possible I could get yours?"

1 MR. OGDEN: What time of year did you start?

2 MR. AJABU: I actually started back probably
3 in March of 2011, and that was an issue in itself.
4 I was waiting for the petitions and I was talking
5 to the Marion County, and they was telling me that
6 they would not get their petitions until January.

7 But I talked to Dale, and he said that they
8 had the petitions already, so I was able to obtain
9 the petition from them and get started.

10 CHAIRMAN WHEELER: When you say "the
11 petitions," you mean the blank petitions?

12 MR. AJABU: Yes, sir.

13 MR. OGDEN: At some point did you turn in --
14 and I'm going to refer to these as the "first
15 batch" and the "second batch" for clarification
16 purposes.

17 At some point did you turn in a first batch
18 of petitions?

19 MR. AJABU: Yes, I did.

20 MR. OGDEN: Do you remember approximately
21 when it was?

22 MR. AJABU: The first of March, March 2nd,
23 March 3rd.

24 MR. OGDEN: How many pages did you turn in;
25 do you remember?

1 CHAIRMAN WHEELER: What I would appreciate,
2 Paul, is if you would enter those into evidence.

3 Do you have originals of the petitions?

4 MR. OGDEN: Right there. (Indicating.)

5 CHAIRMAN WHEELER: This is what has been
6 filed with those?

7 MR. OGDEN: Right.

8 CHAIRMAN WHEELER: Now, as I understand it,
9 as I look at these, these appear to be
10 photocopies. These are not original signatures.
11 Some are, but primarily they are not, particularly
12 on the second batch.

13 MR. OGDEN: Yes.

14 CHAIRMAN WHEELER: Do you have originals of
15 the second batch?

16 MR. OGDEN: I don't think we have the
17 originals. And I should clarify --

18 MR. AJABU: What original?

19 MR. OGDEN: -- you're talking about the "wet
20 ink" originals?

21 CHAIRMAN WHEELER: Some of these are
22 originals. Like right here. (Indicating.) I can
23 see that somebody wrote these right here. They're
24 in blue ink and black ink, and these are the
25 original ones you collected, correct?

1 MR. AJABU: I'm confused about the word
2 "original."

3 MR. OGDEN: Let me handle this.

4 We've debated about that, what is originals,
5 and as attorneys we file documents with the court
6 all the time. We're not required to file
7 original, wet ink documents. And I should say
8 "wet ink" documents. Some of those pages are
9 photocopied and some are, I think, original.
10 Wet-ink-type original. But that's what was filed.

11 CHAIRMAN WHEELER: Let me go ahead and give
12 you this one, so you can identify and introduce
13 this packet. Which I believe is the first packet.

14 MR. OGDEN: Those are --

15 CHAIRMAN WHEELER: With the certification.

16 MR. OGDEN: This is the first packet. And
17 I'm going to hand you what has not been marked,
18 but I assume will be --

19 CHAIRMAN WHEELER: Go ahead and give them to
20 Dale. Dale will mark them.

21 MR. SIMMONS: We are using letters?

22 CHAIRMAN WHEELER: Yes.

23 (Petitioner's Exhibit A, marked for
24 identification.)

25 CHAIRMAN WHEELER: Can you identify

1 Exhibit A?

2 MR. OGDEN: I'm going to hand to my client
3 what has a cover letter on it, "The Marion County
4 Board of Voter Registration has reviewed the
5 attached petitions presented by
6 Mr. Mmoja Ajabu" -- sorry I keep mispronouncing
7 that.

8 "We, as Board Members, certify that to the
9 best of our knowledge and belief there were 1,300
10 total registered voters who signed the attached
11 petitions of the 7th Congressional District," and
12 then they signed it as well.

13 Let me pass this to my client, and ask you to
14 identify that.

15 Does that appear, as best you can tell, to be
16 the documents you filed, the first batch of
17 petitions?

18 MR. AJABU: Yes.

19 MR. OGDEN: Your Honor, I would move these be
20 admitted into evidence.

21 CHAIRMAN WHEELER: Any questions from the
22 commission members?

23 (No response.)

24 CHAIRMAN WHEELER: Without objection, we will
25 admit Exhibit A. Let me pass it. You can go

1 ahead unless you need the exhibit.

2 MR. OGDEN: No, I don't.

3 Do you recall how many were certified out of
4 that batch?

5 MR. AJABU: 1,300.

6 MR. OGDEN: Did you learn anything from the
7 process?

8 MR. AJABU: A lot.

9 MR. OGDEN: And when I say "the process," who
10 did you talk to?

11 MR. AJABU: LaDonna Freeman.

12 MR. OGDEN: Who is LaDonna Freeman?

13 MR. AJABU: She is cochair of the Marion
14 County Election board.

15 MR. OGDEN: Could it be the Marion County
16 Board of Voter Registration?

17 MR. AJABU: Excuse me, yes.

18 MR. OGDEN: What did you learn?

19 MR. AJABU: I actually learned the database
20 they use to certify signatures, and the criteria
21 that they would use to say that a signature was
22 not certifiable.

23 MR. OGDEN: So you're talking about
24 databases. What databases did you use?

25 MR. AJABU: I used a couple. She gave me a

1 couple of -- indianavoters.com, and the other
2 being portal, P-O-R-T-A-L.com.

3 MR. OGDEN: Marion County databases?

4 MR. AJABU: Yes, I guess. You know, they
5 were the databases of voters, and I could look up
6 voters within the 7th District or voters in the
7 state of Indiana, and from that determine whether
8 they were registered in the 7th District.

9 MR. OGDEN: So let me clarify that. The
10 Marion County portal of -- I forget what exactly
11 the term is, the Marion County Clerk's Office for
12 the Marion County Board of Voter Registration.
13 How can you look up names there?

14 MR. AJABU: Actually, the database requires
15 two pieces of information with one piece in
16 common, which is the birth date. The portal
17 requires that you have the birth date and the
18 address. The Indiana voters requires that you
19 have the birth date and the name.

20 So it gives you an opportunity to where
21 dealing with signatures and people's writing --
22 signatures are sometimes very difficult to read,
23 but if they print and they have the address, then
24 you can actually use the address to look up the
25 registration to determine whether that person is

1 in the database being a voter for the 7th
2 Congressional District.

3 MR. OGDEN: What if there was no birth date?

4 MR. AJABU: I could not look it up. I kept
5 moving.

6 MR. OGDEN: So you -- part of this was you
7 were able to check the first batch to see whether
8 some were missed, right?

9 MR. AJABU: I was able to, but my focus was
10 on the second batch.

11 MR. OGDEN: Let's talk about the second
12 batch.

13 CHAIRMAN WHEELER: Let me stop you there. So
14 the first batch, we're in agreement we've got
15 1,300 in the first batch?

16 MR. OGDEN: We're not going to oppose that,
17 correct.

18 CHAIRMAN WHEELER: And the person you were
19 working with -- and this is signed by a
20 Cindy Mowery and a LaDonna Freeman. Is
21 LaDonna Freeman in the room today?

22 MR. AJABU: Yes, she is.

23 CHAIRMAN WHEELER: But you don't know
24 Cindy Mowery, correct?

25 MR. AJABU: Not really.

1 CHAIRMAN WHEELER: We'll stipulate that
2 they're both here. I wanted to make sure you know
3 they're here in case there are questions, as well.

4 MR. AJABU: Yes.

5 CHAIRMAN WHEELER: So the first batch we know
6 there are 1,300?

7 MR. OGDEN: Yes. And we found some that were
8 left out.

9 CHAIRMAN WHEELER: So you know you've got
10 2,700 left. And now we've got the second batch.

11 MR. OGDEN: We'll speak about the second
12 batch.

13 (Petitioner's Exhibit B, marked for
14 identification.)

15 MR. OGDEN: I'm showing you what's marked as
16 Exhibit B. I'd ask you to identify -- is that
17 what I referred to as the second batch of
18 petitions you turned in?

19 MR. AJABU: Yes.

20 MR. OGDEN: Your Honor -- I keep wanting to
21 call you Your Honor. I'm sure you don't have a
22 problem with that.

23 I ask that that be admitted.

24 CHAIRMAN WHEELER: Okay.

25 Any questions from commission members?

1 (No response.)

2 CHAIRMAN WHEELER: Without objection, we'll
3 admit what has been identified as the second
4 batch, which is marked as Petitioner's Exhibit --
5 we probably should go ahead and mark that as
6 Petitioner's instead of Deposition -- Petitioner's
7 Exhibit B. I'll mark that. Go ahead.

8 They're just going to take a look.

9 (Indicating.)

10 MR. OGDEN: And you turned those in at some
11 point, correct?

12 MR. AJABU: Yes, I did.

13 MR. OGDEN: When did you turn those in?

14 MR. AJABU: I think it had to be May, I
15 think.

16 MR. OGDEN: If I were to represent to you
17 that they're stamped June 26th --

18 MR. AJABU: Well, then that's when I turned
19 them in.

20 MR. OGDEN: Could that be?

21 MR. AJABU: Yes. I'm confused. They were at
22 the primary. The first batch was turned in before
23 the primary and given back to me after the
24 primary, and then the second batch was turned in
25 just before the deadline, and I think the deadline

1 was June 30th.

2 MR. OGDEN: And Mr. Chairman, if I could ask
3 how much time I've got left?

4 CHAIRMAN WHEELER: Mr. Simmons?

5 MR. SIMMONS: Five minutes.

6 MR. OGDEN: Five minutes. Okay.

7 Were you the only one that gathered
8 petitions?

9 MR. AJABU: No. There was some preachers
10 that gathered petitions and another --

11 MR. OGDEN: When I say "petitions," you mean
12 signatures?

13 MR. AJABU: Yes. There were four or five
14 people.

15 CHAIRMAN WHEELER: Mr. Ogden, I think one of
16 the commissioners has a question about Exhibit B.

17 MS. HULKA: Counselor, we asked -- the first
18 batch appears to be originals. The second appears
19 to be photocopies.

20 Do you have the original copies that you
21 could enter into evidence today or get those to us
22 at a later date if we so requested?

23 CHAIRMAN WHEELER: Prefer now, because we're
24 going to make a decision today.

25 MR. OGDEN: I understand that. Those were

1 what was turned in.

2 CHAIRMAN WHEELER: This is what was turned
3 in. This is the originals that came from the
4 Board of Voter Registration.

5 What I'm asking is: Do you have the actual
6 originals?

7 MR. AJABU: To my understanding --

8 MR. OGDEN: Go ahead.

9 MR. AJABU: To my understanding when I look
10 at the statute, the original is what I turned in.
11 The only time it uses the term "original" is what
12 I turned in, and it says if I request for them to
13 be returned to me, then the originals, what I
14 turned in, have to be returned to me.

15 CHAIRMAN WHEELER: I'm not disputing that at
16 all. I'm simply asking for purposes -- for
17 example, if someone says there's some
18 irregularities with these documents, I think the
19 question from the commission is: Do you have the
20 originals that we can compare, the ones that the
21 people actually signed, do you have the ones --

22 MR. AJABU: Those are the originals.

23 CHAIRMAN WHEELER: So as far as you're
24 concerned, you don't have anything other than
25 this?

1 MR. AJABU: Yes.

2 MR. OGDEN: And to clarify, I always use the
3 term "wet ink" original because original can have
4 a number of terms in the law.

5 And we're running out of time. So you turned
6 those in. You got a letter back --

7 CHAIRMAN WHEELER: Let me ask: What happened
8 to the wet ink originals? Did you dispose of
9 those?

10 MR. AJABU: I don't know. Those are the
11 originals the best I can do.

12 MS. HULKA: You said the first batch you went
13 out to the traffic court to get signatures. You
14 started in March of 2011, and where did you go to
15 get the second batch of signatures?

16 MR. AJABU: Same place.

17 MS. HULKA: Same place?

18 MR. AJABU: Yes.

19 MS. HULKA: That was after you turned in
20 the -- I'm sorry, when did you get the second
21 batch? I guess I didn't hear that.

22 MR. AJABU: I have not received back the
23 second batch. Those have been housed at the
24 commission to my understanding.

25 MR. OGDEN: They went from the Marion County

1 Board of Voter Registration to the Election
2 Commission.

3 MS. HULKA: Your testimony was that you
4 collected the first batch starting between March
5 of 2011 to sometime before you turned them in in
6 March of 2012. You collected the first batch of
7 wet ink signatures, the original copy, at the
8 Marion County traffic court.

9 The second batch of signatures, I'm asking
10 when and where were those collected?

11 MR. AJABU: Same place, pretty much,
12 primarily.

13 MS. HULKA: Was there a time frame of the
14 second batch that was collected? How many weeks
15 did you spend out there? Days or hours?

16 MR. AJABU: I started back collecting -- I
17 didn't collect any over the winter, so I started
18 back latter part of March, I would say.

19 MS. HULKA: Of what year?

20 MR. AJABU: 2012.

21 MS. HULKA: 2012. So late March. And when
22 did you stop collecting the signatures?

23 MR. AJABU: Latter part of -- June 22nd, I
24 think is the date.

25 MS. HULKA: So did these petitioners,

1 petition signers use their own pen? You were
2 personally collecting these signatures?

3 MR. AJABU: Yes, sir. Myself and
4 Rafael Howard basically were the two.

5 MS. HULKA: But you don't dispute that what
6 you turned in to the board -- or to Marion County
7 was a copy of the originals?

8 MR. AJABU: I do dispute that. I'm saying
9 what I turned in are originals. I do dispute
10 that.

11 MS. OVERHOLT: May I ask a question?

12 CHAIRMAN WHEELER: (Nods head up and down.)

13 MS. OVERHOLT: How is it that you're defining
14 "original"?

15 MR. AJABU: What I turned in. I'm using the
16 definition I see, and that's IC 3-8-6-10(c), it
17 says, "Following certification of the petition
18 under this section, the office may upon the
19 request of the candidate named in the petition
20 return the original petition to the candidate for
21 filing with the appropriate official in accordance
22 with this subsection."

23 And this law, that's the only time I see
24 "original" used in the context that it's used,
25 original is -- means what I turned in that I would

1 get back.

2 MS. OVERHOLT: Let me ask you this, then, as
3 a follow up: Did you actually have the
4 individuals you were having -- you say you were
5 obtaining signatures for your petition, correct?

6 MR. AJABU: That's correct.

7 MS. OVERHOLT: So did you have distinct
8 individuals, 3,010 distinct individuals sign on
9 their own a petition supporting you as a candidate
10 for Congress?

11 MR. AJABU: Actually, more than that. I had
12 4,400-and-some.

13 MS. OVERHOLT: You saw these individuals
14 actually sign the petition?

15 MR. AJABU: Between myself and Mr. Howard.

16 MS. OVERHOLT: So where are the pieces of
17 papers that those individuals, the
18 4,000-and-some-odd, where are the pieces of paper
19 that those individuals actually signed when you
20 asked them to sign the petition?

21 MR. AJABU: You have them.

22 MS. OVERHOLT: No, we don't. We've got
23 photocopies.

24 MR. OGDEN: Your Honor --

25 MS. OVERHOLT: So we have what you gave to

1 the Marion County Board of Voter Registration.

2 MR. AJABU: But why do you ask for that? The
3 law doesn't require that.

4 MS. OVERHOLT: I'm just asking where are the
5 pieces of paper that the people signed, and you
6 say that we have them and we don't.

7 MR. OGDEN: Your Honor -- Mr. Chairman, I
8 would point out there is absolutely nothing in the
9 law that requires you to file wet ink originals.
10 Photocopies --

11 CHAIRMAN WHEELER: I don't think we're
12 disputing that. I think we're simply asking if
13 there are questions about what was filed, if he
14 has the wet ink originals to back them up.

15 And my understanding is you do not. They are
16 destroyed or something.

17 MR. AJABU: I do not.

18 CHAIRMAN WHEELER: I think
19 Commissioner Chapelle has a question.

20 MR. CHAPELLE: I have a question. I just
21 want to make sure I understand your testimony. Is
22 Exhibit B what you turned in to the Marion County
23 Board of Voter Registration? In other words, is
24 there any dispute over whether these documents are
25 what you personally filed?

1 MR. AJABU: Not on my behalf. I filed the
2 originals and that looks like what I filed.

3 MR. CHAPELLE: So your testimony is this is
4 what you filed with the board?

5 MR. AJABU: What I filed, the originals, yes.

6 MR. CHAPELLE: There were a couple of pages
7 here and I want to ask about them because it
8 looked like on the form, and I may be --

9 CHAIRMAN WHEELER: Joe, let me ask a
10 preliminary question before you go.

11 When you filed those, did you simply
12 photocopy the signature sheets you had? And what
13 has been called the wet ink originals, you
14 photocopied those and that's what you filed with
15 the voter registration board?

16 MR. AJABU: I made copies of what I filed,
17 but I gave the voter registration the originals.

18 CHAIRMAN WHEELER: Did you manipulate the
19 originals in any way? You didn't cut and paste?

20 MR. AJABU: No.

21 CHAIRMAN WHEELER: And nobody on your behalf
22 did?

23 MR. AJABU: No.

24 CHAIRMAN WHEELER: So as far as you know,
25 what was filed with the Marion County Voter

1 Registration Board was simply an accurate
2 photocopy of the original documents which have now
3 been destroyed, lost, or unavailable.

4 MR. OGDEN: Can you clarify what you mean by
5 "manipulate"? It has a devious meaning --

6 CHAIRMAN WHEELER: I just want to know if he
7 did anything to them other than simply photocopy
8 them.

9 For example, in my experience, I've done
10 dozens of challenges like this with petitions.
11 There are people that take petitions and aggregate
12 them by county, and they may copy them onto this
13 list or they may cut and paste onto this list.

14 We can discuss whether there's propriety to
15 do that.

16 But it's my understanding you did not do
17 that. There was no need to do that because it was
18 all one county, right?

19 MR. AJABU: That's correct.

20 MR. OGDEN: Your Honor, may I have a second?

21 MR. AJABU: In going down through the
22 petitions, understanding that the addresses, birth
23 dates may not be legible, I would make sure that
24 they were legible. Out on the petition drive,
25 collecting petitions, people would say, "Okay, I

1 don't want to write this, can you write this for
2 me?"

3 I would say, "Okay, I can write it," and I
4 would say, "I can do everything but sign your
5 signature. Your signature has to be your
6 signature." So if you're talking about doing
7 those types of things --

8 CHAIRMAN WHEELER: But you would do that at
9 the time you collected on what we refer to as the
10 wet ink original, correct?

11 MR. AJABU: Yes. I would do that.

12 CHAIRMAN WHEELER: Fair enough.

13 MR. AJABU: And when I looked at them, you
14 know, if the signature and the print -- I could
15 tell what was printed, then I would make sure that
16 what was printed was legible, but I never messed
17 with the signature. I never messed with anybody's
18 signature.

19 CHAIRMAN WHEELER: You wouldn't redo it and
20 sign it. It would be like a cross-out and write
21 "37" because it didn't look legible.

22 We could tell when you did that, because
23 there would be a mark-out.

24 MR. AJABU: Yes. But as far as the
25 signature --

1 CHAIRMAN WHEELER: I understand.

2 MR. AJABU: I didn't mess with anybody's
3 signature.

4 CHAIRMAN WHEELER: Commissioner Chapelle,
5 sorry to interrupt.

6 MR. CHAPELLE: I have a couple of quick
7 pages. I'd like to hand that back.

8 CHAIRMAN WHEELER: I think he numbered them,
9 as well.

10 MR. CHAPELLE: Sir, if I --

11 MR. OGDEN: Are you talking about the ones
12 you pulled out?

13 CHAIRMAN WHEELER: Paul, if we get them out
14 of order, they're never going to go back.

15 MS. OVERHOLT: What pages are those?

16 MR. CHAPELLE: I just want to ask about pages
17 17 and 28, which are just two random pages that I
18 picked out.

19 And, Reverend, my question for you is: It
20 looks like on page 17 and, again, page No. 28 with
21 the red marking there on the bottom right-hand
22 corner, if you look on that, the block of
23 signatures, to me it appears like something had
24 been copied and placed on top of it and
25 photocopied.

1 And the reason I say that is because the
2 lines on the top and the lines to the right-hand
3 side, there's a part that says, "Date" across the
4 top, and it looks like there's something placed
5 there.

6 Can you explain to me why that is or what it
7 is we're looking at there?

8 MR. AJABU: I can't. When I got the forms
9 from Dale, he told me that I could copy their form
10 because I did not have enough forms, so I copied
11 the form; and how it came up, I don't know.

12 MR. CHAPELLE: Okay.

13 MR. AJABU: It had to be what they gave me.

14 MR. CHAPELLE: So your testimony is what they
15 gave you was a form that didn't look like a line
16 at the top.

17 MR. AJABU: I didn't notice at the time. I
18 copied their form.

19 CHAIRMAN WHEELER: I've got to be honest,
20 having looked through those documents, those
21 aren't the only examples. Almost all of them
22 appear to be what I would refer to as a
23 cut-and-paste job.

24 I'll use an example: On my piece of paper it
25 looks as if someone took one set that had a set of

1 names, sat it down on this one and photocopied it
2 just like if I'm doing that, those lines don't
3 line up, right?

4 If you look at all of those, they have the
5 same thing on them. And I'm trying to understand
6 why that would be the case. And what you're
7 saying, that's the way they came. You didn't
8 photocopy, you didn't do anything?

9 MR. AJABU: If I were to use the same sheet
10 of paper as the original that had that being
11 skewed, then you would find that to be skewed on
12 all of the documents.

13 CHAIRMAN WHEELER: Do you have the original,
14 then? The one that was skewed originally?

15 MR. AJABU: I don't.

16 CHAIRMAN WHEELER: I understand.

17 MR. AJABU: I got it from the election
18 commission.

19 CHAIRMAN WHEELER: I didn't know if you had
20 it so you could show it to us.

21 MR. AJABU: I didn't pay attention to it.
22 You're bringing my attention to it now.

23 CHAIRMAN WHEELER: Fair enough.

24 I apologize. We interrupted Paul.

25 MR. OGDEN: I was going to conclude -- I'm

1 sorry, do you have more?

2 MR. CHAPELLE: Well, let me make sure I
3 understand. Why weren't the wet ink copies
4 submitted to the board of voter registration?

5 MR. AJABU: Why was it required?

6 MR. CHAPELLE: I understand there may be a
7 debate of why it was required.

8 MR. AJABU: I'm just stating the law, and I'm
9 not outside the law one way or the other, and I'm
10 hoping that we're following the law. So if I'm
11 following the law and I'm not outside the law,
12 then I would hope that the signatures submitted
13 would be counted and I would not be a victim of
14 someone not doing their job.

15 I just -- I just, the work that I done was a
16 lot of work. I mean, a lot of work.

17 MR. CHAPELLE: Is there another copy of this?

18 MR. AJABU: Not to my knowledge. I've got
19 copies. I've got 50/11 copies of copies. But
20 those are the originals. Those are the originals.

21 CHAIRMAN WHEELER: Fair enough. Believe me,
22 I understand how hard that is to get those copies.
23 And I want to make sure that you get full credit,
24 because as I understand your allegation, as I read
25 it, your contention is that you got all of these

1 and the Marion County Voter Registration Board --
2 and the two members are here -- they didn't count
3 them.

4 So I want to be sure we get this out before
5 we have an opportunity to ask them why they didn't
6 count them.

7 Mr. Ogden?

8 MR. OGDEN: I had just a couple questions
9 more. You turned those in on June 26th as you
10 testified to. Did you get a letter back from the
11 Marion County Board of Voter Registration?

12 MR. AJABU: Yes, I did.

13 MR. OGDEN: And I'm showing you Exhibit C.
14 Is that a fair and accurate copy of the letter you
15 got back?

16 CHAIRMAN WHEELER: Is that the July 10th
17 letter?

18 MR. OGDEN: Yes.

19 CHAIRMAN WHEELER: The original actually is
20 here in Exhibit B. So you don't need to introduce
21 that one.

22 MR. OGDEN: So your understanding from
23 looking at the July 10th letter, there were no
24 additional signatures certified?

25 MR. AJABU: Yes, yes.

1 MR. OGDEN: Did you have a chance to go
2 through the second batch and count?

3 MR. AJABU: Yes, I did.

4 MR. OGDEN: How many did you find?

5 MR. AJABU: 2,418.

6 MR. OGDEN: 2,418.

7 Was it your understanding when you were
8 collecting them that you could count a district
9 outside of the 7th Congressional District?

10 MR. AJABU: No.

11 MR. OGDEN: Did you try to get signatures
12 from the 5th District?

13 MR. AJABU: Actually, what I would ask people
14 is if they were a resident of the Marion County.
15 I didn't try to ask them if they were a resident
16 of the 7th Congressional District, because I knew
17 that those lines had been changed and a lot of
18 people, probably the majority of the people,
19 didn't realize they were out until they tried to
20 vote in the primary and found out that, wow, I'm
21 looking a certain person and they're not there.

22 So in looking at the original boundaries, I
23 knew that if a person lived in Marion County, more
24 likely than not, they were going to be a 7th
25 District voter.

1 MR. OGDEN: So you're saying with 2,418 names
2 in the second batch, and the 1,300 in the second
3 batch --

4 MR. AJABU: First batch.

5 MR. OGDEN: First batch, thank you. You
6 have, I believe my math is correct, 3718 total?

7 MR. AJABU: Yes.

8 MR. OGDEN: Mr. Chairman, I would also -- as
9 this is an administrative proceeding, I'd like to
10 consider hearsay. I'm sure we can have hearsay
11 here.

12 I did a count and I have an affidavit from
13 myself here finding 2,229 signatures in batch two
14 from the 7th, 205 from the -- that would be from
15 the 4th District -- 5th District, excuse me, that
16 got knocked off, for 3,734.

17 I'd like to introduce this.

18 And that needs to be marked as Exhibit D.

19 CHAIRMAN WHEELER: It's C, actually.

20 (Petitioner's Exhibit C, marked for
21 identification.)

22 MR. OGDEN: My final number with the first
23 batch was 3,734.

24 CHAIRMAN WHEELER: Let me pass them around to
25 the commission members.

1 MR. OGDEN: The blue one is the original.
2 Keep your copy.

3 CHAIRMAN WHEELER: Is this your copy?

4 MR. OGDEN: I've got another copy.

5 CHAIRMAN WHEELER: Give us a second to look
6 over it.

7 MR. OGDEN: That was a very painstaking
8 process, let me tell you.

9 CHAIRMAN WHEELER: And let me go through
10 this. This was the process you followed to
11 determine whether or not the signatures were
12 actually --

13 MR. OGDEN: Right. I used the public
14 database in the county. And you have to have the
15 birth date for it. And that's the important thing
16 to emphasize is that if you don't have the birth
17 date to look them up -- and the statute doesn't
18 require a birth date.

19 CHAIRMAN WHEELER: Mr. Neal, do you have any
20 questions?

21 MR. NEAL: I have no questions on it.

22 MS. OVERHOLT: I have a question on the
23 relevance.

24 CHAIRMAN WHEELER: I'll admit the exhibit
25 without objection, subject to the relevancy, which

1 I think Mr. Ogden has indicated he is admitting as
2 additional support that this packet contained a
3 total --

4 MR. OGDEN: The number --

5 CHAIRMAN WHEELER: Your count 2,229.

6 MR. OGDEN: From the 7th District. But after
7 reviewing the statute, you can count the 5th.

8 MS. OVERHOLT: And I don't see the -- 3-8-6-3
9 states that it's the total vote cast in the last
10 election and the election district the candidates
11 represent. So I don't see how the district
12 signatures would be relevant to this.

13 MR. OGDEN: Mr. Chairman, I can respond.

14 CHAIRMAN WHEELER: Let me ask you a question:
15 The 205 signatures, are you saying they were in
16 the old 7th and moved into the new 5th?

17 MR. OGDEN: Actually, they would have been
18 old 7th.

19 CHAIRMAN WHEELER: You and I were both
20 present at the statehouse where this was a big
21 issue.

22 MR. OGDEN: Those are from the northern
23 Marion County townships of Lawrence, Washington
24 Pike, but they are now outside --

25 CHAIRMAN WHEELER: They were formerly 7th

1 that are part of the new 5th.

2 MR. OGDEN: And in response to the
3 commissioner's point that we shouldn't count the
4 5th District, I would refer to 3-8-6-8, "certify
5 each petitioner is a voter in the county." It
6 doesn't say in the district.

7 Also, too, I would point out that you can run
8 for Congress, you can live in Gary, Indiana, and
9 run for Congress down here in Indianapolis.

10 CHAIRMAN WHEELER: I understand that part,
11 but the question is whether you can have a
12 petition signature from people in Gary to allow
13 you to run in Marion County.

14 MS. OVERHOLT: And 3-8-6-2 says you have to
15 be registered to vote on the date and qualified to
16 vote for the candidate.

17 CHAIRMAN WHEELER: In that district. So that
18 means you couldn't get signatures in Gary and use
19 them in Marion.

20 MR. OGDEN: 3-8-6-2 -- it doesn't matter.
21 We're 200 over.

22 CHAIRMAN WHEELER: You think you're far over
23 that.

24 MR. OGDEN: That's a valid interpretation.

25 CHAIRMAN WHEELER: Mr. Ogden, anything else?

1 MR. OGDEN: No. I'd like to make final
2 argument after rebuttal, of course. Nothing
3 further, Your Honor.

4 CHAIRMAN WHEELER: Mr. Neal?

5 MR. NEAL: Thank you, Mr. Chairman and
6 members of the commission. My name is
7 Nicholson Davey Neal, I'm the Deputy Secretary of
8 State of Indiana. On July 31st, the Secretary was
9 informed by the codirectors of the Indiana
10 Election Division that Reverend Ajabu had
11 submitted a petition, and that in separate
12 documents the Marion County Board of Voter
13 Registration had certified 1,300 valid signatures.
14 And in a separate document on July 12th, the Board
15 of Voter Registration submitted there were no
16 additional valid signatures --

17 CHAIRMAN WHEELER: Let me stop you there. As
18 I understand it, the July 12th is the one that's
19 already part of Exhibit B.

20 MR. NEAL: Yes.

21 CHAIRMAN WHEELER: And then for paperwork
22 status, let me hand you this document and see if
23 this is the codirector's memorandum.

24 Have you seen a copy of the codirector's
25 memorandum?

1 MR. OGDEN: I may have.

2 (Respondent's Exhibit 1, marked for
3 identification.)

4 MR. NEAL: I can enter this.

5 CHAIRMAN WHEELER: That's the original. So
6 we'll enter the original.

7 MR. OGDEN: I'm not 100 percent sure I have.

8 CHAIRMAN WHEELER: Mr. Neal may have a copy.
9 (Document passed.)

10 MR. OGDEN: Thank you.

11 CHAIRMAN WHEELER: Mr. Neal, I'd like, if I
12 may, I'd like to have that marked as Respondent's
13 Exhibit 1. So that's the document referred to
14 from the codirectors of the Secretary of State.

15 MR. NEAL: Yes, Mr. Chairman.

16 CHAIRMAN WHEELER: Now, as you indicated, the
17 Secretary of State issued a determination dated
18 July 31st, 2012?

19 MR. NEAL: I have not yet.

20 CHAIRMAN WHEELER: I'm sorry. I overran
21 that. My bad. Go ahead.

22 Are there any objections to that document?

23 MR. OGDEN: Just a second.

24 No objection, Your Honor.

25 CHAIRMAN WHEELER: Without objection,

1 Respondent's Exhibit A will be admitted. That
2 will be the codirectors of the Secretary of State.

3 MR. NEAL: Thank you.

4 In Respondent's Exhibit 1, the codirectors of
5 the election division recommended that the office
6 deny certification of the petition. And as such,
7 on that same day the office issued its
8 certification of denial of petition of nomination
9 to Reverend Ajabu, but --

10 CHAIRMAN WHEELER: And I'm told the original
11 was actually mailed to you --

12 MR. OGDEN: That one, I have.

13 CHAIRMAN WHEELER: The original?

14 MR. OGDEN: Yes.

15 CHAIRMAN WHEELER: Will you swap out an
16 original for a copy so I can admit the original?
17 The one that actually has the star, the seal?

18 If we could make that Respondent's Exhibit 2,
19 and I'll trade you for a copy.

20 (Respondent's Exhibit 2, marked for
21 identification.)

22 CHAIRMAN WHEELER: Is there any objection to
23 that being admitted as Respondent's Exhibit 2?

24 MR. OGDEN: Let me look.

25 CHAIRMAN WHEELER: It just came from your

1 client.

2 MR. OGDEN: All right. Well, then it should
3 be good.

4 CHAIRMAN WHEELER: Mr. Neal, if there's no
5 objection, we'll accept Respondent's 2, which is
6 the original "Certification of Denial of Petition
7 of Nomination."

8 MR. NEAL: As is consistent practice in the
9 office, the Secretary of State's office did not
10 independently review the batch -- either batch of
11 signatures, but rather relied upon statements from
12 certifications and validations from Marion County
13 Board of Voter Registration which are previously
14 entered as Petitioner's, I believe A and B,
15 stating, again for the record, that Mr. Ajabu's
16 verified petition signatures remained as 1,300 for
17 the 7th Congressional District, and that the
18 second batch contained no additional valid
19 signatures.

20 MS. HULKA: So Mr. Neal, in the Secretary of
21 State's Office, no one there did any independent
22 review of any of the petition signers?

23 MR. NEAL: The Secretary did not. We relied
24 on the recommendation of the codirectors of the
25 Indiana Election Division who stated in their

1 letter -- and I want to state this accurately --
2 "Based on our review of the petition and
3 accompanying documentation."

4 So that is what we relied upon. The
5 Secretary of State did no independent review of
6 either batches of petitions.

7 MS. HULKA: Is it your position that you're
8 not required statutorily to do an independent
9 review in order to fulfill your duties under
10 3-8-6-12(d)?

11 MR. NEAL: No. It is our position that the
12 code requires the Board of Voter Registration to
13 certify and validate candidate signatures, and
14 it's our position to certify or deny that petition
15 for nomination.

16 Prior to 2006, it wasn't possible for the
17 Secretary of State's Office to either conduct its
18 own independent review. The office relied solely
19 on the county board of voter registration.

20 MS. HULKA: And what has changed since 2006?

21 MR. NEAL: Implementation of the statewide
22 voter registration referred to in petitioner's
23 evidence as indianavoters.com.

24 MS. HULKA: So you do believe you have the
25 authority under the statute to do your own

1 independent review?

2 MR. NEAL: No, that's not my position. It is
3 our position that we rely on recommendations from
4 the Indiana Election Commission codirectors who
5 receive their certification and validation from
6 the county board of voter registration.

7 MS. OVERHOLT: So would you have the
8 authority to do your own independent
9 investigation? Her question was about authority,
10 and your answer was about practice.

11 MR. NEAL: Yes. She asked if we had the
12 authority, and I believe what our practice is is
13 that we rely on the code which states in 3-8-6-10
14 that the county voter registration office shall
15 certify and file petitions in compliance with the
16 requirements. We rely on that certification.

17 MS. HULKA: So is it fair to state that your
18 office doesn't believe there's anything in the
19 code to prohibit you from conducting your own
20 independent analysis, or maybe providing a review
21 upon the county review of the certification?

22 MR. NEAL: I would.

23 CHAIRMAN WHEELER: It would be fair to say
24 the statute doesn't say: One, there's no
25 authorization in the statute for you to do it, and

1 there's nothing to say you can't do it.

2 MR. NEAL: That's right.

3 CHAIRMAN WHEELER: And what you're saying is
4 it's your practice to rely on the county board?

5 MR. NEAL: That's correct.

6 CHAIRMAN WHEELER: Anything from you guys?

7 (No response.)

8 MR. NEAL: I have nothing further.

9 MS. OVERHOLT: Is there anyone here from the
10 Marion County Board of Voter Registration?

11 Can you come forward?

12 MS. OVERHOLT: Can you pass me those
13 petitions?

14 CHAIRMAN WHEELER: Do you want both?

15 MS. OVERHOLT: Yes.

16 CHAIRMAN WHEELER: Could you identify
17 yourselves by name and your employer?

18 MS. FREEMAN: LaDonna Freeman, Marion County
19 Board of Voter's Registration.

20 MS. MOWERY: Cindy Mowery, Marion County
21 Board of Voter Registration.

22 CHAIRMAN WHEELER: I don't think you guys
23 were here, were you guys previously sworn or not?

24 MS. FREEMAN: No.

25 CHAIRMAN WHEELER: I would ask Mr. King to

1 swear you in.

2 MR. KING: Please rise and raise your right
3 hand and respond "I do" at the conclusion of the
4 oath.

5 (Witnesses sworn.)

6 MS. OVERHOLT: Can you identify yourselves
7 and spell your names for the record.

8 MS. FREEMAN: LaDonna Freeman, L-A-D-O-N-N-A
9 F-R-E-E-M-A-N.

10 MS. MOWERY: Cindy Mowery, M-O-W-E-R-Y.

11 MS. OVERHOLT: Are both of you currently
12 employed by the Marion County Board of Voter
13 Registration?

14 THE WITNESSES: Yes.

15 MS. OVERHOLT: And you were both appointed by
16 your respective political parties to these
17 positions?

18 THE WITNESSES: Yes.

19 MS. OVERHOLT: And you've been here for the
20 course of the hearing today, right? You've heard
21 the testimony?

22 THE WITNESSES: Yes.

23 MS. OVERHOLT: To get somewhat of a clear
24 record, Ms. Mowery, we've been talking about
25 Exhibit A, which is a certification that both of

1 you appear to have sent to the Secretary of State
2 recording petitions filed by Mr. Ajabu.

3 Do you recall Mr. Ajabu filing batches of
4 petitions with your office for the 7th
5 Congressional District?

6 MS. MOWERY: Yes. He came in, but he
7 primarily worked with LaDonna Freeman.

8 (Laughter.)

9 MS. OVERHOLT: That will make it easier.

10 Okay. Ms. Freeman, did you personally review
11 the petitions that Mr. Ajabu submitted?

12 MS. FREEMAN: Yes.

13 MS. OVERHOLT: Do you recall a distinction --
14 well, go ahead and show her. What is being
15 delivered to you is Exhibit A, which has been
16 referenced as the first batch of petitions.

17 So when you received those in your office,
18 what was the process that you went through in
19 reviewing those petitions?

20 MS. FREEMAN: The process is when a candidate
21 comes in and delivers these, we file stamp them
22 the date they turned them in, and then we start
23 the process of making sure they're in the first --
24 that they're in the right address, the 7th
25 Congressional District, and then put our notation

1 on the side if they're not registered.

2 Everybody does it different, but we make a
3 notation whether they are or not to be counted.

4 MS. OVERHOLT: So what factors do you use in
5 determining whether or not you're going to count
6 the signatures?

7 MS. FREEMAN: That they live in the 7th
8 Congressional District and, at the time that we
9 are doing the process, that they are registered at
10 that address at that time.

11 MS. OVERHOLT: Do you look at signatures
12 themselves?

13 MS. FREEMAN: Yes.

14 MS. OVERHOLT: Are there circumstances under
15 which you will deny or not count based on the
16 signature?

17 MS. FREEMAN: Yes.

18 MS. OVERHOLT: What would cause you not to
19 count?

20 MS. FREEMAN: Where you can't read it.

21 MS. OVERHOLT: Are you looking for original
22 signatures in terms of actual -- being able to
23 tell it's the actual signature?

24 MS. FREEMAN: Original signatures.

25 MS. OVERHOLT: So you don't count

1 photocopies?

2 MS. FREEMAN: No.

3 MS. OVERHOLT: So the first batch you found,
4 I think established 1,300.

5 MS. FREEMAN: Correct.

6 MS. OVERHOLT: So then do you recall
7 receiving a second batch of petitions from
8 Mr. Ajabu?

9 MS. FREEMAN: Uh-huh.

10 MR. OVERHOLT: We're going to trade you B
11 for A.

12 And actually I'll ask you: After you went
13 through the batch --

14 MS. FREEMAN: Uh-huh.

15 MS. OVERHOLT: -- the first batch and
16 certified the first 1,300 signatures, did you have
17 a conversation with Mr. Ajabu about why some of
18 the signatures were not counted?

19 MS. FREEMAN: No, not on the first batch.

20 MS. OVERHOLT: Did anyone in your office to
21 your knowledge have any conversation with him?

22 MS. FREEMAN: No.

23 MS. OVERHOLT: All right. So let's look at
24 Exhibit B. So that's the second batch of
25 signatures.

1 MS. FREEMAN: Right.

2 MS. OVERHOLT: From the cover letter it
3 appears that you didn't find any additional
4 signatures?

5 MS. FREEMAN: We reviewed these pages and we
6 found that these were all photocopies. Some were
7 duplicates of batch A.

8 MS. OVERHOLT: So there were some that were
9 duplicates of batch A, and there were others that
10 were -- they were different signatures, but they
11 were photocopied?

12 MS. FREEMAN: They were all photocopies,
13 except page 443. Page 443 has one original
14 signature, and that voter is not registered at
15 that address.

16 CHAIRMAN WHEELER: May I ask a question?

17 MS. OVERHOLT: Sure.

18 CHAIRMAN WHEELER: With the photocopies, did
19 you simply say these are photocopies and stop
20 there, or did you actually study each page?

21 MS. FREEMAN: I noted whether they were
22 photocopies or if they were originals. So I went
23 through to see if I could find an original on each
24 stack, and I did on 443.

25 CHAIRMAN WHEELER: So your definition of

1 original is the wet ink original, the actual
2 originals as opposed to what looks like
3 photocopies?

4 MS. FREEMAN: Correct.

5 CHAIRMAN WHEELER: Because these were
6 photocopies, you didn't take the additional step
7 to check those against the voter registration,
8 because they were photocopies?

9 MS. FREEMAN: Correct.

10 CHAIRMAN WHEELER: Apparently you checked
11 some of them because they looked to be photocopies
12 of the first batch, right?

13 MS. FREEMAN: Correct.

14 MS. OVERHOLT: Apparently you had a
15 conversation with Mr. Ajabu about the first batch
16 of signatures?

17 MS. FREEMAN: Uh-huh.

18 MS. OVERHOLT: Did you ask him to provide you
19 with the originals?

20 MS. FREEMAN: I did. I sent an e-mail, and I
21 followed up with a phone call.

22 MS. OVERHOLT: You have some documents in
23 front of you. Do you have the e-mail that you
24 sent him?

25 MS. FREEMAN: Uh-huh.

1 CHAIRMAN WHEELER: Is that the only copy you
2 have? Did you only bring one copy?

3 MS. FREEMAN: Uh-huh.

4 CHAIRMAN WHEELER: If you're going to refer
5 to it, could you go ahead and mark it as
6 Respondent's 3.

7 (Respondent's Exhibit 3, marked for
8 identification.)

9 MS. OVERHOLT: Do you mind if we?

10 MS. FREEMAN: You can keep it.

11 MS. OVERHOLT: I'll show this to Mr. Ogden
12 and see if he has any objections.

13 CHAIRMAN WHEELER: Is there any objection to
14 Respondent's 3?

15 (No response.)

16 CHAIRMAN WHEELER: Hearing no objection,
17 Respondent's Exhibit 3 is admitted.

18 MS. OVERHOLT: So, Ms. Freeman, you brought
19 out this e-mail. Could you -- that's now been
20 marked and introduced as Exhibit 3.

21 What is this e-mail?

22 MS. FREEMAN: I e-mailed Mr. Ajabu that he
23 needed to turn in the original photocopies. I
24 can't remember the date and time.

25 CHAIRMAN WHEELER: Can you read that into the

1 record?

2 MS. OVERHOLT: Sure.

3 "Mr. Ajabu, After consulting with the State
4 Election Board and the Office of Corporation
5 Counsel for Voters Registration, the photocopies
6 of which you have submitted on Tuesday,
7 June 26th, 2012, are insufficient. The State of
8 Indiana requires that the county only certify
9 original signatures. The deadline for you to
10 submit to our office the original petitions is
11 Monday, July 2, 2012, at 12:00 (Noon). Thanks,
12 LaDonna Freeman."

13 So after -- this e-mail is dated Friday,
14 June 29, 2012.

15 After you sent this e-mail to Mr. Ajabu, did
16 you hear from him again regarding these batch two
17 signatures?

18 MS. FREEMAN: I don't recall. I followed up
19 with a phone call like at 11:32, I believe, on the
20 same day. We talked and I reminded again him by
21 phone call, and I had one of our staff members
22 present when I made the call.

23 And I also on June 29th, I followed one with
24 our attorney, David Lichtenberger, Corporation
25 Counsel, about the photocopy signatures.

1 MS. OVERHOLT: So in your conversation with
2 Mr. Ajabu, you told him you needed the original
3 signatures?

4 MS. FREEMAN: Yes.

5 MS. OVERHOLT: Did he explain why he didn't
6 have those?

7 MS. FREEMAN: He said those were original
8 signatures.

9 CHAIRMAN WHEELER: Could I see the e-mail
10 from -- is it OCC?

11 MS. FREEMAN: Uh-huh.

12 CHAIRMAN WHEELER: I take it you went to OCC
13 and said --

14 MS. FREEMAN: I called him and had him come
15 down to look and verify that -- some of the
16 petitions that we had.

17 CHAIRMAN WHEELER: I'd like to introduce this
18 into evidence, if no one has an objection -- and
19 may I introduce this into evidence?

20 MS. FREEMAN: Yes.

21 CHAIRMAN WHEELER: It would be marked as
22 Respondent's Exhibit 4.

23 Let me read it out loud and then I'll hand it
24 over to you.

25 MR. OGDEN: Sure.

1 (Respondent's Exhibit 4, marked for
2 identification.)

3 CHAIRMAN WHEELER: This is a letter from
4 David J. Lichtenberger, whom I understand to be
5 assistant corporation counsel for the City of
6 Indianapolis.

7 Is he specifically assigned to voter
8 registration?

9 MS. FREEMAN: Yes.

10 CHAIRMAN WHEELER: So he has some expertise
11 in that area?

12 MS. FREEMAN: Yes.

13 CHAIRMAN WHEELER: And it's addressed to you,
14 LaDonna Freeman, and copies Cindy Mowery, dated
15 Friday, June 29, 2012.

16 And I quote, "After reviewing the relevant
17 law, I believe that Leslie Barnes' interpretation
18 concerning," quote, "'signatures'" close quote,
19 "is correct. The State of Indiana requires that
20 the county may only certify original signatures.

21 "These photocopies that you have been
22 provided are insufficient. (Plus, as you may
23 recall, even if these photocopies were sufficient
24 under the law, there are some questions as to
25 whether these are actual documents or whether the

1 individual," quote, "'doctored,'" closed quote,
2 "these documents - some of the documents look like
3 they have been tampered with as there are some
4 parts that are illegible and some parts where
5 there are multiple lines where there should only
6 be one line," period.

7 That's the e-mail you received back from him;
8 is that correct?

9 MS. FREEMAN: Correct.

10 CHAIRMAN WHEELER: And that's the e-mail
11 that's been marked as Respondent's Exhibit 4?

12 MR. OGDEN: No objection, Your Honor.

13 CHAIRMAN WHEELER: Hearing no objection,
14 Respondent's Exhibit 4 admitted.

15 MR. OGDEN: We're only up to 4?

16 CHAIRMAN WHEELER: On your side -- or on his
17 side. I'm sorry.

18 Let me just ask a couple more questions
19 regarding this.

20 One, Leslie -- whom do you know Leslie Barnes
21 to be?

22 MS. FREEMAN: The Democratic attorney over
23 the state.

24 CHAIRMAN WHEELER: And she's sitting here
25 today -- wearing two hats, as I recall.

1 MS. FREEMAN: Yes.

2 CHAIRMAN WHEELER: And you found that her
3 interpretation of the law was something to rely
4 upon as did Mr. Lichtenberger?

5 MS. FREEMAN: Yes.

6 CHAIRMAN WHEELER: So Mr. Lichtenberger's
7 interpretation, as I read this e-mail, also
8 matched that of Ms. Barnes?

9 MS. FREEMAN: Yes.

10 CHAIRMAN WHEELER: And based upon your
11 testimony, you did not, in fact, review those
12 petitions because they were photocopied. Because
13 that's the legal advice you received?

14 MS. FREEMAN: Yes.

15 CHAIRMAN WHEELER: And you communicated that
16 to Reverend Ajabu that you would not count them
17 because those were not, quote, "original
18 signatures," closed quote. And I understand that
19 he disagreed with you on that interpretation?

20 MS. FREEMAN: Yes.

21 CHAIRMAN WHEELER: But when he says in his
22 petition, quote, "A review of these second batch
23 petitions reveal that, unlike the first batch
24 forms, the second batch forms did not contain any
25 notations such as 'NR,' (not registered) in the

1 'Office Use Only' section of the form. It appears
2 that MCBVR made no effort whatsoever to review the
3 second batch forms to see if they contained valid
4 signatures."

5 That would actually be correct.

6 MS. FREEMAN: Right.

7 CHAIRMAN WHEELER: And you did not review
8 those because they were photocopies, or not
9 original or wet ink signatures like we talked
10 about?

11 MS. FREEMAN: Yes.

12 CHAIRMAN WHEELER: The first batch did
13 contain original wet ink signatures, and you went
14 line by line and confirmed those and 1,300 of
15 those were found to be valid?

16 MS. FREEMAN: Yes.

17 CHAIRMAN WHEELER: Do you know how many he
18 turned in originally? In the first batch?

19 MS. FREEMAN: "On March 2nd, 2012, Mr. Ajabu
20 filed with the Marion County Board of Voter's
21 Registration, 368 pages of signatures on his
22 Petition of Nomination to run for the 7th
23 Congressional District. Contained in the 368
24 pages were 3,638 signatures.

25 "Of the 3,638 signatures, 1,300 were

1 certified by the Marion County Board of Voter's
2 Registration May 10th, 2012."

3 CHAIRMAN WHEELER: So the first batch that
4 you did review that did have original signatures,
5 only one in three were good?

6 MS. FREEMAN: Yes.

7 CHAIRMAN WHEELER: The other two-thirds, do
8 you know why the other two-thirds were not good?
9 Had they moved?

10 MS. FREEMAN: There was signatures with no
11 addresses, signatures with post office boxes that
12 were not certifiable, signatures were duplicated
13 elsewhere in the filing, signatures were
14 illegible, signatures gave addresses outside the
15 7th Congressional District, for example, Muncie,
16 Indiana; Hammond, Indiana; and Peoria, Illinois,
17 signatures were not registered to vote in Marion
18 County at the time of verification.

19 CHAIRMAN WHEELER: So the first shot through,
20 only one in three, basically?

21 MS. FREEMAN: Yes.

22 CHAIRMAN WHEELER: And the second time
23 through, because they were not originals, you did
24 not review them in any way, shape, or form,
25 correct?

1 MS. FREEMAN: Uh-huh.

2 "On June 26th, Mr. Ajabu filed a total of 443
3 pages, and one page had one original signature and
4 the other 442 pages were photocopies.

5 "Contained in the 443 pages were 4,371
6 signatures.

7 "Upon analysis of the 442 photocopied pages,
8 it was determined that 361 of the pages were the
9 same as 361 pages submitted in March."

10 CHAIRMAN WHEELER: So he resubmitted --

11 MS. FREEMAN: Uh-huh.

12 CHAIRMAN WHEELER: -- 361 out of the 1,300
13 you previously had, so only about 100-odd new
14 pages.

15 MS. FREEMAN: Actually 81 additional pages.

16 CHAIRMAN WHEELER: Math wasn't my strong
17 point.

18 But of those 81 new pages, as I understand
19 it, because those were photocopies, you did not
20 review them?

21 MS. FREEMAN: Correct.

22 MS. OVERHOLT: Ms. Freeman, to get back to
23 your e-mail references or, excuse me,
24 Mr. Lichtenberger's e-mail referencing
25 Leslie Barnes, did you also consult with

1 Dale Simmons? Did either of you consult with
2 Dale Simmons?

3 MS. MOWERY: I believe at one time we had a
4 brief conversation, but it was our understanding
5 Mr. Ajabu was working with Dale at the State.

6 MS. OVERHOLT: And just for clarification,
7 who is Mr. Simmons?

8 MS. MOWERY: He is the general counsel of
9 Indiana.

10 MS. OVERHOLT: Do you have any other further
11 questions?

12 CHAIRMAN WHEELER: Mr. Chapelle, do you have
13 further questions?

14 MR. CHAPELLE: No.

15 CHAIRMAN WHEELER: What I'll do is give
16 Mr. Ogden -- in a moment he may have an
17 opportunity to cross so we're not calling people
18 back and forth.

19 Mr. Neal, as I understand it -- let me ask
20 you, do you have any questions for them? These
21 are actually proponents on your side.

22 MR. NEAL: No.

23 CHAIRMAN WHEELER: But as I understand it,
24 you relied on them for their interpretation of the
25 law and of the petition.

1 MR. NEAL: That's correct.

2 CHAIRMAN WHEELER: The Secretary of State for
3 denial of the petition.

4 MR. NEAL: That's correct.

5 CHAIRMAN WHEELER: Mr. Ogden, you may use
6 your time to present additional evidence in 10
7 minutes or thereabouts.

8 MR. OGDEN: I'll keep it very brief.

9 Ms. Freeman --

10 MS. FREEMAN: Yes.

11 MR. OGDEN: -- is it your position that if I
12 have an original wedding petition, I spill a cup
13 of coffee on it and instead of turning in a wet
14 piece of paper, you can't count any of those
15 signatures?

16 MS. FREEMAN: No. If it's a photocopy, no.

17 MR. OGDEN: Do you know what the statute is
18 that's being relied upon for that interpretation,
19 is it 3-8-6-6?

20 MS. FREEMAN: I believe it's IC 3-8-6-1.

21 MR. OGDEN: One is probably referring to the
22 entire chapter.

23 MS. MOWERY: Mr. Ogden?

24 MR. OGDEN: Yes?

25 MS. MOWERY: May I address your comment about

1 the coffee spilled on the petition?

2 MR. OGDEN: Yes.

3 MS. MOWERY: We've had that happen in our
4 office, and people typically bring that piece of
5 paper in with the copy.

6 MR. OGDEN: Okay.

7 3-8-6-6 I think is what Ms. Barnes was
8 relying on. Do you see any place in there that
9 says that you can't submit at photocopy?

10 And, I'm sorry, I assume you're not an
11 attorney. If you can't answer the question,
12 that's fine.

13 CHAIRMAN WHEELER: Are you asking for a legal
14 interpretation?

15 MR. OGDEN: I probably shouldn't have.

16 CHAIRMAN WHEELER: As I understand it, she
17 relied upon the legal interpretation of Ms. Barnes
18 who is here, and I will ask --

19 MR. OGDEN: And I disagree with that
20 interpretation.

21 CHAIRMAN WHEELER: I understand.

22 MR. OGDEN: Is it your interpretation that if
23 someone puts down a post office box you cannot
24 count that?

25 MS. FREEMAN: You can't count that.

1 MR. OGDEN: Are you aware that the statute,
2 actually there's two of them, 3-5-6-4 talks about
3 the resident's address for the mailing address,
4 and 3-8-6-6 talks about the resident's mailing
5 address. That's almost as if they ran those two
6 together. Not that they ever make mistakes.

7 MS. FREEMAN: Let me go back on that. If
8 their mailing address shows up on the first
9 Tuesday as a P.O. Box or a different mailing
10 address, it does get counted.

11 MR. OGDEN: You said the first Tuesday?

12 MS. FREEMAN: In the system.

13 MR. OGDEN: Is that system available to the
14 public?

15 CHAIRMAN WHEELER: Is that a proprietary
16 system?

17 MS. MOWERY: It's our voter registration
18 system.

19 MR. OGDEN: Did you say you went through the
20 entire 443 pages?

21 MS. FREEMAN: Yes. Each page.

22 MR. OGDEN: You made a determination -- are
23 you saying that you determined there were only 81
24 new pages?

25 MS. FREEMAN: There were 81 additional pages

1 that were photocopied, yes.

2 MR. OGDEN: Were they all photocopied?

3 MS. FREEMAN: Yes. All except page 443.

4 MR. OGDEN: How did you make a determination
5 of they were photocopied? If they wrote in black
6 ink, how would you know?

7 MS. FREEMAN: One, you can turn around in the
8 back and see by the imprint. That's one way of
9 telling -- but they are all photocopies.

10 MR. OGDEN: Okay.

11 CHAIRMAN WHEELER: When you said the
12 "imprint" -- just a quick question. If you flip
13 those over, the originals have a back page. Those
14 do not have a back page; is that correct? So that
15 would lead you to believe those are photocopies?

16 MS. FREEMAN: Uh-huh.

17 MR. OGDEN: Did you mark those at all, the 81
18 new pages at all when you went through them?

19 MS. FREEMAN: No.

20 MR. OGDEN: You didn't mark them so you could
21 tell later on which ones were new pages and which
22 were --

23 MS. FREEMAN: I have them here.

24 MR. OGDEN: But you didn't mark them on the
25 document for the Secretary of State's Office at

1 all?

2 MS. FREEMAN: No.

3 CHAIRMAN WHEELER: Did you write them -- I
4 take it in front of you, you show page 87,
5 page 88, page 89 are copies of page 26, 27 --

6 MS. FREEMAN: Yes.

7 CHAIRMAN WHEELER: Is that a document you can
8 provide us?

9 MS. FREEMAN: Yes.

10 CHAIRMAN WHEELER: So for example, I'm going
11 to try you out.

12 MS. OVERHOLT: Are you going to mark it?

13 That's a good point.

14 Were we up to Respondent's 5?

15 (Respondent's Exhibit 5, marked for
16 identification.)

17 CHAIRMAN WHEELER: As I understand it, this
18 is a list correlating the two sets of petitions.

19 So you have sets as well?

20 MS. FREEMAN: Yes.

21 CHAIRMAN WHEELER: What you pulled out of
22 that packet, these are your working copies?

23 MS. FREEMAN: Yes.

24 CHAIRMAN WHEELER: I have the originals --

25 MS. FREEMAN: Yes.

1 CHAIRMAN WHEELER: -- that actually may help
2 us be organized.

3 One of you guys line me up. (Indicating.)

4 So as I understand it, that document
5 represents your working paper when you went
6 through these and matched them up.

7 MS. FREEMAN: Yes.

8 CHAIRMAN WHEELER: So when I look at lines on
9 there, I can compare one page here and one page
10 here, and I can go line by line and compare and
11 see if they're photocopies?

12 MS. FREEMAN: Yes.

13 CHAIRMAN WHEELER: We'll do that here in just
14 a second.

15 MR. OGDEN: Mr. Chairman we're having trouble
16 reading. We don't know what page --

17 CHAIRMAN WHEELER: That's why I want to walk
18 through it.

19 In your packet, is that a set of petitions in
20 there or not?

21 MR. OGDEN: These are the petitions I marked
22 up.

23 CHAIRMAN WHEELER: If you want to come over
24 here and look along with me as we do this, that's
25 fine.

1 MR. OGDEN: I only have the first set.

2 CHAIRMAN WHEELER: So you won't be able to do
3 this?

4 MR. OGDEN: No.

5 CHAIRMAN WHEELER: If you want to come up
6 here and watch as I do that, because I want to be
7 sure I understand this.

8 MR. AJABU: May I come up?

9 CHAIRMAN WHEELER: Yeah, that would be fine.
10 Just come in front. Come right in front here,
11 Mr. Ogden.

12 Do you have one of those sheets?

13 MS. FREEMAN: No, I don't.

14 CHAIRMAN WHEELER: So when it says "page,"
15 what does this mean right here? Actually, tell
16 you what, let me see if I can do it off the
17 originals here.

18 Why don't you come up here and we'll all do
19 it together.

20 MS. FREEMAN: Do you want me to pull one out?

21 CHAIRMAN WHEELER: Ms. Mowery, were you
22 involved with this or was this hers?

23 MS. MOWERY: It's hers. And she did a
24 fantastic job with it.

25 CHAIRMAN WHEELER: So looking at page 1 of

1 Exhibit 5, it says, "Page No. 2," and then "Page
2 number -- what's that, eight?"

3 MS. FREEMAN: Page No. 8.

4 CHAIRMAN WHEELER: So the first column
5 involved this first filing?

6 MS. FREEMAN: Yeah.

7 CHAIRMAN WHEELER: So I would look to page --
8 so page 2. So I can compare that with page No. 8
9 on the second filing?

10 We're going to compare page 8 of the first
11 filing, which is Respondent's Exhibit A, with
12 page 2 in the first filing.

13 MS. OVERHOLT: From the second filing.

14 CHAIRMAN WHEELER: From the second filing.

15 And as I look at those, the first signature
16 here, would it be fair to say that those are
17 identical?

18 MS. FREEMAN: They are identical.

19 CHAIRMAN WHEELER: It would be fair to say
20 they are identical.

21 MS. FREEMAN: And Nos. 2 and 9 have different
22 addresses. The addresses are different.

23 CHAIRMAN WHEELER: Leave them right here, but
24 you can point to them. (Indicating.)

25 Do you understand?

1 MR. AJABU: No.

2 CHAIRMAN WHEELER: This is the first batch.
3 The wet ink originals.

4 MR. AJABU: These are the photocopies.

5 CHAIRMAN WHEELER: Just leave them there, but
6 you can look at them.

7 MR. AJABU: So what's the problem?

8 CHAIRMAN WHEELER: You would agree that this
9 is simply a photocopy of this with an address
10 changed; you would agree with that, correct?

11 MR. AJABU: No, I wouldn't.

12 CHAIRMAN WHEELER: Tell me why not.

13 MR. AJABU: Well --

14 CHAIRMAN WHEELER: They sure look the same --

15 MR. OGDEN: They are.

16 CHAIRMAN WHEELER: They sure look the same.

17 MR. OGDEN: And I would point out the law
18 doesn't prevent the person from writing down the
19 address. It only requires the person to put the
20 signature.

21 CHAIRMAN WHEELER: I'm not disagreeing with
22 that. I'm just saying these are the same people.

23 MS. OVERHOLT: They're not new names.

24 CHAIRMAN WHEELER: So these are people
25 already reviewed as part of the first batch

1 whether they're certified or not. I thought
2 Reverend Ajabu previously testified he didn't make
3 photocopies, he didn't manipulate them.

4 MR. OGDEN: I don't agree with the term,
5 "manipulation," but you can write down the
6 person's address.

7 CHAIRMAN WHEELER: But you would agree these
8 two are the same?

9 MR. OGDEN: Yes.

10 And I did go through and I found a few
11 duplicates.

12 CHAIRMAN WHEELER: Let's do the next one.
13 We've got 1 and 1 are the same. Whoops. Did I
14 lose 1 and 1? Page 1 and 1. This indicates
15 page 1 and page 1 are the same of those batches.

16 And that's what you did. You compared and
17 said these are the same?

18 MS. FREEMAN: Yes.

19 CHAIRMAN WHEELER: So when you say these
20 pages are the same, that's what you did?

21 MS. FREEMAN: Yes.

22 MR. AJABU: There's something wrong. Tell me
23 what I'm missing.

24 CHAIRMAN WHEELER: Be careful, don't write on
25 them.

1 MR. AJABU: I won't. See these, right here
2 says that I understood that they did not count
3 these. They did not count these, and so --

4 CHAIRMAN WHEELER: So did you resubmit all
5 the ones that they did not count?

6 MR. AJABU: I did. I sure did, yes. And if
7 they didn't count them, then, if you look at this,
8 that says "Middle Field Court," and that says,
9 "Hannah Village," which means the address is the
10 same. All of this is the same. (Indicating.)

11 CHAIRMAN WHEELER: Let me ask you this:
12 Would it have been you went back when these said
13 NR, not registered, not registered --

14 MR. AJABU: That's right.

15 CHAIRMAN WHEELER: You went in and changed
16 the addresses?

17 MR. AJABU: Yes.

18 CHAIRMAN WHEELER: I'm asking LaDonna.

19 You went and looked at those, because you
20 note 1 through 10, the addresses have been
21 changed. Did you look at whether these were valid
22 at that point, or not?

23 MS. FREEMAN: Some of them, yes.

24 CHAIRMAN WHEELER: What was your
25 determination?

1 MS. FREEMAN: Some of them, yes.

2 CHAIRMAN WHEELER: Some of them were valid?

3 MS. FREEMAN: No, not at the time we submit.

4 They were not at that address at the time we --

5 CHAIRMAN WHEELER: Not at this address?

6 MS. FREEMAN: Right.

7 CHAIRMAN WHEELER: But there were new
8 addresses, and you noted there were new addresses
9 here?

10 MS. FREEMAN: Right.

11 CHAIRMAN WHEELER: Did you try to recertify
12 these?

13 MS. FREEMAN: No.

14 CHAIRMAN WHEELER: You saw they were all
15 photocopied and we're not going to accept them?

16 MS. FREEMAN: Right.

17 CHAIRMAN WHEELER: Would that explain the
18 difference here?

19 MR. AJABU: Yeah.

20 CHAIRMAN WHEELER: So you would have
21 resubmitted almost all of these plus with some
22 more.

23 MR. AJABU: Let me explain my thinking. When
24 I submitted the first batch --

25 MS. OVERHOLT: Can we sit?

1 CHAIRMAN WHEELER: You would agree that you
2 resubmitted 360-odd pages, correct?

3 MR. AJABU: No, I wouldn't.

4 CHAIRMAN WHEELER: Do you want me to keep
5 going through them?

6 MR. AJABU: No, no.

7 CHAIRMAN WHEELER: She's testified to and
8 provided us a crosshatch -- and I'll give this to
9 you. You can see where she noted that, so
10 somebody went through and changed the addresses,
11 I'm presuming that's you, and resubmitted them,
12 correct?

13 MR. AJABU: And this is the issue. When I
14 got back the first batch, and she told me that
15 there's 1,300 valid signatures, my undergrad
16 degree is in electrical engineering technology.
17 When I looked at the statistical probability of
18 her getting 3,000 and whatever she said, and
19 coming back with an even number like that,
20 automatically my antenna went up in the air.

21 Did she really go through that or did she
22 pluck a number from the air? So that's when I
23 went back and found she had made a number of
24 errors. In fact, there's some --

25 CHAIRMAN WHEELER: He's got them. Paul has

1 got them.

2 MR. OGDEN: I'm sorry.

3 CHAIRMAN WHEELER: I apologize. I lost the
4 original documents. That's a very bad thing. Go
5 ahead, I'm sorry.

6 You were discussing the fact that she had
7 1,300, you had submitted 3,000-odd, and you
8 thought that was unusual.

9 MR. AJABU: Yes. The statistical probability
10 of coming up with an even number like 1,300 is
11 almost impossible. So I questioned the integrity
12 of the process. I went back through them and
13 looked at them, and found throughout that they had
14 actually counted -- and this amazed me, they
15 counted some that didn't have any birth
16 certificates -- birth dates, which I said, well,
17 how do you do that? There must be another
18 database.

19 And then there were some that the address was
20 different. So I would go in and change the
21 address. Never messing with the signature at all.

22 So when I resubmitted them, I expected to get
23 credit for the ones that were valid voters and
24 putting the correct address on the form so that
25 they would be counted.

1 When I done that and I relooked at what I had
2 submitted, I had submitted another 2,418
3 signatures.

4 CHAIRMAN WHEELER: That would include not
5 necessarily new signatures, but signatures with
6 changed addresses?

7 MR. AJABU: Those would be new signatures,
8 yes. Signatures they had not counted in the
9 initial 1,300.

10 CHAIRMAN WHEELER: But that would include the
11 1,700 or 1,800 that they found invalid in the
12 first batch -- sorry 3,000 they found invalid in
13 the first batch, some of which you changed
14 addresses?

15 MR. AJABU: That's correct.

16 CHAIRMAN WHEELER: In going through her
17 sheet -- and we're all doing statistics -- it
18 looks like you changed addresses on about 450
19 signatures?

20 MR. AJABU: I can't say.

21 CHAIRMAN WHEELER: I'm using her document
22 where it says addresses are different, and it's
23 approximately 450, so you would have changed 450
24 on the photocopy batch you gave back to her, and
25 then you gave her another set of new signatures as

1 well?

2 MR. AJABU: That's right.

3 CHAIRMAN WHEELER: But even the new
4 signatures were photocopies. They weren't the
5 originals like you had done the first time.

6 MR. AJABU: And, again, now that I know what
7 you're looking for, I went through and where
8 people would not have put down their correct
9 address, I put down the correct address so that it
10 would be counted.

11 MR. OGDEN: And, Mr. Chairman, one thing I
12 would point out, LaDonna testified page 443, one
13 signature, not a registered voter. I looked him
14 up. That person is registered. Right there on
15 the County's own database. I'd be happy to do it
16 again, but the fact is they make an effort not to
17 let candidates on the ballot.

18 I'm sorry, I'm getting argumentative.

19 CHAIRMAN WHEELER: I'll give you a minute on
20 closing argument. Let me -- I think we've heard
21 an awful lot. Let me jump to the commission
22 members and see if they have any additional
23 questions for any party, and then I'll let you
24 conclude.

25 Anything?

1 MS. HULKA: I have a quick question.
2 Ms. Freeman, if you didn't count a petitioner
3 because their address was incorrect, you couldn't
4 find them in the system and then you got a copy of
5 that with a corrected signature, would you then
6 count that?

7 Or let's say it was original wet ink, and the
8 petitioner wrote the right address and they were
9 registered, would you count that, then, if it was
10 contained in the original --

11 MS. FREEMAN: If Mr. Ajabu would have come
12 back with an original signature and correct
13 address in a timely manner, we would have counted
14 that.

15 MS. HULKA: What if it was the same with the
16 address just crossed off?

17 MS. FREEMAN: Can you repeat that?

18 MS. HULKA: If it was an original wet
19 signature, but the only thing that was different
20 was the address had been crossed off --

21 CHAIRMAN WHEELER: Can I modify your question
22 a little bit?

23 MS. HULKA: Yeah.

24 CHAIRMAN WHEELER: A candidate may ask to
25 have their petitions back. Right?

1 MS. FREEMAN: Yes.

2 CHAIRMAN WHEELER: The original wet ink
3 petitions back. So a candidate could then -- for
4 example, I think this is what you're asking -- say
5 a candidate, where you wrote "NR," the candidate
6 would take that wet ink petition, mark off the old
7 address, write in a new address. He has marked it
8 in, it's the same piece of paper, it even says
9 "NR" along there, but he's written in a new
10 address; would you count that?

11 MS. HULKA: If you don't know the answer --
12 you've never that had that situation?

13 MS. FREEMAN: I've never had it. I'd check
14 with my counterpart and seek counsel on that.

15 CHAIRMAN WHEELER: Do you have people that
16 come back with revised petitions, but those are
17 all original petitions?

18 MS. FREEMAN: Yes.

19 CHAIRMAN WHEELER: So do they have to get a
20 new signature from those new people?

21 MS. MOWERY: When you sign your name on
22 something, you don't want it altered unless you're
23 aware of that.

24 CHAIRMAN WHEELER: That invites voter fraud?

25 MS. MOWERY: Right.

1 CHAIRMAN WHEELER: Any other questions?

2 MR. CHAPELLE: I want to make sure I
3 understand. Is it 450 new addresses that were
4 submitted on the summary?

5 MS. FREEMAN: I believe it was 590-something.

6 CHAIRMAN WHEELER: Okay. Good.

7 MR. CHAPELLE: That's what I was wondering.

8 MS. FREEMAN: I think it's 590.

9 CHAIRMAN WHEELER: That might be helpful. Is
10 this the analysis you read from?

11 MS. FREEMAN: Yes. But I don't have that.

12 CHAIRMAN WHEELER: I'll mark that as
13 Respondent's Exhibit 6. That's the document you
14 were reading from, right?

15 MS. FREEMAN: Yes.

16 (Respondent's Exhibit 6, marked for
17 identification.)

18 CHAIRMAN WHEELER: We're going to mark that
19 as Respondent's No. 6.

20 MR. OGDEN: I'm a little unclear. Who
21 created this document?

22 CHAIRMAN WHEELER: She did. That's the
23 document she read from just now.

24 MR. OGDEN: Give us a chance to look at it.

25 CHAIRMAN WHEELER: Sure.

1 I understand you may disagree with what she
2 says. The question goes to the admissibility of
3 the document.

4 MR. OGDEN: We don't object to it.

5 MR. AJABU: I have another issue, then.

6 CHAIRMAN WHEELER: Mr. Chapelle, any other
7 questions?

8 MR. CHAPELLE: I think that answered my
9 question.

10 CHAIRMAN WHEELER: What I'm going to do,
11 Mr. Ogden, I'll give you a brief closing and give
12 Mr. Neal the same opportunity.

13 MR. OGDEN: Thank you. We've had --
14 unfortunately, I apologize for the length of time
15 that this testimony took. As an attorney I go
16 into hearings and say we can knock it out in
17 15 minutes, half an hour.

18 The fact is, there is absolutely no law that
19 says you can't turn in photocopies. That is just
20 absolutely not true. I've been an attorney
21 for 25 years, we turn in -- in Rule 11 we have to
22 sign documents and verify documents. It doesn't
23 have to be an original wet ink signature or the
24 court won't take it.

25 I know nothing in the law that says -- even

1 Marion County will take copies of deeds and record
2 them. They don't have to be original documents.
3 It is clear that Mr. Ajabu worked quite hard
4 collecting signatures to get on the ballot. It is
5 the first batch of 1,300 that were counted.

6 He went back and found additional ones that
7 they missed, and I would also point out that the
8 law, if you look at the law, it only requires that
9 the voter put down the signature. It does not
10 require that the voter put down the address.

11 The address has to be there, but the voter
12 doesn't have to put it down. Only the signature
13 has to be affixed. It could well be a situation
14 where the person just moved and may be still be
15 eligible to vote at the previous location. So
16 when they are down at the traffic court signing
17 documents putting down their address, they may be
18 putting down a brand new address, yet under the
19 law be allowed to go back and vote one time at
20 their previous address. So we don't know that.

21 The fact is, a lot of this material that we
22 got today was new. Apparently the Marion County
23 Board of Voter Registration had several documents
24 that they didn't provide to us -- which I think
25 would have really helped out the process.

1 But the fact is, they didn't go in and check
2 out to see whether these people were, in fact,
3 registered.

4 I have an example that I pulled out and it's
5 just an example -- and I'm sorry for being
6 argumentative of how the board of voter
7 registration works -- page 43 from the second
8 batch, Jacqueline Beezly, right there, registered
9 on the Marion County website, and yet they counted
10 that person as not being registered.

11 The testimony has been that Reverend Ajabu
12 turned in far in excess of 3,010 signatures.
13 There were some duplicates, apparently, but the
14 fact is it's the burden of the Marion County Board
15 of Voter Registration to go through and count
16 those, and they did not count those on the second
17 batch.

18 So I think there is testimony before the
19 commission that he far exceeded the number needed
20 to qualify for the ballot.

21 Thank you.

22 CHAIRMAN WHEELER: Thank you, Mr. Ogden.

23 Mr. Neal?

24 MR. NEAL: Secretary's office certified the
25 denial of the petition based on the recommendation

1 of the Indiana Election Division codirectors.
2 Their review was based on certification from the
3 Marion County Board of Voter Registration based on
4 consistent and predictable practice.

5 We heard testimony today of the length and
6 depth of their review of both the first and second
7 batch, and we would ask the commission to uphold
8 the certification of denial of the petition.

9 CHAIRMAN WHEELER: I'm going to take a
10 privilege of the chairman. I would like to ask a
11 legal question of the two counsel, Ms. Barnes and
12 Mr. Simmons. I don't care who goes first.

13 It strikes me the significant issue involved
14 the decision of the Marion County Election Board
15 not to review photocopied petitions finding those
16 weren't in compliance with statute.

17 As I understand it, based on the advice of
18 corporate counsel and the Secretary of State's
19 Office, and it sounds like various people were
20 consulting with each of you on this issue.

21 I don't care who starts.

22 MS. BARNES: Thank you, Mr. Chairman.
23 Members of the Commission, Ms. Freeman did call
24 with that question whether or not the county board
25 of voter registration could certify signatures on

1 a petition that appeared to be photocopies, or
2 whether they had to be original signatures.

3 We did not use the term "wet ink," but that
4 is what we both understood, the signature that the
5 voter had applied to the petition.

6 There are several statutes which I read in
7 conjunction to come up with my advice for
8 Ms. Freeman. One was 3-8-6-6, which requires each
9 petition must contain the signature of the
10 petitioner, and then there is the definition in
11 Title 1 under "Statutory Construction" which
12 applies throughout all of the 36 Indiana titles,
13 and that definition is found at IC 1-1-4-5 clause
14 28.

15 CHAIRMAN WHEELER: I'm sorry, 1-1-4-5?

16 MS. BARNES: 5, and clause 28. And what it
17 says is, "If a written signature of a person is
18 required, the term means the proper handwriting of
19 a person or person's mark."

20 And then I also have -- when interpreting the
21 statute, if the definition is unambiguous, you use
22 the plain meaning definition of "handwriting." I
23 looked that up in several different sources:
24 Online dictionary, paper dictionary -- handwriting
25 is considered the original -- again, it doesn't

1 use "wet ink," but I'm not sure I've ever seen
2 that term used in Indiana code, but it said the
3 individual's own handwriting.

4 It does not ever permit a photocopy to be
5 used, from what I'm seeing. That was the advice I
6 gave to Ms. Freeman. And I guess I would also
7 indicate in other sections, in other chapters of
8 the Indiana code, such as voter registration
9 forms, 3-7-32, "Completing a Voter Registration
10 Form," it simply says it must be contained, be
11 signed by the applicant.

12 If the commission would allow photocopied
13 signatures, then we would be registering voters
14 based upon photocopied voter registration
15 application. And, again, I don't know whether the
16 commission wants to go down that road.

17 But we have always advised our county voter
18 registration offices when it comes to a voter
19 registration application or a petition, then it
20 must contain the signature of the voter, not a
21 photocopy. A photocopy is insufficient.

22 Sorry, that was --

23 CHAIRMAN WHEELER: No, that was excellent.

24 Thank you.

25 Mr. Simmons?

1 MR. SIMMONS: My analysis is really pretty
2 much identical. I applied plain meaning to the
3 usage of the term "original" in 3-8-6-10, noting,
4 as Leslie did in 3-8-6-6, the signature of the --
5 each petitioner is required on the petition, and
6 it's the job in 3-8-6-10 for the Marion County
7 Voter Registration Board to confirm that
8 signature.

9 So it has the requirement that the signature
10 of the petitioner be attached to it. Their job is
11 to review the signature. And even if we didn't
12 have to use plain meaning, we don't have a
13 definition of signature in Title III, but I also
14 looked at the same statute of general construction
15 of Indiana statutes -- as a matter of fact, I have
16 copies of it here today, which refers to the
17 written signature.

18 And as Leslie noted, it clearly indicates
19 something applied by that person. Whether it's
20 their mark or whether it's an actually written out
21 signature. It is what is applied by that person.

22 So I came to the same conclusion that Leslie
23 did that original "wet," if we will, signature is
24 required on that petition. They're required to
25 have that in order to review and approve that

1 petition.

2 CHAIRMAN WHEELER: And let me follow up with
3 a secondary question. This is going to go to the
4 two codirectors, as the agency head and election
5 division, which is the agency designee, with the
6 interpretation, the enforcement interpretation of
7 this statute.

8 And as I understand, and I'll put words in
9 Ms. Barnes' mouth, I think she said the division
10 has always interpreted that particular statute in
11 this fashion to require an original signature.

12 And I'm curious whether that is the agency's
13 position and, in particular, the director's.

14 MS. BARNES: Since I can only speak for but
15 one codirector, that of the Democratic codirector,
16 that has been his interpretation and that of his
17 predecessors that the requirement of the signature
18 be one that the applicant applies to the piece of
19 paper, the application.

20 CHAIRMAN WHEELER: Mr. King, as the other
21 codirector?

22 MR. KING: Chairman and Members of the
23 Commission, as the Republican codirector, I would
24 agree with the statements that Ms. Barnes has made
25 on behalf of current Democratic codirector and

1 predecessors as being the same as myself and other
2 previous Republican codirectors.

3 CHAIRMAN WHEELER: So it would be fair to say
4 that given that the codirectors and cocounsel are
5 in unanimity on this, that that would be the
6 agency's position and they would urge that
7 interpretation on the commission as well.

8 MR. KING: That is correct.

9 CHAIRMAN WHEELER: Any other questions?

10 MR. CHAPELLE: No.

11 MR. OGDEN: Mr. Chairman, may I --

12 CHAIRMAN WHEELER: No, you're done. You had
13 your shot.

14 With respect to the issue for the
15 commission --

16 MS. OVERHOLT: Can we excuse?

17 CHAIRMAN WHEELER: I'm sorry. Yes, please.
18 Thank you very much. You can be excused.

19 With that, commission members, for purposes
20 of discussion I would accept a motion on this
21 particular matter whether to grant the contest or
22 deny the contest.

23 MR. CHAPELLE: I move that it be denied.

24 CHAIRMAN WHEELER: I have a motion that the
25 contest be denied in Cause No. 2012-243.

1 Do I have a second?

2 MS. OVERHOLT: Second.

3 CHAIRMAN WHEELER: Motion has been made and
4 seconded. We will now have discussion among the
5 commission members as to the motion. I will start
6 with my far left.

7 MS. OVERHOLT: I would say it seems, based
8 upon what we've heard today, that the basis for
9 the denial of certification by the Marion County
10 Board of Voter Registration is supported by the
11 law and practice. Which would mean that the
12 denial of the certification by the Secretary of
13 State's Office was also appropriate.

14 So I would deny the contest on those grounds.

15 CHAIRMAN WHEELER: I'll jump to
16 Commissioner Chapelle.

17 MR. CHAPELLE: My reasoning would be what
18 counsel said. I think maybe this is something the
19 courts would have to review, but it seems having
20 been intimately involved in the petition gathering
21 process myself, getting the wet ink signature on a
22 petition, I think it's a straightforward process,
23 and it does to a certain extent guard against
24 these issues of whether or not it's the actual
25 signature or not.

1 I agree with the statutory interpretation;
2 and in listening to this, I understand there may
3 be problems with how these issues are communicated
4 by the election board on the county level, but I
5 don't know if that's something that we can address
6 on this petition.

7 CHAIRMAN WHEELER: Vice chair?

8 MS. HULKA: I think even if we were to accept
9 that it's ambiguous whether the original needed to
10 be provided or not, whether even if you could
11 provide one signature and make five copies and it
12 would count as six, even if we could agree it's
13 not clear, I'm not sure we have the authority to
14 then go through each signature as a commission and
15 determine whether or not it's valid. I think that
16 if there's any question of statutory
17 interpretation, I think it's best left to the
18 courts.

19 So I would deny the challenge.

20 CHAIRMAN WHEELER: I've spent five years
21 chairing this commission, and I guess this will be
22 my sixth year since I'm doing it on a proxy basis,
23 and during that time we have had many, many
24 petition issues, petition challenges. And my
25 concern with allowing the photocopy process -- I'm

1 in agreement with the statute as interpreted with
2 the commission accepting photocopies is it's rife
3 for the opportunity for fraud.

4 I have been in a position where we have
5 opened boxes of petitions and simply seen -- we
6 had a situation with a young man in Bloomington
7 where he simply photocopied the same one over and
8 over again. The same page.

9 We know -- strike that. We don't know.

10 I do know a former member of this commission
11 who I served with, Butch Morgan, the St. Joe
12 County chair, resigned as the St. Joe County chair
13 based on fraudulent petition signatures for Obama
14 and Clinton in the last petition cycle based upon
15 the fact that they were either hand copied or
16 photocopied from somebody else's petition.

17 My concern with an interpretation other than
18 the one that has been given by the cocounsel and
19 codirectors is that it invites election fraud. We
20 know there have been fraud. We know there has
21 been fraud in the petitions, it's already been
22 proven.

23 Governor Kernen said, "I did not sign
24 Barack Obama's petition, yet my signature is
25 there." Well, how did his signature get there?

1 Someone either photocopied his signature, or they
2 wrote it in for him, but either way there was
3 fraud in the petition process.

4 And I believe that an interpretation that
5 requires an original, as we've said "wet ink"
6 signature, precludes that type of fraudulent
7 petitions. And fraudulent petitions, they cause
8 the public not to have respect for the process and
9 they're improper.

10 So I think for me, I agree with the legal
11 interpretation; and if that legal interpretation
12 is correct, then the Marion County Voter Board
13 acted appropriately.

14 Now, I do have some concerns for what happens
15 to a person in your situation. Which is to say
16 how do you go back as a petition collector and get
17 those corrected and resubmitted, and I don't know
18 exactly how to do that, to be perfectly frank.

19 Do you have to go to each individual voter
20 and have them recharge each of the addresses?
21 Because I don't know, but that seems to be a
22 pretty substantial burden. I don't know the
23 answer to that. Perhaps the legislature will give
24 us some direction, or as I think some of the
25 commission members have said this, maybe the

1 courts, if you chose to appeal this, the courts
2 will give us some direction on that.

3 From my standpoint, I fall in the same boat,
4 I take the legal advice of the counsel and
5 codirectors which is that the Marion County
6 Election Board acted properly in not considering
7 the photocopied versions.

8 Because even if I take -- you throw out the
9 360-odd pages you photocopied and made changes to,
10 you also submitted -- you didn't submit originals
11 on your new ones, the 80-odd pages of new ones,
12 you submitted photocopies of those. I'm not sure
13 why you chose to do that. I'm not sure why you
14 didn't submit wet ink and don't have the copies
15 here for us today, because I think that would have
16 been helpful for us, I think.

17 But in any event, that's an explanation of
18 where I'm leaning.

19 The motion has been made and seconded.

20 Any further discussion from the Commission
21 members?

22 (No Response.)

23 CHAIRMAN WHEELER: All in favor of granting
24 the motion to deny the contest in Cause No.
25 2012-243 signify by saying, "Aye."

1 THE COMMISSION MEMBERS: Aye.

2 CHAIRMAN WHEELER: Those opposed same sign.

3 (No response.)

4 CHAIRMAN WHEELER: The motion carries
5 unanimately. The contest is denied.

6 I'll accept a motion to adjourn.

7 MR. CHAPELLE: So moved.

8 CHAIRMAN WHEELER: Those opposed same sign.

9 (No response.)

10 CHAIRMAN WHEELER: Thank you very much.

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12 (Time noted: 3:34 p.m.)

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CERTIFICATE

I, Deborah J. Pearce, the undersigned Court Reporter and Notary Public residing in the city of Noblesville, Hamilton County, Indiana, do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me on Tuesday, September 4, 2012, in this matter and transcribed by me.

Deborah J. Pearce
Notary Public in and for
the State of Indiana

My commission expires September 7, 2017