

1 That's just unconscionable to me, for a --
2 for -- that a U.S. Senate candidate is asking to
3 be placed on the ballot by some conspiracy
4 theory because they didn't make copies of the
5 documents that they submitted to the local
6 election officials.

7 It's very clear it's 498. They didn't meet
8 the threshold. And on top of that, they didn't
9 file a CAN-1 form themselves to challenge this.

10 If they had an issue with it, their first
11 line of recourse was to go to the local election
12 officials and say, "Wait a second. You should
13 have certified these," or, "Wait a second.
14 Where is this page that we didn't get back?"
15 They didn't do that.

16 And then, when they submitted the documents
17 to you and they realized that there's an issue,
18 they knew -- Mr. Zody filed his first CAN-1
19 challenge on Wednesday morning, some 48
20 hours-plus before the deadline.

21 If the Young campaign had an issue and
22 said, "Oh, it does look like we only have 498,
23 and it should be 500 or more," they had an
24 opportunity last week to come into the Election
25 Division, file their own CAN-1, and say, "We

1 believe it should be higher than what's
2 submitted. We believe that the" -- as the form
3 says, due to insufficient signatures or the
4 county voter registration's office failure to
5 certify qualified petitioners is not in
6 accordance with law.

7 If they had an issue with what they
8 submitted because they felt, after looking at it
9 the second time, the clerks messed up, there's a
10 "dup." here, and there shouldn't have been,
11 there's a -- someone who's not designated one
12 way or the other, and they should have been
13 certified, they could have come and asked this
14 body, through this process, to do that.

15 So I don't think that this Commission
16 should raise that number from the 498, because
17 they didn't follow the procedures to do so.

18 And if this Commission is going to permit
19 them, and you are essentially going to decide
20 there are some people who were certified that
21 were -- or there were some people who were not
22 certified who should have been, then that's a
23 two-way street.

24 And when we get to the subsequent petition,
25 then we'll be going through some of these and

1 saying, "Well, here's some that were certified
2 that should not have been." And then that
3 number will dip below the 500 once again.

4 Thank you.

5 CHAIRMAN BENNETT: Response from the Young
6 campaign?

7 MR. BROOKS: Yeah. I just want to make a
8 couple of quick observations, and then I'm going
9 to talk a little further.

10 About half of the time the Democrats and
11 the Stutzman campaign spent talking to you was
12 about good campaign practices or bad campaign
13 practices. Those are totally irrelevant. The
14 issue is what's in front of you.

15 They are suggesting that we are asking you
16 to certify. That's not the case. The local
17 voter registration people put into the SVRS that
18 those 501 names were certified.

19 Some little clerical inconsistent
20 error doesn't -- you've got to look at all the
21 evidence. It's like I'm giving you evidence
22 from some third party. I'm giving you evidence
23 from the very people who actually sat there and
24 did it. They entered that those 501 names were,
25 in fact, certified.

1 VICE CHAIRMAN LONG: Show me 501 names they
2 certified.

3 MR. BROOKS: What did I just say?

4 VICE CHAIRMAN LONG: Show me 501 names they
5 certified. The only place you can get it is on
6 that printout.

7 MR. BROOKS: It's a printout. That is the
8 501.

9 VICE CHAIRMAN LONG: But they certified --
10 to me, a certification is, you write your name
11 on it. "I certify the above and foregoing,"
12 period, period, period.

13 Show me where the voter registration
14 office in those three counties have certified
15 501 names.

16 MR. BROOKS: Those voter registration
17 people entered into the computer --

18 VICE CHAIRMAN LONG: I understand. You
19 don't have --

20 MR. BROOKS: I have the --

21 VICE CHAIRMAN LONG: -- to repeat it.

22 Show me something that they have signed, a
23 voter registration officer in Lake, Porter, and
24 LaPorte Counties has signed, under oath, that
25 there's 501 signatures on the petitions that

1 were filed. Do you have such a document?

2 MR. BROOKS: We have a document that has
3 500 signatures that the voter registration,
4 through the SVRS system, says they certified.
5 There are 500 of them.

6 VICE CHAIRMAN LONG: You answered my
7 question. Thank you.

8 MR. BROOKS: 500.

9 So in any event, I'm not asking you guys to
10 do a certification.

11 I'm asking you to take the evidence that's
12 in front of you, which is twofold, all of which
13 is from voter registration, and see if this
14 makes sense. Because obviously, there were some
15 inconsistencies.

16 Obviously, you know, the Stutzman campaign
17 thinks we ought to disenfranchise a person
18 because of a clerical error, writing
19 Congressional District 2, when it was obviously
20 Congressional District 1.

21 We're not asking you to do anything except
22 to determine what the voter registration
23 intended with its certification. We have put
24 those pieces together for you.

25 And before we get much further, there's

1 been very little conversation about the general
2 state of law in Indiana. And I'm sure the
3 Commission is generally familiar with these
4 things, but I'm going to go through and cite to
5 you one statute -- one case, a couple three
6 statutes. And then I'm going to talk about the
7 precedent and history of what this Commission
8 has done.

9 I'm going to start with quoting Wyatt v.
10 Wheeler, which is 936 N.E.2d 232 and 239.

11 Quote, "Our Supreme Court has long held
12 that the law favors the franchise and the
13 enfranchisement. The purpose of election law
14 and the efforts of the court are to secure to
15 the elector an opportunity to freely and fairly
16 cast his ballot, and to uphold the will of the
17 electorate, and prevent disenfranchisement.

18 "To disenfranchise voters because of a mere
19 irregularity or a mistaken construction of the
20 law by a party committee or election
21 commissioner would defeat the very purpose of
22 all election laws."

23 And make no mistake why we're here. We're
24 here because the Stutzman campaign would like
25 you to turn his primary election into a

1 coronation. He doesn't want you -- he doesn't
2 want to face Todd Young.

3 There's speculation about the Democrats.
4 But I sort of get the Democrats and, you know,
5 why they think that.

6 But he's going to be the only person on the
7 ballot. You'll be disenfranchising all of the
8 State of Indiana from an opportunity to have a
9 real election instead of the coronation of
10 Marlin Stutzman over the -- over a few disputed
11 certifications that the voter registration
12 office has told you were certified.

13 I'm not going to read all the different
14 statutes, but I would just call your attention
15 to 3-5-6-2. It's a statute that talks about the
16 presumption in favor of the voters when you're
17 looking at signatures by certification.

18 I'm going to cite you another statute.
19 It's not on point, but it's very consistent with
20 the law and what this Commission has done. And
21 that's 3-12-1-12.

22 And that's a statute that says that an
23 otherwise legal vote does not turn into an
24 invalid vote if the only reason is because there
25 was error or omission on the part of an election

1 official.

2 And while this isn't technically a vote,
3 this is exactly what the Democrats and the
4 Stutzman campaign are asking you to do, is
5 because there were a couple of clerical errors
6 and the 500 signatures that were there, the 500
7 people they said they certified, and they had a
8 clerical error three times, they're asking you
9 to disenfranchise the State of Indiana and have
10 a coronation for Marlin Stutzman.

11 Then I would also cite you to 3-8-1-1.1.

12 "If a candidate filing error is made by the
13 election division or a circuit court clerk, the
14 error does not invalidate the filing."

15 And this is the general concept of
16 detrimental reliance that is throughout Indiana
17 law, but is also very prevalent in election law.

18 In this case we were told ahead of time
19 that there were 501 certified signatures,
20 according to the local voter registration
21 people, because they're the ones that entered it
22 into the SVRS. The Election Division, again,
23 told us we had 501 certified signatures,
24 according to the voter registration people,
25 because they're the ones that entered it.

1 I want to talk to you about three quick
2 Election Commission cases. One is The Matter of
3 Susan Minx. It's a 1996 case. In that case,
4 Susan Minx was wanting to run for the
5 legislature. She needed to get a certain amount
6 of signatures in order to do that.

7 She went to the clerk's office. The clerk
8 misinformed her as to what district she lived
9 in. So she started gathering petitions, found
10 out that was the wrong district, and switched
11 gears and started gathering the correct
12 petitions. But by the deadline, even with
13 combining both the wrong district and the right
14 district, did not have enough petitions.

15 And what the Commission said is, "The
16 chair stated that it appears that credible
17 evidence had been submitted that Ms. Minx
18 received bad information in this case, and that
19 simply adding together the number of signatures
20 she received from both districts might not fully
21 reflect her detriment, since this bad
22 information may have prevented her from moving
23 forward in the same manner as if she had
24 received correct information."

25 In other words, Ms. Minx was entitled to

1 rely on the clerk, and he -- she did to her
2 detriment. And she was allowed to stay on the
3 ballot by a unanimous vote, even though she
4 didn't have the right number of signatures. No
5 one even argued she had the right number of
6 signatures.

7 And I want to talk about the 2008 challenge
8 to Senator McCain when he was running for
9 president. And I'm quoting from that
10 transcript. This is, I believe, the same case
11 that Mr. Bopp was pointing to, where
12 Mr. McClamroch, on Page 84, says to the
13 Commission, "A candidate for president of the
14 United States has a right to rely on a
15 certification from a county clerk. It is not
16 our responsibility to go back and verify beyond
17 what's been certified to us."

18 The Democrat member of the Commission at
19 that time, Sarah Riordan, said, "But we've
20 talked before about how we favor the notion of
21 access, and I think that has to apply,
22 regardless of party, that that has to be our
23 primary informing philosophy, and it is mine."
24 That goes back to not disenfranchising people.

25 But she goes on. "And Mr. McClamroch made

1 the point that Senator McCain should not be
2 required to come back and verify every single
3 one of those signatures, and I think that's
4 right."

5 Mr. Wheeler, the chairman at the time,
6 said, "I agree with Commissioner Riordan that it
7 is not the candidate's responsibility to go
8 through and certify. It is the county clerk's
9 certification."

10 And Vice Chairman Long at the time followed
11 up with, "Mr. Chairman, on echo," agreeing with
12 those comments. "I want to go one step
13 further." And you actually were very
14 complimentary to the challenger in that case.
15 But you had agreed with everybody else on that
16 subject.

17 And you went on to say, "And I believe if
18 we're going to err, it's going to be -- in my
19 mind, unless the law is so abundantly clear that
20 there's a violation, if it's ambiguous at all,
21 that we err on the side of letting people run,
22 from any people before them," which I think is a
23 mis- -- I'm sure you didn't say it exactly that
24 way at the very end. But the point is the same.
25 You err on --

1 VICE CHAIRMAN LONG: You never know what I
2 might say at one of these meetings.

3 MR. BROOKS: Pardon?

4 VICE CHAIRMAN LONG: You never know what I
5 might say at one of these meetings.

6 MR. BROOKS: Perhaps it's accurate.

7 But I think the point is pretty clear that
8 you believe that you should be erring on the
9 side of keeping people on the ballot. That was
10 a 4-0 vote.

11 And I would tell you that in that case, the
12 McCain people had certifications of over 500,
13 but the challenger had 47 challenges that, if
14 they were all granted, would have taken him
15 below 500.

16 And what that Commission did is not
17 consider that, because the certified number was
18 over 500. It didn't even consider that, even
19 though they would have gone below it. And I
20 think that's an important thing to consider.

21 So as we move forward here, I guess I can
22 quote -- the other case is the Jim Wallace case.
23 And that was a case in which the
24 certification -- which, by the way, was an SVRS
25 certification -- was for Marion County, which

1 was the Seventh Circuit, because it's all in
2 Marion County -- was 489 -- or 486.

3 The petitioner -- the challenger's attorney
4 wanted to deduct from that 486, and Mr. Wallace
5 wanted to add to that total from 486.

6 And what happened in that case was,
7 Mr. Long moved to sustain the challenge without
8 allowing the deductions, and basically saying to
9 Mr. Wallace, "You could have sent in more
10 information, but you didn't present us with any
11 affidavits, or anything, so there wasn't a
12 sufficient thing." And so you're going to rely
13 on that 489 or 486 and sustain the challenge.

14 And that was an SVRS number. Nobody
15 brought in all the petitions and had you
16 hand-count that, because Marion County was on
17 the system, as I think almost every -- if not
18 every county is currently on them today.

19 So while you can call it voluntary, that's
20 just a misdirect. It's a red herring.

21 Voluntary or not, it is a statement of the
22 voter registration officials that this person
23 was certified. They voluntarily did it or not.
24 That's what they said. And you guys need to
25 consider that and not disenfranchise the entire

1 state and not have Mr. Stutzman run unopposed.

2 So I would just conclude by saying that
3 consistent with this Commission's history and
4 with Indiana law, that you should find that --
5 like commissions in other very similar cases,
6 that the Young campaign had the right to rely on
7 a number from the local voter registration
8 people. That is what the SVRS system is. It is
9 the statement of the local voter registration
10 people.

11 Further, we've tied up all the little loose
12 ends for you. Granted, you don't have one
13 signature on there. But you have undisputed
14 testimony that the chain of custody got to the
15 Election Division.

16 Again, I'm not making the claim that
17 something nefarious happened. But the
18 undisputed testimony is that there are 54 pages.
19 Page 51 is missing. It actually adds up. The
20 two -- two missing Lake County petitions, as the
21 Democrats and the Stutzman campaign filed,
22 are -- are now identified as part -- as being in
23 that missing page.

24 And while one of the two counsel indicated
25 that we're saying that there's two voters from

1 the missing page, remember, you don't need the
2 missing page for the duplicate. It was
3 certified by the local voter registration people
4 as saying he was certified. And you all looked
5 through, and there is no other signature. So he
6 was clearly entitled to be certified, and was.
7 So even without the missing page, we're at 500.

8 And I'd just ask the Commission, with all
9 due respect, to empower the people of Indiana,
10 not entertain some technical, hypertechnical
11 view of election law, when you have evidence
12 from the local voter registration people as to
13 not just how many, but who they certified.

14 We know their names. It's not a random
15 thing from someone else. This we know from the
16 local voter registration office.

17 And I ask you to defeat this challenge and
18 certify Mr. Young to the ballot.

19 CHAIRMAN BENNETT: Thank you. Well, it's,
20 by my clock, 5:00. We've heard a lot from both
21 parties. We appreciate all the presentations.

22 VICE CHAIRMAN LONG: Are we ready for a
23 vote or discussion?

24 CHAIRMAN BENNETT: Let's have a motion.

25 VICE CHAIRMAN LONG: I'm ready to make a

1 motion. I move that we sustain the challenge
2 because he doesn't have enough certified
3 signatures on the petition.

4 CHAIRMAN BENNETT: Is there a second?

5 COMMISSION MEMBER OVERHOLT: Second.

6 CHAIRMAN BENNETT: Is there any discussion?

7 VICE CHAIRMAN LONG: Discussion. One of
8 the things you get when you've been around maybe
9 too long, I remember the McCain petition and
10 hearing quite well. A young law student from
11 I.U. Bloomington, and he did a spectacular job.
12 He did such a good job I understand Toby hired
13 him later.

14 But the petitions that are in the Wallace
15 matter, we did look at this, at the petitions in
16 that matter. Mr. Wallace, unfortunately, was
17 unrepresented. And if he'd had any of the
18 lawyers who are here today representing him,
19 there may well have been a different result.
20 But it was just an unfortunate situation.

21 I can tell you that that was one that I met
22 with a modicum of criticism from members of my
23 party for my vote in the matter, because I voted
24 to disenfranchise him, and it was not received
25 with the best -- or not to disenfranchise him,

1 but to sustain the challenge, because he didn't
2 have enough petitions. I think that's a simple
3 question.

4 I think this is a simple case. The law is
5 clear. I think that the clerk or the voter
6 registration office must certify the petition.

7 Now, where I come from, certification means
8 you certify. And if you can add up the petition
9 signatures, there's 498, or there's 497, and you
10 get an extra -- it's under 500.

11 The only way that this could have possibly
12 been statutorily acceptable, in my opinion, is
13 that the voter -- whether or not you file a
14 CAN-1 or not, I've seen nothing from the voter
15 registration folks in the counties that are in
16 this district that certify anything any
17 different than what they certified the first
18 round, 498.

19 If you went to the trouble to prove that
20 the campaign -- that the -- the chain of
21 custody, that missing page is a nonissue to me.

22 Mr. Bross and Mr. Wozniak, why didn't the
23 voter registration offices in those counties
24 file a certificate or an affidavit of error
25 that, "We should have certified these and we

1 didn't"? I think you're asking us to make a
2 decision, and according to their decision-making
3 process, that they were wrong.

4 I don't know why they didn't certify these
5 people. It says "dup." I don't know what that
6 means. I mean is it a duplicate? I didn't find
7 one in there, so I don't believe it's a
8 duplicate.

9 You're trying to have us certify them. And
10 I believe that's what you're asking us to do
11 based on records that you brought in here.

12 And specifically for the record here,
13 Exhibits 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14,
14 15, and, to the extent they're applicable, 19,
15 20, and 22, I think they relate to maybe one
16 that's missing page signatures. These records
17 aren't certified by anybody. You tell us
18 they're print-offs. I don't even know what some
19 of them are. It says, "Super petition results,
20 report, supervisors, election." I don't know
21 what they are.

22 I know they're not certified by anybody
23 that's in the voter registration office in any
24 of the counties that are referred to here.
25 They're not certified by anybody. And I'm not

1 prepared to say that the voter registration is
2 wrong in not certifying these people.

3 Maybe they compared signatures. I know of
4 one campaign that we had to -- and these
5 petition drives are a pain. But we had to take
6 them back because they were comparing signatures
7 to say, "Well, they don't look the same," so
8 they wouldn't certify them.

9 So you go get more. I mean that's what you
10 do in these processes.

11 And right now, they could have not
12 certified these two people for any number of
13 reasons, none of which have been addressed.
14 They're not required to state on the petition
15 why. And the statute is clear that the voter
16 certification must be by the voter registration
17 officials of the county.

18 They've not been done. There is an
19 accommodation program out there that they
20 entered data. I pointed it out to you earlier
21 just on the one -- there was a discrepancy on
22 the -- whatever that printout is, and the actual
23 votes in LaPorte County, they -- they didn't --
24 just one vote or one signature. That's a pretty
25 big signature, though, in this petition.

1 And in the McCain case we said -- and I
2 believe there was -- Mr. McCain, Senator McCain
3 had a right to rely on the certification of the
4 county clerk, and so does Congressman Young.
5 The county clerk said, at best, 498 signatures
6 in the first district, and he had a right to
7 rely on that.

8 I mean I agree we're not here because
9 somebody made a mistake. Well, that's probably
10 why we're here, but that's -- it's not up to us.

11 The law says, the legislature said you must
12 have 500 certified signatures, certified by the
13 election officials. And they do not have them,
14 and that's why I made my motion.

15 And by the way, all of you did a nice job
16 in presenting your cases. It's always nice to
17 see good lawyers' work.

18 CHAIRMAN BENNETT: I think that voter
19 disenfranchisement is a very serious matter. I
20 think that everyone did a fine job here
21 representing their interests in the case. But I
22 fall back on the spirit and intent and the
23 purpose of our election laws.

24 Indiana Code 3-8-2-9 and 10 of the election
25 laws are all designed to ensure that we have

1 serious and viable candidates on the ballot for
2 our primary elections.

3 I think that Congressman Young's reliance
4 on the certification by the Statewide Voter
5 Registration System, which showed 501
6 signatures, and the evidence and testimony that
7 we've heard here today about the reasons why the
8 other totals that have been done by hand
9 purportedly by the petitioners demonstrate that
10 there is no problem with the Statewide Voter
11 Register System, that it is a reliable system,
12 and that our prior history on this matter shows
13 me that we have consistently and properly
14 allowed candidates to rely on that system.

15 The idea that the Young campaign should
16 have challenged the certification from Lake
17 County, which had over 500 signatures, doesn't
18 compute with me. I don't know why they would
19 have a duty or a reason to challenge it once the
20 certification says 500 or more.

21 I think, in this situation, we're not being
22 asked to do anything more than we should be
23 doing, which is to uphold the intent, spirit,
24 and purpose of voter registration laws to allow
25 citizens of Indiana to be enfranchised, to vote

1 their will for serious, viable candidates.

2 And I cannot support the motion to approve
3 the challenge.

4 COMMISSION MEMBER KLUTZ: It seems there's
5 certain mandatory requirements that we've all
6 been asked to look at. 500 signatures of
7 registered voters that were timely submitted.
8 Those are the mandatory items that I've been
9 focusing on.

10 If the candidate is able to do that, the
11 evidence supports that they were able to do
12 that, I'm unwilling to disqualify a signature
13 because of a clerical error.

14 I cannot support the motion on the table.

15 COMMISSION MEMBER OVERHOLT: And on the
16 flip side of that, I support the motion because
17 I think there are mandatory requirements that
18 were not met.

19 And I think we've been presented with
20 speculation about why those haven't been met,
21 but speculation isn't sufficient.

22 And that's why I support the motion.

23 CHAIRMAN BENNETT: Just one final comment.
24 It seems to me if there's any question, we
25 should err on the side of enfranchisement rather

1 than disenfranchisement.

2 VICE CHAIRMAN LONG: If I could make one
3 final comment. I think that due diligence is
4 required of everyone. And to challenge someone,
5 to come forward on the theory that we're
6 disenfranchising somebody, you have to prove
7 that you're a candidate. And he just, simply,
8 in my mind, Mr. Chairman, all due respect to you
9 and your positions, he just hasn't made it.

10 CHAIRMAN BENNETT: All right.

11 At this time I would ask for a vote to
12 upholding the challenge.

13 VICE CHAIRMAN LONG: Challenges, both of
14 them.

15 CHAIRMAN BENNETT: Challenges. All in
16 favor of upholding the challenge, say aye.

17 VICE CHAIRMAN LONG: Aye.

18 COMMISSION MEMBER OVERHOLT: Aye.

19 CHAIRMAN BENNETT: All opposed say nay.

20 COMMISSION MEMBER KLUTZ: Nay.

21 CHAIRMAN BENNETT: Nay.

22 We have a split, 2-2 vote. Therefore, the
23 challenge is not upheld.

24 Now, we can consider the opposite motion,
25 and perhaps we should do that before --

1 VICE CHAIRMAN LONG: Do you want to do that
2 before --

3 COMMISSION MEMBER OVERHOLT: This was --
4 that wasn't --

5 VICE CHAIRMAN LONG: These are joint
6 challenges. That's what we were talking about,
7 I'm assuming. That's what my motion was
8 directed to.

9 COMMISSION MEMBER KLUTZ: 2016-12 and
10 2016-5.

11 (Discussion off the record.)

12 CHAIRMAN BENNETT: The challenge has not
13 been upheld for the -- to prove that there have
14 not been 500 signatures. That was the issue.

15 We still have the second half of this to go
16 through, if we're going to do that. But that's
17 what -- the challenge has not been upheld at
18 this point.

19 Now, I would make the opposite motion,
20 which is that the challenge be denied. And I
21 don't know if anybody needs to say anything more
22 on that.

23 COMMISSION MEMBER KLUTZ: This statement
24 that I -- I get to 500 votes, based upon the
25 evidence presented, but I do not get to 501, to

1 the extent that's important, I want to make
2 sure, for the record. I have a hard time using
3 the lost-Page-51 theory. I'm unwilling to
4 accept a signature that I've not seen, that we
5 have to speculate on.

6 I am willing to accept the duplicate
7 signature. I think evidence has been presented
8 that that voter was registered when he signed
9 the petition.

10 I'm willing to accept the Bross, the
11 LaPorte voter that had a blank designation. I
12 think evidence was submitted that showed he was
13 a registered voter at the time he signed the
14 petition, and the petition was timely filed.

15 And I believe there's -- I'm willing to
16 accept the LaPorte error, which showed
17 Congressional District 2, when it should have
18 been Congressional District 1.

19 For purposes of my vote to support this
20 motion, I believe Candidate Young received 500
21 valid signatures.

22 CHAIRMAN BENNETT: Thank you. All in favor
23 of denying the challenge say aye.

24 Aye.

25 COMMISSION MEMBER KLUTZ: Aye.

1 CHAIRMAN BENNETT: All opposed say nay.

2 COMMISSION MEMBER OVERHOLT: Nay.

3 VICE CHAIRMAN LONG: Nay.

4 CHAIRMAN BENNETT: We are split 2-2 denying
5 the challenge.

6 So at this point we'll take a recess for
7 five minutes and be back.

8 (A recess was taken from 5:18 p.m. to
9 5:30 p.m.)

10 CHAIRMAN BENNETT: I'll call the Indiana
11 Election Commission meeting back to order.

12 We're now in the position of hearing from
13 the petitioners' position on other challenges
14 besides just the numbers.

15 We're missing some of the Stutzman people?

16 VICE CHAIRMAN LONG: They did not want to
17 join this one.

18 CHAIRMAN BENNETT: They did not join this
19 one?

20 VICE CHAIRMAN LONG: They did not. I think
21 theirs was -- they totally carved out that
22 portion so that they could go on.

23 CHAIRMAN BENNETT: Well, then, Mr. Patton?

24 MR. PATTON: Thank you, Mr. Chairman.

25

1 (Exhibits 1-Zody, and 2A-2C-Zody were
2 marked for identification.)

3 MR. PATTON: And just for purposes of the
4 record, this matter that we're about to discuss
5 is under Cause No. 2016-13. That is the second
6 challenge filed by Mr. Zody, where he states --
7 and I believe in the petition he submitted, it's
8 IC 3-8-2-8, and IC 3-6-12-7. Please see the
9 additional language as follows. And as you will
10 note, he had supplemental information, and there
11 were two exhibits -- or actually an Exhibit 1,
12 and then Exhibit 2 is separated, 2A, 2B, 2C.

13 And for purposes of the record, I'm going
14 to refer to those exhibits as they were attached
15 to that CAN-1 challenge form, and begin with the
16 first exhibit that I present to you today, which
17 is Exhibit No. 3.

18 (Exhibit 3-Zody was marked for
19 identification.)

20 VICE CHAIRMAN LONG: Three?

21 MR. PATTON: Yes, sir. And what I've
22 handed you, which is Mr. Zody's Exhibit 3, is a
23 two-page document, petition signature
24 processing. And as you'll see at the bottom of
25 the page, it says 2016 Indiana Election

1 Administrator's Conference.

2 As you're well aware, every December the
3 staff puts on a conference for all the clerks in
4 the state to educate them on issues that are
5 going to come up with the next year's election
6 issues. And obviously, with this being a
7 presidential and governor and U.S. Senate on the
8 ballot in 2016, petitions were an issue. So
9 these were the guidelines that were provided to
10 clerks across the state on how to process these
11 petitions.

12 And you will note in the middle of the
13 first page, the Frequently Asked Questions.

14 And then on the second page in the middle,
15 it indicates what the petition must include.
16 And that's Indiana Code 3-6-12-7. The petition
17 carrier must include the following: Signature,
18 date signed, printed name, date of birth, full
19 address, including the ZIP code.

20 And this is all information that's
21 completed by the petition carrier; not a voter,
22 but the petition carrier, who is presumably
23 employed by or a volunteer of the campaign.

24 If the petition carrier does not comply
25 with these requirements, voter registration

1 officials must accept the filing, but do not
2 determine the validity of the signatures, and
3 give the petition carrier the best possible
4 notice that certification is incomplete. The
5 petition carrier has until the deadline date and
6 hour to correct the error.

7 If the deadline date passes and the
8 petition carrier's error has not been corrected,
9 then the signatures will not count, pursuant to
10 IC 3-6-12-8.

11 And it further -- states further that a
12 missing petition carrier signature may lead to a
13 challenge under 3-6-12-10.

14 And that's exactly what we're here on. And
15 I'll reference you to Exhibits 2A, 2B, and 2C,
16 which are in your materials, hopefully, as
17 attachments to Mr. Zody's challenge.

18 You will note on 2A, the petition is not
19 signed by the carrier. And for reasons unknown,
20 even though the clerks were provided the
21 educational materials by staff in December, they
22 did not comply with that statute, and they went
23 ahead and certified these signatures anyway,
24 when state code said they should not have been
25 certified.

1 Further, on 2B, there is one signature that
2 was certified. But that petition was also not
3 signed by the carrier. But yet, again, the
4 local election office certified the signature
5 when it should not have been, by state code, by
6 educational materials that this Commission, the
7 Election Division, put forth.

8 And finally, Exhibit 2C, that petition does
9 not include the carrier's full address, any
10 address for that matter. The line is entirely
11 blank. And there is one signature from the
12 first congressional district, and that's the
13 LaPorte County petition that was certified for
14 that county.

15 And again, it was certified, when it should
16 not have been, because the clerk did not follow
17 the guidelines put forth by this body.

18 So based on that, we believe those
19 petitions and the signatures on those petitions,
20 on 2A, 2B, and 2C, were improperly certified by
21 local election officials.

22 And that would amount to a total of seven
23 registered voters in Lake County, and one in
24 LaPorte. So a total of nine -- no, I'm sorry --
25 a total of eight signatures that were certified

1 that, pursuant to state law, should not have
2 been certified.

3 COMMISSION MEMBER KLUTZ: Any of these
4 petitions, or all three of these exhibits, are
5 you asserting that any of these registered
6 voters were not registered?

7 MR. PATTON: That aren't -- aren't ...

8 COMMISSION MEMBER KLUTZ: I'm asking are
9 you asserting that at all?

10 MR. PATTON: No.

11 COMMISSION MEMBER KLUTZ: Are you asserting
12 that any of these petitions that I'm looking at
13 right now in your exhibits were not timely
14 filed?

15 MR. PATTON: No. Our position is it did
16 not comply with state law because they did not
17 follow the process and procedures to have it be
18 a valid petition to be processed by the clerk.

19 COMMISSION MEMBER KLUTZ: I'm looking at 2C
20 now. Exhibit 2C is what I'm looking at now. It
21 looks like there's eight signatures that, for
22 whatever reason, the clerk certified. And not
23 for just Young, but eight signatures on here --

24 MR. PATTON: I believe they would all be
25 for Young, they'd be --

1 COMMISSION MEMBER KLUTZ: Well, I'm sorry.

2 All --

3 MR. PATTON: Right.

4 COMMISSION MEMBER KLUTZ: -- Young. I
5 misspoke.

6 And the carrier signed it and the carrier
7 printed her name. And the carrier printed her
8 date of birth, and then dated it when she signed
9 all this.

10 But she didn't put her address right there.
11 And therefore, these signatures should not be
12 counted?

13 MR. PATTON: Under the law, they --

14 COMMISSION MEMBER KLUTZ: And that's the
15 sole --

16 MR. PATTON: -- should not be --

17 COMMISSION MEMBER KLUTZ: -- reason?

18 MR. PATTON: Under state statute, they
19 should not have been certified because it did
20 not include that carrier's information, correct.

21 VICE CHAIRMAN LONG: Could I ask a
22 question?

23 MR. PATTON: Certainly.

24 VICE CHAIRMAN LONG: You said on 2A, the
25 carrier signature is not --

1 MR. PATTON: No. The date signed by
2 carrier --

3 VICE CHAIRMAN LONG: Date signed, okay.

4 MR. PATTON: So 2A and 2B fail to include
5 date signed by the carrier.

6 VICE CHAIRMAN LONG: Okay. I misheard you,
7 then. I apologize, because I had a signature on
8 mine, and I was wondering if maybe there was ...

9 MR. PATTON: And with regards to Exhibit 1
10 that is included and attached to Mr. Zody's
11 petition under 2016-13, you'll see on Line 4,
12 the last -- or Line 4, the signature that was
13 certified, Andrea Drygas (phonetically). And it
14 was certified -- it was dated by the carrier on
15 January 5, 2016, and it was certified by the
16 clerk that she was a registered voter the
17 following day, on January 6.

18 VICE CHAIRMAN LONG: Okay, January 6.

19 MR. PATTON: So Ms. Drygas signed this
20 petition sometime, at the very latest, on
21 January 5, the date that it was signed by the
22 carrier. And her voter registration was
23 certified by the clerk the very next day.

24 (Exhibit 4-Zody was marked for
25 identification.)

1 MR. PATTON: I'm handing you Zody No. 4.
2 And this is information off of IndianaVoters.Com
3 for the same individual with the same date of
4 birth.

5 And you will note that this voter was not
6 registered to vote until February 10, after the
7 date that this petition was presumably signed,
8 after the date that this signature was
9 certified, after the filing deadline for the
10 campaign to submit to the election official.

11 On the day -- on the -- he filed this
12 candidate challenge on Wednesday, February 10,
13 at 8:30 in the morning, and attached this CAN-4
14 with Ms. Drygas's name, and questioned that.
15 And what's the day that she was registered to
16 vote? February 10, the very same day.

17 (Exhibit 5-Zody was marked for
18 identification.)

19 MR. PATTON: I want to mark this as Zody
20 No. 5. This is additional information from the
21 Indiana Voters about the same individual that
22 shows the registration date of February 10,
23 2016, again, the same day that Mr. Zody filed a
24 challenge.

25 And if you take Zody No. 5, and you also

1 take Exhibit 1 -- and let's look at that. We
2 have a signature from Ms. Drygas, presumably, on
3 the early part of January of 2016. And then we
4 have another signature from the registration,
5 again, a month later, February 2016.

6 And look how that "A" is written in both
7 signatures. You have a very pointed "A," almost
8 like the peak of a house, in her signature on
9 the CAN-1.

10 But then, going through these petitions,
11 Mr. Zody and his staff note that some of these
12 people weren't registered. So he challenged
13 them on Wednesday morning, and -- sometime on --
14 on Wednesday, the 10th, nine days ago.

15 And then sometime on the 10th, she
16 registered. Well, look at the "A" there. It's
17 not the peak of a house. It's a rounded "A."
18 And these are signatures that are a month apart.

19 But regardless of the fact whether it's a
20 fraudulent signature or not, at the time she
21 signed this -- this signature was put on the
22 petition, this name was put on this petition, at
23 the time it was certified, at the time of the
24 filing deadline for candidates two weeks ago,
25 she wasn't a registered voter.

1 So this is a two-way street. If they want
2 to -- if we're going to rehabilitate some of
3 these signatures, as you did in the previous
4 hearing, for a clerk's error, then on that
5 two-way street we're also going to look at a
6 clerk's error and say, "Guess what? You
7 shouldn't have certified some of the signatures
8 that you did." And this is the one.

9 COMMISSION MEMBER KLUTZ: What day do you
10 believe she -- that Andrea Drygas signed this
11 petition?

12 MR. PATTON: Based on the CAN-4 form,
13 Exhibit 1, it's certified by the carrier as
14 January 5, is when she signed it.

15 So I would say January 5 or before is when
16 this person signed -- whomever it was put Andrea
17 Drygas's name and information on this document.

18 And then, if we compare this SVRS document
19 that we've discussed throughout the day, how did
20 she get included in this count of the 501?

21 VICE CHAIRMAN LONG: Are you saying it
22 would not be possible for her to be in the SVRS
23 on that date?

24 MR. PATTON: I'll show you.

25

1 (Exhibit 6-Zody was marked for
2 identification.)

3 MR. PATTON: And I apologize. This is the
4 only copy of the SVRS that I have. It's Zody
5 No. 6.

6 On Zody No. 6, I'll walk through and show
7 you there is a Drygas at that address. It's not
8 Andrea. It's an Andrew. One letter off, a "W"
9 versus an "A" at the end of the first name. And
10 there's an Andrew Drygas, who we believe to be
11 her father, who's registered. But his signature
12 is nowhere on any of these petitions.

13 Once again, clerk's error. They put his
14 name on the SVRS, and there's no Andrea Drygas
15 on the SVRS. The only place you'll find her
16 name is on this petition.

17 But she's not registered to vote. She
18 wasn't in January. She wasn't as of two weeks
19 ago at the filing deadline.

20 So based on the comments and discussion and
21 ruling from the previous hearing, it sounds like
22 there are at least three commissioners who are
23 under the belief that there are 500 or fewer
24 signatures.

25 And based on these issues with the

1 petitions that were Exhibits 2A, B, and C, we
2 believe that number should be reduced by a total
3 of eight.

4 But then, additionally, Exhibit No. 1, this
5 person is not being disenfranchised because they
6 were not a registered voter at the time that the
7 petition was signed, submitted, or at the time
8 of the filing deadline.

9 And with that, we would request the
10 Commission to determine that there are fewer
11 than 500 signatures submitted in Congressional
12 District 1, and sustain the challenge under
13 Cause No. 2016-13.

14 CHAIRMAN BENNETT: Okay. Very well.

15 Mr. Brooks?

16 MR. BROOKS: Let me just start by saying
17 what I've said before. As far as I know, and
18 I've read quite a lot of these cases, I do not
19 believe this Commission has ever allowed a party
20 to come in and reduce the certified number; that
21 is, decertify. Didn't happen in the McCain
22 case, where we have 47 arguably defective
23 petitioners. Didn't consider it.

24 When it was over 500 in the Wallace case,
25 where there was 800 -- 486, less than 500, there

1 was also an effort to be made to reduce that
2 number. This Commission did not do it.

3 So I simply tell you it is unprecedented
4 for you to uncertify or decertify somebody.

5 But let me address these issues directly.

6 (Exhibits 25-Young, 26-Young, and 27-Young
7 were marked for identification.)

8 MR. BROOKS: This is 25, 26, and 27.

9 Before I discuss those affidavits, I want
10 to discuss -- let's talk, just briefly, about
11 the magnitude of these two errors on -- or three
12 errors on the petitions themselves.

13 One is that the carrier didn't sign it. I
14 cannot think of a less important thing for a
15 petitioner to do. We know when they were turned
16 in, and we know when they were processed. The
17 only thing that matters is that it was before
18 the petition deadline.

19 But having said that, we sort of went
20 through those statutes, on the carrier, what is
21 supposed to happen. What's supposed to happen
22 is, in this egregious case, without having an
23 address and a -- or a -- the date, the county
24 clerks or the county registration people are
25 supposed to give the carriers an opportunity to

1 come in and correct it.

2 These particular ones were all turned in
3 and processed in very early January, so there
4 was plenty of time for that to happen.

5 As indicated on the two affidavits, it
6 didn't happen. In the case of the two missing
7 dates, the affidavit of Mr. Barclay
8 (phonetically) simply tells you that he got all
9 of those petitions at the Lake County Republican
10 Reagan Breakfast, he signed them all on
11 October 9, and inadvertently left two off, and
12 then, in pertinent part, nobody from Lake County
13 ever contacted him, or anyone at the Young
14 campaign, to inform us and give us an
15 opportunity to come back.

16 Rachel, whose address is missing, was in
17 frequent contact with them, all -- both these
18 counties. An affidavit of Rachel is -- she
19 submitted 74 pages of Todd Young ballots in
20 Lake, Porter, and LaPorte, and one of those
21 pages, she forgot the address.

22 So if the purpose of the address is to be
23 able to get ahold of them in case something else
24 is the matter, there's 73 of those floating
25 around. It's certainly not a mystery to the

1 Democrats what her address is because it's on
2 the very -- she's the one who signed the one for
3 the Andrea Drygas.

4 So I would tell you that this would be the
5 most remarkable, hypertechnical view of any law,
6 to disenfranchise eight people because of the
7 missing date, which doesn't matter to anything,
8 a missing address which everybody had, and in
9 which the local county officials didn't follow
10 proper procedure and give them a chance to come
11 back and fix it.

12 Easy fix. This is not the kind of thing
13 that, in Indiana, we disenfranchise people for,
14 in my opinion. And I hope you agree with that.

15 Now, on the Andrea Drygas situation, I mean
16 we've heard the Democrats tell us that she
17 wasn't registered on this date, that date, and
18 that date, the most important one of which was
19 the filing deadline.

20 Well, if you will look at the full voter
21 registration report, as opposed to the one --
22 only the one that tells you when the effective
23 date is, you will see that she registered on
24 January 13.

25 So forget that somebody hurried out and

1 registered her the day they filed their appeal.

2 She registered on January 13.

3 Where it says "precinct effective date,"
4 that is when it was processed. And for those
5 who are familiar with the voter registration
6 process, you've got to send out some mail and
7 wait seven days. So we know she applied before
8 the deadline. She was processed before the
9 deadline.

10 But let's talk about what Indiana law
11 requires about voter registration for a second.

12 Pursuant to 3-7-26.3-9, a county voter
13 registration office must electronically enter
14 all voter registration information obtained by
15 the county voter registration office into the
16 computerized list on an expedited basis at the
17 time the information is provided to the county.

18 "Expedited basis" is defined in 3-5-2-23.2.
19 And that expedited basis is within 48 hours.

20 Had this application been processed
21 according to law, this would have been
22 completed, and, even with the 7-day waiting
23 period, well before the deadline.

24 So the question is, here she is. She was
25 certified by the local authorities and should

1 have been registered by the time the deadline
2 was, on February 5. No matter how you do the
3 math, that's just an error or omission on the
4 part of the -- the Porter County election
5 officials to not have her registered in time for
6 that deadline.

7 So we would ask that you leave that vote in
8 the total. It was certified by the -- I mean
9 it's sort of like wanting to have this both
10 ways. He argued that even though somebody who
11 was demonstrably eligible to be certified,
12 couldn't be certified, because they didn't fill
13 in the right blank, where there was a clerical
14 error. But now we're saying that somebody that
15 was certified shouldn't have been certified.

16 And I think the whole thing, in total, is
17 that you should not disqualify this voter. She
18 was certified. She should have been registered
19 had the Porter County election officials
20 followed the proper procedures. And we'd be
21 sitting here today not wondering whether she was
22 or wasn't registered before or after the
23 deadline.

24 VICE CHAIRMAN LONG: Do you want to address
25 the forgery?

1 MR. BROOKS: Pardon?

2 VICE CHAIRMAN LONG: I'd kind of like to
3 hear about the forgery. If that's her
4 signature, I think that's sort of important.
5 The signature on her voter registration in no
6 way comports to the signature on that petition.

7 I'd like to hear you explain that. And the
8 Young campaign maybe didn't call her and tell
9 her she made a mistake in it.

10 It's just astounding to me, when the
11 Republican legislature puts these requirements
12 on these petitions, and they end up biting the
13 rear end of the Republican rising star. Then we
14 come out, "Well, this is hypertechnical."

15 It's almost as humorous to me as when we do
16 the campaign finance. And here we get campaign
17 finance violations by legislators. And they
18 come parking over here, and my God, you know,
19 this is -- you passed these damn laws. You've
20 got to live by them.

21 Your party has put these registration
22 requirements upon us. Now, tell me and address
23 the forgery.

24 MR. BROOKS: Well, you are calling it a
25 forgery. I'm not willing to say that.

1 VICE CHAIRMAN LONG: Do you -- is that what
2 you're going to tell me?

3 MR. BROOKS: I'm not -- I get your point
4 that they don't look -- you've got to understand
5 how -- when these things get signed, a lot of
6 these petitions are signed with somebody holding
7 a clipboard, and they're moving around, or
8 whatever.

9 So look. I don't know this person. And I
10 see how you have decided that it's a forgery. I
11 cannot share that --

12 VICE CHAIRMAN LONG: And I wouldn't expect
13 you to.

14 MR. BROOKS: -- view with you.

15 And I would also say, neither did the local
16 voter registration people. So they're the ones
17 who certified her.

18 VICE CHAIRMAN LONG: But the voter
19 registration people didn't have this signature
20 when they certified this on the 6th, because you
21 just said she didn't register until the 13th.

22 Now, how could they compare the signature
23 six days before they got it? Could you explain
24 that to me?

25 MR. BROOKS: They wouldn't have. You're

1 right. They would not have had --

2 VICE CHAIRMAN LONG: My God. Thank you
3 very much. I was really hoping -- I thought,
4 if we'd pass this around the room, we'd get a
5 pretty high percentage that --

6 MR. BROOKS: It still does not change the
7 fact --

8 VICE CHAIRMAN LONG: -- these are not
9 signed by the same people.

10 MR. BROOKS: It still does not change the
11 fact that it's not a sit-down signature,
12 generally, on these certificates.

13 And I would say that the law specifically
14 says that with respect to signatures, you are to
15 give any reasonable doubt whatsoever to the
16 validity of the signature.

17 Because the circumstances are very
18 different when you sign a petition from when
19 you're sitting down to sign something else, I
20 think it would be very sensible to have a
21 reasonable --

22 VICE CHAIRMAN LONG: How do you know she
23 was sitting down to sign something else? Maybe
24 she was standing on her head. I don't know what
25 she was doing.

1 MR. BROOKS: I don't know, either, but
2 neither do you.

3 And that's the point. The point is that it
4 could have been a very different situation, and
5 it likely is. It likely is.

6 VICE CHAIRMAN LONG: And it could be an
7 abject forgery, couldn't it? Would you admit
8 that?

9 MR. BROOKS: I suppose you could reach that
10 conclusion. I don't believe that's the
11 responsible conclusion to reach, given the
12 different circumstances for signing a petition
13 and filling something else out. I don't think
14 that's necessarily --

15 VICE CHAIRMAN LONG: Where's an affidavit
16 from this lady that says she signed that
17 petition? Do you have one of those?

18 MR. BROOKS: I do not, or I would have
19 given it to you.

20 VICE CHAIRMAN LONG: I would have hoped --
21 did you attempt to get one? I mean you got
22 affidavits all over that district for all these
23 things that happened. Couldn't you find that
24 girl?

25 MR. BROOKS: There's a lot of people we

1 tried to find that are really hard to find.

2 VICE CHAIRMAN LONG: I'll bet. That's all
3 I've got.

4 CHAIRMAN BENNETT: Anything else?

5 MR. BROOKS: Let me look. I maybe have one
6 more exhibit.

7 COMMISSION MEMBER OVERHOLT: I guess,
8 before we leave Ms. Drygas, I mean the point
9 that I would raise about it, what I find
10 problematic, regardless of the signatures and
11 the fact that she might have multiple ways of
12 signing her name, which is kind of unusual, but
13 I think you're not disputing that as of
14 January 5, 2016, she was not a registered voter,
15 right? I mean there's no -- there's no dispute
16 regarding that?

17 MR. BROOKS: That's correct.

18 COMMISSION MEMBER OVERHOLT: But this
19 petition -- each individual -- and I know we've
20 all signed these forms, and we're all well
21 aware, I think, of the requirement.

22 But these petitions say that by signing her
23 name, if she, indeed, did sign her name, that
24 she is representing that she resides at the
25 address after her signature, which we're not

1 disputing, that I'm aware of. But also that she
2 is a duly qualified registered voter in Indiana.

3 And it doesn't say that, "I'm going to make
4 sure I'm a registered voter by the time this
5 form has to be submitted." It says that she is
6 duly qualified when she signs this form.

7 And there's no dispute that she was not
8 duly qualified on January 5, 2016, because she
9 didn't try to register until January 13.

10 COMMISSION MEMBER KLUTZ: What date did she
11 sign the form?

12 COMMISSION MEMBER OVERHOLT: January --

13 MR. PATTON: January 5.

14 COMMISSION MEMBER OVERHOLT: Well,
15 January 5 would be the latest, because the
16 carrier signed it on the 5th.

17 COMMISSION MEMBER KLUTZ: Andrea signed
18 this -- we know that Andrea signed this on or
19 before January 5?

20 VICE CHAIRMAN LONG: We know she signed it
21 on or before --

22 MR. PATTON: Based on --

23 VICE CHAIRMAN LONG: -- January 6 --

24 MR. PATTON: -- the petition carrier
25 certification, if we're going to believe the

1 petition carrier certification, yes.

2 COMMISSION MEMBER OVERHOLT: And I would
3 say that --

4 COMMISSION MEMBER KLUTZ: There's --

5 COMMISSION MEMBER OVERHOLT: -- then we're
6 getting into the fact --

7 COMMISSION MEMBER KLUTZ: -- an error in
8 the date.

9 VICE CHAIRMAN LONG: It was certified on
10 the 6th. Look at the second page. The second
11 page says the clerk signed it. Now, did they
12 all make it -- did they have a time warp up
13 there, and they just got the dates wrong? That
14 was -- it had to be signed by everybody on that
15 petition on or before January 6, because the
16 clerk had signed it that day, or the voter
17 registration officer, "I certify these -- these
18 signatures."

19 COMMISSION MEMBER KLUTZ: On Exhibit 2A,
20 what date were these signed on or before?

21 VICE CHAIRMAN LONG: 2A?

22 COMMISSION MEMBER KLUTZ: Yeah.

23 VICE CHAIRMAN LONG: They were signed on or
24 before January 8, because that's the date they
25 were certified.

1 I don't get nervous about what the date of
2 the -- if it's a mistake on the date. But
3 surely to God you're not going to say that the
4 clerk has signed off here, or whatever the title
5 is, voter registration, two of them that have
6 signed off, they've used that -- surely those
7 signatures were all there by that date.

8 And if you want, I mean that's -- I'm --
9 I'm looking at the clerk's certification date as
10 the date that's -- that's the certified date.
11 And they have to have been signed by then.
12 Otherwise, they wouldn't have been certified.

13 MR. PATTON: And if I may, going back to
14 how did this signature get certified in the
15 first place if she wasn't registered, I'll
16 reference you back to the SVRS -- I think it's
17 Exhibit 7 -- where it shows Andrew.

18 If you look at -- if you are a clerk and
19 you're going through all the presidential
20 candidates and the governor candidates and the
21 U.S. Senate candidates, and you're going through
22 all these forms, you have seen so many names and
23 signatures and addresses and dates of birth,
24 it's a blur.

25 So they see this signature of Andrea

1 Drygas. And I can't tell if that's an "E" or an
2 "A" or a "W" at the end.

3 And then they see the address and the
4 name -- at least, certainly, the last name, and
5 all but the very last letter of the first
6 name -- matches with an address for an Andrew
7 Drygas, who is registered. So the clerk's like,
8 "Yeah, I'm going to certify this because that
9 person's registered."

10 But the printed name, if you look at that,
11 that's very clearly Andrea. The date of birth
12 matches up with an Andrea. I mean if we didn't
13 have -- if she had not registered to vote,
14 whether it was January 13 or February 2 or
15 February 10, or whatever, if she hadn't
16 registered to vote, we would have been saying,
17 "Who is this girl? We don't know. We don't
18 know who she is."

19 But now we do. She signed this, at the
20 very latest, on January 5. The signature was
21 certified on January 6. And I think it's an
22 honest mistake of the clerk, because they
23 thought it was an Andrew, because it's Andrew on
24 the SVRS. Not Andrea. Andrew. They thought
25 they were certifying Andrew's signature.

1 So at the time it was signed, at the time
2 it was certified, not registered to vote. At
3 the very earliest, based on Young Exhibit 27,
4 she was registered on January 13.

5 CHAIRMAN BENNETT: All right. Is there
6 anything else from either the petitioner or the
7 respondent?

8 MR. BROOKS: Yeah. I just want to make one
9 comment, that I find it quite amusing that when
10 it comes to Andrew, these poor, overworked voter
11 registration people make mistakes.

12 But when they clearly made clerical errors
13 on at least three of those ones we gave you, no,
14 that's just it.

15 MR. PATTON: But that's a --

16 MR. BROOKS: I don't have -- I don't have
17 anything else to say on these two exhibits.

18 MR. PATTON: It's a two-way street. You
19 can't have it both ways. If we're going to
20 forgive them for the errors that they made and
21 increase the number from 498, then, at the same
22 time, when there's errors when they weren't
23 registered to vote, you -- you gave them more
24 signatures that the clerks made errors.

25 And even though they weren't certified, you

1 gave them two or three more signatures because
2 of the clerk error, when those individuals
3 apparently were registered to vote.

4 And on the flip side, going the other
5 direction on that same road, this was a clerk
6 error by certifying a signature for someone who
7 was not registered to vote. It's a two-way
8 street.

9 CHAIRMAN BENNETT: Anything else from
10 anybody?

11 (No response.)

12 CHAIRMAN BENNETT: Do we have a motion?

13 VICE CHAIRMAN LONG: I move --

14 COMMISSION MEMBER KLUTZ: I actually have
15 some questions.

16 VICE CHAIRMAN LONG: Go ahead.

17 COMMISSION MEMBER KLUTZ: Mr. Brooks, would
18 you mind looking at the Lake petition for me?

19 MR. BROOKS: Any Lake petition?

20 COMMISSION MEMBER KLUTZ: It's designated
21 as 45 at the top.

22 MR. BROOKS: I gave you my only copy -- no,
23 wait a minute. What number at the top?

24 VICE CHAIRMAN LONG: Forty-five.

25 MR. BROOKS: Okay. I'm there.

1 COMMISSION MEMBER KLUTZ: One thing that
2 surprised me, at the bottom, where it says
3 number of valid signatures, it says five.

4 And on the -- on the number of valid
5 signatures on the next page --

6 VICE CHAIRMAN LONG: Mine says eight.

7 COMMISSION MEMBER KLUTZ: Yours says eight?
8 Okay.

9 COMMISSION MEMBER OVERHOLT: You're on 45,
10 right?

11 COMMISSION MEMBER KLUTZ: What's your next
12 page say?

13 VICE CHAIRMAN LONG: Well, that's --

14 COMMISSION MEMBER KLUTZ: Mine was a 45 at
15 the top as well -- I'm sorry. Thirty-two?

16 VICE CHAIRMAN LONG: Yeah, 32.

17 MS. NUSSMEYER: Yeah.

18 MR. BROOKS: Okay. I see it says five.

19 COMMISSION MEMBER KLUTZ: And on the other
20 side it says five valid signatures?

21 VICE CHAIRMAN LONG: Yeah. It's got a five
22 and a circle at the bottom.

23 COMMISSION MEMBER KLUTZ: When I do my
24 count, I get seven. I'm just -- do we have any
25 evidence or any idea what's going on here?

1 MR. PATTON: Well, just to clarify, Line 1
2 shows precinct M16. Line 2 says NR, which I
3 presume means not registered.

4 COMMISSION MEMBER KLUTZ: Correct.

5 MR. PATTON: Line 3 is WCT1. Line 4 is the
6 "dup.," which we've discussed. Line 5 [sic] is
7 WCT3. Line 5 [sic] is, I believe, Hobart 4.
8 And 8 and 9 are Porter, so they would not have
9 been --

10 COMMISSION MEMBER KLUTZ: Okay, that's --

11 VICE CHAIRMAN LONG: Yeah, I agree, that's
12 five.

13 CHAIRMAN BENNETT: Anything else?

14 MR. BROOKS: On this issue, I have -- I
15 have some exhibits for additional votes.

16 CHAIRMAN BENNETT: Well, we should hear
17 those before we determine the --

18 VICE CHAIRMAN LONG: We didn't get notice
19 of that, did we?

20 MR. BROOKS: Pardon?

21 CHAIRMAN BENNETT: Well, let's --

22 MR. BROOKS: We certainly -- we certainly
23 have done it that way ...

24 (Discussion off the record.)

25 MR. BROOKS: Let me just verbally make this

1 motion. In the prior segment, we argued about
2 whether or not the four ones that I've talked
3 about were certified.

4 I would like, now, to draw the Commission's
5 attention to the three, Mr. Wozniak, Mr. Bross,
6 and Mr. Neiswinger. Not Melcher. Melcher
7 didn't have a signature.

8 So I would now ask this Commission to count
9 those back in, not because they were certified,
10 but because they should have been. There's no
11 question that they signed it. There is no
12 question that they were registered and should
13 have been certified. There's no question
14 whatsoever on those three.

15 VICE CHAIRMAN LONG: Hasn't this board
16 already done that? The motion was -- this
17 gentleman explained his vote. He's got 500, and
18 that's got those two signatures in there.

19 MR. BROOKS: Well, I --

20 VICE CHAIRMAN LONG: And so I mean I think
21 we've already -- why are we plowing the same
22 ground over and --

23 MR. BROOKS: It's not the same ground.

24 VICE CHAIRMAN LONG: -- over again? It is
25 the same --

1 MR. BROOKS: No, it's not.

2 VICE CHAIRMAN LONG: -- ground. We've
3 already --

4 MR. BROOKS: I'll tell you why it's not the
5 same ground. It's not the same ground because
6 the whole first argument was what was certified
7 and what was not. You did not believe that the
8 signatures that I suggested were certified.

9 That is not the same subject as should they
10 have been certified, that the clerks or voter
11 registration people made an error. Now that you
12 believe that they weren't certified, you should
13 now consider that a clerk made an error, and
14 they should have been certified.

15 And that is indisputable, and it's a
16 totally different subject.

17 CHAIRMAN BENNETT: Do you have any evidence
18 to present on whether they should have been
19 certified?

20 MR. BROOKS: Well, you've got it. You've
21 got the --

22 VICE CHAIRMAN LONG: -- indisputable --

23 CHAIRMAN BENNETT: I'm talking about those
24 three.

25 MR. BROOKS: Oh, yeah. I have more than

1 that. I have more than that.

2 CHAIRMAN BENNETT: So you have others?

3 MR. BROOKS: Yeah.

4 CHAIRMAN BENNETT: All right.

5 (Exhibit 28-Young was marked for
6 identification.)

7 MR. PATTON: And again, I'll raise the
8 objection. This should have been filed as their
9 own CAN-1 challenge under Section 7 of the form.

10 MR. BROOKS: There's no requirement for a
11 CAN-1 filing when you've been told --

12 COMMISSION MEMBER OVERHOLT: Mr. Brooks --
13 are we still streaming this? Because you need
14 to try to be on your own microphone.

15 MR. BROOKS: What you have is an affidavit
16 from Rachel Null (phonetically). If you look on
17 the second page, you will see --

18 MR. PATTON: May I have one, please?

19 MR. BROOKS: I'm sorry. This copy didn't
20 come out very well, but I'm going to show you.
21 And the reason for rejection was no signature.
22 I'm going to read that -- it's on my copy -- but
23 it says no signature.

24 (Discussion off the record.)

25 CHAIRMAN BENNETT: Go ahead.

1 MR. BROOKS: So the bottom line here is,
2 it's patently wrong that there's no signature,
3 because there is a signature.

4 But we've got an affidavit from Rachel
5 saying that she signed the petition that's
6 attached, and that's her name.

7 So this is one that should be added back
8 in. It clearly should have been certified.

9 (Exhibits 29-Young, 30-Young, and 31-Young
10 were marked for identification.)

11 MR. BROOKS: This is Exhibit 29, Exhibit
12 30, and Exhibit 31.

13 Now, Patricia Wieser (phonetically), she
14 signed as Patricia Wieser. Her married name,
15 and you'll see from the divorce, she -- her
16 previous name was Wieser. She married Mr. Tile
17 (phonetically). And obviously, she has changed
18 her marital status again.

19 Pursuant to statute, I don't know -- can
20 you see the name well enough to see if it's
21 Patricia Wieser?

22 COMMISSION MEMBER KLUTZ: Is that the
23 same --

24 MR. BROOKS: Yeah. It's just a little
25 better copy.

1 A voter whose name is changed may vote in
2 an election by filing with the circuit court or
3 the voter's registration a verified statement.

4 So her change of name has not changed her
5 registration status. She's still entitled to
6 vote. She's still registered. And that was
7 presumably rejected. It says -- I think it says
8 "not registered." But, in fact, she is
9 registered. She's registered at the address
10 that's there.

11 If you look at the signature, it is -- the
12 first name is signed the same. Everything is
13 the same except a marital status change.

14 VICE CHAIRMAN LONG: It seems to me the
15 Patricia that married Tile is Patricia Ann
16 McClellan (phonetically).

17 MR. BROOKS: I would say, having looked at
18 these records a little bit, I would say she's
19 had a --

20 VICE CHAIRMAN LONG: Are you knowing or are
21 you guessing?

22 MR. BROOKS: No. I know the answer to
23 that. Her maiden name was McClellan. She
24 married Wieser, divorced Wieser, married Tile,
25 and for that reason, has taken the name back.

1 But since you're apt to look at signatures --

2 VICE CHAIRMAN LONG: Well, I didn't --

3 MR. BROOKS: -- those signatures match.

4 VICE CHAIRMAN LONG: Well, I didn't --

5 MR. BROOKS: Those signatures --

6 VICE CHAIRMAN LONG: -- say that for sure.

7 MR. BROOKS: -- match. It's a lot closer
8 than anything else you're going to get.

9 So we submit that she is a legitimate
10 registered voter. She should not have been
11 rejected for having a name change, and a change
12 in marital status. She should be added to the
13 list.

14 (Exhibits 32-Young and 33-Young were marked
15 for identification.)

16 MR. BROOKS: This is 32 and 33. So
17 Mr. Nordrine (phonetically) signed this
18 petition. Mr. Nordrine is a registered voter at
19 that address. They indicate "not registered."

20 I would tell you what the -- there's one
21 little discrepancy, and that is he wrote his
22 birthdate being 7/20/15. In fact, his birthdate
23 is 7/20/54.

24 So as he's signing, and he's been signing
25 checks all day, he got partway through and he

1 wrote '15. I'm pretty sure that nobody thought
2 that he was a one-year-old when he signed this
3 thing. It's a minor discrepancy.

4 The date of birth is not required to be on
5 the petition as a matter of law, by the way. So
6 it is -- it's an extra thing not required by
7 law. It's a pretty simple error. This person
8 is registered and should have been certified.

9 (Exhibits 34-Young, 35-Young, 36-Young, and
10 37-Young were marked for identification.)

11 MR. BROOKS: This is 34. This is sort of
12 an interesting case, more than some. Mr. Carson
13 has a Crown Point -- can you guys read that?

14 VICE CHAIRMAN LONG: No, not at all. You
15 might as well have handed over a blank page.

16 MR. BROOKS: I'll show you in a minute.
17 It's got his address here in Crown Point. It
18 was turned in late. And it's indicated that
19 he's not registered.

20 So he is registered, as you can see from
21 his voter registration, in Porter County, with
22 the same address that he put on his petition,
23 Crown Point.

24 For some reason -- and we found a map that
25 doesn't really -- it's just a mystery to me as

1 to how you can have a Crown Point address but be
2 registered in Porter County, but he is. And
3 it's the same person, the same address.

4 When Lake got that, they should have --
5 they have access to the whole -- the whole voter
6 registration process. I think the process
7 should be while you have to certify, as a matter
8 of law, those people in your own county, you
9 can't -- it doesn't say you can't certify
10 somebody else from a county -- or send it --
11 send it to another.

12 So here's a case of a clearly registered
13 voter, clearly within the first --

14 VICE CHAIRMAN LONG: Let's correct
15 something. You just said that Lake County had
16 access to the whole file; did you not?

17 MR. BROOKS: I believe they do.

18 MS. NUSSMEYER: It's my understanding, and
19 Dale, correct me if I'm wrong, that the
20 county -- their access to the Statewide Voter
21 Registration System is just to their county.
22 They would not have -- they could do a statewide
23 search, but they would only have --

24 MR. BROOKS: I've got some screenshots from
25 people in counties other than what I was --

1 MS. NUSSMEYER: Well, maybe it's just
2 access to --

3 MR. BROOKS: I think they've got
4 statewide -- now, it used to be, I think, they
5 were a lot pickier about that. But I think they
6 have countywide access now.

7 MR. SIMMONS: They can do a voter search,
8 but I'm not sure they would be doing that in a
9 petition processing --

10 MR. BROOKS: No, no, no. I'm just saying
11 it's possible for voter registration to pull up
12 that screenshot, even though it's in Porter.

13 VICE CHAIRMAN LONG: Do you want them to do
14 that on everybody that's not registered, do a
15 statewide search on them?

16 MR. BROOKS: Well, here's my --

17 VICE CHAIRMAN LONG: Is that what you're
18 proposing?

19 MR. BROOKS: Well, here's my point to you.
20 We're looking for, did we have people who should
21 have been certified that are registered voters?
22 That's a petition that is signed by a registered
23 voter in the first congressional district.
24 That's my -- that is my --

25 VICE CHAIRMAN LONG: -- clerk up there in

1 voter's registration --

2 MR. BROOKS: That is my --

3 VICE CHAIRMAN LONG: -- certify this now,
4 if you try to get them to certify this now, as
5 their statutory duty?

6 MR. PATTON: It's too late.

7 VICE CHAIRMAN LONG: I'm asking Mr. Brooks.
8 If they've got the voter registration office in
9 Lake County, have you asked them to certify
10 these people?

11 MR. BROOKS: Well, I tried not to --

12 VICE CHAIRMAN LONG: Either you have or you
13 haven't.

14 MR. BROOKS: Let me -- let me answer the
15 question this way. I have tried not to be
16 critical of one party or the other in this
17 process.

18 VICE CHAIRMAN LONG: I'm just asking --

19 MR. BROOKS: Let me answer your question.

20 VICE CHAIRMAN LONG: I'm asking --

21 MR. BROOKS: You asked me a question. Can
22 I answer it?

23 VICE CHAIRMAN LONG: Can he answer the damn
24 question?

25 MR. BROOKS: I'm going to --

1 CHAIRMAN BENNETT: One at a time.

2 MR. BROOKS: The answer to the --

3 CHAIRMAN BENNETT: Do you understand the --

4 MR. BROOKS: -- question is --

5 CHAIRMAN BENNETT: Do you understand the
6 question?

7 MR. BROOKS: Maybe you should repeat it.

8 VICE CHAIRMAN LONG: I will. Did you ask
9 the voter registration office in Lake County to
10 correct what you think is their error?

11 MR. BROOKS: And my answer to you is that
12 we could not get the Democrat member of voter
13 registration up there to sign an affidavit that
14 they said -- read and said was true because the
15 Democrat party wouldn't allow them to sign an
16 affidavit.

17 And I can give an affidavit saying that. I
18 was trying to keep that out of here.

19 But if you think that I've got some
20 prospect of going and getting two signatures
21 from a Republican and a Democrat in Lake County
22 at this point, I think that's naive.

23 VICE CHAIRMAN LONG: Have you ever heard of
24 a subpoena?

25 MR. BROOKS: I can't get a subpoena. As I

1 understand it, only this Commission can get a
2 subpoena. I asked Dale about getting subpoenas,
3 but unlike trial court, I can't just write a
4 subpoena.

5 VICE CHAIRMAN LONG: And did Dale tell you
6 how to get one?

7 MR. BROOKS: Yeah, he told me how to get
8 one. He told me --

9 VICE CHAIRMAN LONG: And did you get --

10 MR. BROOKS: -- that all four commissioners
11 had to be together and vote in an affirmative to
12 do it. Well, you guys weren't together until
13 today.

14 So for me to get a subpoena between here
15 and last -- what, at the time the challenge was
16 filed, was impossible. So I'm okay with getting
17 one. I wanted to.

18 This is an issue I'm going to come back to,
19 but I've got a couple of intervening ones.

20 The statute requires that an address, when
21 they're being certified, requires that it be the
22 resident's address as shown on the voter
23 registration roll or system.

24 The form does not ask that question. The
25 form asks what your current residence is.

1 So, for example, in this case, a college
2 student wrote his residence as where he was
3 living. But he is a registered voter in that
4 county. The form in this case, if you say,
5 "What's your registration address," then they
6 can either screw up or not.

7 But this form affirmatively misleads people
8 to what the question is. If I move, I still am
9 registered at that address. I can, pursuant to
10 a -- I can -- I can go back and vote.

11 But this address disenfranchises -- this
12 form disenfranchises people who move, but are
13 still registered, because it doesn't ask them
14 the right question. They would have to lie on
15 that form, the way it's worded, in order to be
16 counted, when, in fact, they're registered
17 voters. And I've got a lot more of those, but
18 that's the situation here.

19 As you can see, he listed an address that
20 is a local college, Hyles-Anderson College.
21 That's the address he lived at. That's a
22 college.

23 This form is essentially disenfranchising
24 college kids because they're going to school,
25 listed as their address, even though they're

1 still registered at home. And that's a defect
2 in the law, which, if it was ambiguous, it would
3 be one thing. But it's actually affirmatively
4 misleading.

5 I believe this vote should be counted and
6 added to the total.

7 (Exhibits 38-Young through 44-Young were
8 marked for identification.)

9 MR. BROOKS: This is 38 and 39.

10 This is a case where, on this particular
11 petition, Mr. Ashford has signed -- or printed
12 his name, his address. He is a registered
13 voter, as you can see. But somebody had already
14 scribbled in the signature mark, and he didn't
15 sign it because there was no space there.

16 And here's an affidavit from him saying he
17 filled out the petition. The signature line was
18 already -- it was his intention to sign, and
19 he's a registered voter, so I would request that
20 this individual get added back in.

21 VICE CHAIRMAN LONG: Would you agree he
22 didn't sign this petition?

23 MR. BROOKS: I do.

24 VICE CHAIRMAN LONG: Okay. I just wanted
25 to make sure.

1 MR. BROOKS: Yes.

2 VICE CHAIRMAN LONG: You're asking us to
3 count a signature that -- right?

4 MR. BROOKS: Because it's a defect in the
5 form.

6 VICE CHAIRMAN LONG: What's the allotment
7 of time? I've got plans this evening.

8 MR. BROOKS: I've given you enough to get
9 up over 500. We can stop now, if you want to go
10 ahead and say that.

11 CHAIRMAN BENNETT: I mean I think that's
12 the problem, is that we are challenging all of
13 these, so we --

14 VICE CHAIRMAN LONG: I have to --

15 CHAIRMAN BENNETT: -- have to listen to the
16 evidence.

17 VICE CHAIRMAN LONG: I immediately -- I've
18 got plans this evening, and I'll ask
19 Ms. Overholt to walk out with me, and this
20 hearing's over.

21 Now, we either get it over, or be done.
22 We've got people all over the state here coming
23 in for this. And you set the rules, and you set
24 the time, and the -- the time we have the
25 petition, we -- you let it go different.