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TRANSCRIPT OF PROCEEDINGS
OF THE INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

Hearing heard on the 23rd day of February, 2018,
at the Indiana Government Center South, 402 W.
Washington Street, Conference Room B, before the
Indiana Election Committee.

A Stenographic Record By:
Craig Williams, CSR, RPR
Notary Public
Stenographic Reporter

In the Matter Of:

Indiana Election Commission Public Session Agenda

TRANSCRIPT OF HEARING

February 23, 2018



CONNOR REPORTING

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APPEARANCES

INDIANA ELECTION COMMISSION:

BRYCE H. BENNETT
Chairperson

KAREN CELESTINO-HORSEMAN
Proxy for Vice Chairman Anthony Long

MEMBER SUZANNAH WILSON OVERHOLT

MEMBER ZACHARY F. KLUTZ

INDIANA ELECTION DIVISION STAFF:

BRAD KING
Co-Director

ANGIE NUSSMEYER
Co-Director

MATTHEW R. KOICHEVAR
Co-General Counsel

DALE SIMMONS
Co-General Counsel

1 (Time noted: 1:35 p.m.)

2 CHAIRPERSON BENNETT: I call this meeting
3 of the Indiana Election Committee into session
4 on Friday, February 23rd, 2018, to order. The
5 following members of the commission are present:
6 Myself, Bryce Bennett, Chair. We have Karen
7 Celestino-Horseman, Proxy for Vice Chairman
8 Anthony Long, who just joined us. Member
9 Suzannah Overholt is here, and Member Zachary
10 Klutz. The Indiana Election Division Staff, we
11 have Co-Directors Brad King and Angela
12 Nussmeyer, and we have Co-General Counsels Dale
13 Simmons and Matthew Kochevar.

14 Our court reporter today is Craig Williams
15 from Connor Reporting. Before we begin today's
16 proceedings, I want to remind everyone on behalf
17 of the court reporter to identify yourself when
18 you begin to speak, spell your name when
19 identifying yourself, speak clearly, and do not
20 speak at the same time as others.

21 DOCUMENTATION OF COMPLIANCE WITH OPEN DOOR LAW

22 CHAIRPERSON BENNETT: At this time I'd
23 request Mr. King and Ms. Nussmeyer to confirm
24 that the commission meeting has been properly
25 noticed as required under the open door laws.

1 CO-DIRECTOR KING: Mr. Chairman, members of
2 the Commission, the notice for this meeting was
3 posted in accordance with the Indiana Open Door
4 Law.

5 CHAIRPERSON BENNETT: Thank you.

6 I now recognize Mr. King and Ms. Nussmeyer
7 to present minutes of the January 5th, 2018
8 Indiana Commission meeting.

9 APPROVAL OF JANUARY 5, 2018 COMMISSION MINUTES

10 CO-DIRECTOR KING: Mr. Chairman, members of
11 the Commission. The January 5th, 2018 minutes
12 were reviewed by Co-Director Nussmeyer and
13 myself and are presented to you with our
14 recommendation for your approval.

15 CHAIRPERSON BENNETT: Is there a motion to
16 approve these minutes as presented?

17 MEMBER KLUTZ: So moved.

18 CHAIRPERSON BENNETT: We have a motion. Is
19 there a second?

20 VICE CHAIR CELESTINO-HORSEMAN: Second.

21 CHAIRPERSON BENNETT: We have a second. Is
22 there any discussion?

23 Hearing none, all in favor, say aye.

24 All opposed, say nay.

25 The ayes have it, and the motion to approve

1 the minutes is adopted. We will sign the
2 minutes.

3 CANDIDATE CHALLENGE PROCEEDINGS

4 CHAIRPERSON BENNETT: We'll now move
5 forward to the adoption of candidate challenge
6 hearing procedures. In the past, the Commission
7 has followed procedures for conducting candidate
8 challenge hearings, and I move that the
9 Commission use the following procedures today:

10 When each candidate challenge is called,
11 the hearing will begin by recognizing the
12 Election Division staff to provide information
13 about the documents provided to the Commission
14 members, including candidate challenge forms and
15 the notice given to the candidate and
16 challenger. Unless there is objection, the
17 documents provided to the Commission by the
18 Election Division will be entered into the
19 record of this meeting.

20 After the Election Division staff completes
21 its presentation, the challenger will be
22 recognized first. The challenger or the
23 challenger's authorized representative, if
24 written authorization has been filed with the
25 Election Division, may present their case for no

1 more than five minutes unless the Commission
2 votes to allow additional time to the presenter.

3 Commission members may ask questions during
4 a presentation, but the time spent answering
5 these questions will not be counted against the
6 presenter's time. The Election Division may
7 signal the chair when the presenter's time is
8 up.

9 If the presenter offers additional
10 documents or other physical evidence not
11 previously received by the Commission, then the
12 original must be provided to the Election
13 Division, that would be Dale Simmons, to
14 preserve for the record.

15 The candidate or the candidate's authorized
16 representative, if written authorization has
17 been filed with the Election Division, will be
18 recognized following the last presentation by a
19 challenger. The candidate may present their
20 case for no more than five minutes unless the
21 Commission votes to allow additional time for a
22 presenter.

23 Following the presenter by a challenger,
24 the candidate may cross-exam the challenger.

25 Following the presentation by a candidate, a

1 challenger may cross-exam the candidate. The
2 cross-examination in all cases is limited to two
3 minutes, unless the Commission votes to allow
4 additional time.

5 The cross-examination must be limited to
6 questions regarding statements made by the
7 presenter. Following presentation by the
8 candidate, the challenger may present a rebuttal
9 of no more than two minutes.

10 The Commission may dismiss the cause of any
11 challenger who has failed to appear to testify
12 before the Commission.

13 Is there a second to my motion for the
14 Commission to adopt these procedures for today's
15 candidate challenge hearings?

16 IEC MEMBER KLUTZ: Second.

17 CHAIRPERSON BENNETT: Is there any
18 objection by Commission members to these
19 procedures?

20 Hearing none, is there any further
21 discussion?

22 Hearing no discussion, all in favor, say
23 aye.

24 All opposed, say nay.

25 The ayes have it, and the motion is

1 approved.

2 Everyone present who plans to testify
3 before the Indiana Election Commission regarding
4 any matter today, including campaign finance and
5 voting system matters, please stand for the
6 administration of the oath.

7 (All prospective people intending to
8 testify before the Indiana Election Commission
9 stood and were jointly sworn in.)

10 CHAIRPERSON BENNETT: We will now begin
11 consideration of candidate challenges. I remind
12 everyone to please identify themselves before
13 you begin, please.

14 EARL HARRIS, JR.

15 Cause No. 2018-6

16 CHAIRPERSON BENNETT: The first challenge
17 we will address is the challenge to Earl Harris,
18 Jr. And that is Cause No. 2018-6 in the matter
19 of the challenge to candidate Earl Harris, Jr.,
20 candidate for the Democratic Party nomination
21 for state representative in District 2. The
22 Election Division has provided a copy of the
23 candidate filing challenge form with
24 attachments, a copy of the notice given in this
25 matter, and an appearance entered on behalf of

1 the candidate Mr. Chin, identified as Scott
2 Chinn on behalf of the candidate.

3 At this time I would recognize Rosa Maria
4 Rodriguez, challenger, for a presentation.

5 MS. RODRIGUEZ: Good afternoon. I'm not
6 familiar with the setting, so where do I stand,
7 I sit?

8 CHAIRPERSON BENNETT: You're perfect where
9 you are. You may sit if you'd like.

10 MS. RODRIGUEZ: I would prefer. Thank you
11 so much.

12 I'm Rosa Maria Rodriguez. Rosa, R-O-S-A,
13 M-A-R-I-A, Rodriguez, R-O-D-R-I-G-U-E-Z.

14 May I continue?

15 CHAIRPERSON BENNETT: Yes, you may.

16 MS. RODRIGUEZ: Hello, my name is Rosa
17 Maria Rodriguez. On May the 8th, 2016, I had
18 submitted a candidate's filing challenge on Earl
19 Harris, Jr. I stand before you today because
20 the same matter of challenge criteria in 2016
21 still is present today. I am requesting a full
22 and analytical detailed investigation on all
23 proof that I submitted in 2016. This same
24 documentation stands active today.

25 Candidate Earl Harris, Jr. for State

1 Representative, Second District, as I stated
2 before, has maintained his voter registration.

3 2. He's voted in the North Township
4 District Precinct 30 of which he is not a
5 resident.

6 3. On or about January 6th, 2016, and
7 January 11, 2018, Mr. Harris filed for candidacy
8 for State Representative, Second District.
9 Whereas, Mr. Harris did not and does not live in
10 the state of Indiana Second District. He did
11 not live in the Indiana Second District in the
12 2016 Indiana election. He does not presently
13 live there, which makes him ineligible to run in
14 this present election as representative for
15 Second District.

16 Furthermore, Mr. Harris continues to
17 permanently live here in Indianapolis.

18 I recognize that under the laws of Indiana,
19 Harris is entitled to a presumption that his
20 voter registration and his running for Indiana
21 State Representative was lawful. I know all
22 relevant evidence that has been submitted and
23 circumstances must be taken into account,
24 including the knowledge and intent of the voter
25 and candidate.

1 I ask the Indiana Election Commission if
2 there's even a smidgen of a doubt in your mind,
3 as it is in the minds of many of the residents
4 that live in the Second District, that Earl
5 Harris, Jr. is representing and have confirmed
6 that he does not live in the Second District. I
7 ask that you take very seriously the evidential
8 proof I have submitted and that you look out for
9 the best interests of the constituents of the
10 Second District.

11 Subject to prosecuting authorities proving
12 all of the required elements beyond reasonable
13 doubt, either or both of these actions
14 constitute violations to the Indiana Election
15 Code. It is important for you to know that the
16 voters, the constituents in the state of Indiana
17 and especially those in the Second District
18 deserve to know the truth.

19 I recognize Mr. Harris' rights to
20 procedure, due process, including a full
21 opportunity to rebut the proof before you today.
22 But again, there is room for possible violations
23 of the law. I implore you not to reject the
24 requests of an investigation and obtain the
25 truth so all are held accountable for their

1 actions and by the law.

2 I'm not asking this for myself but rather
3 for the voters, the constituents of the Second
4 District and to hold everyone accountable,
5 because we work for them regardless who wins.

6 In the interest of promoting the highest
7 possible level of confidence in the election
8 process and this Election Commission, your
9 endeavors to speak the truth to elevate credible
10 candidates to represent the voters in our state
11 and it is upon you. To allow circumventing the
12 law, they stated ignorance is not acceptable.
13 To permit a candidate, regardless of who they
14 are or who they are related to, to run for
15 office when the residency is questionable is not
16 acceptable. It cannot be allowed to continue.
17 The voters in Indiana Second District, and even
18 throughout the state of Indiana, know the truth
19 about politicians. Even those that walk in the
20 halls --

21 CHAIRPERSON BENNETT: One minute remaining.

22 MS. RODRIGUEZ: -- they know the truth.
23 The voters in Second District deserve to be
24 treated with dignity and with respect. And
25 giving candidates that forthright and just by

1 giving us the assurance that their
2 representatives are truthful of the residency
3 and actions because we vote for them, we owe
4 them to do the right thing.

5 I provided factual evidence taken from
6 inserts of Mr. Harris' very own Facebook page
7 accounts showing his continuous living in
8 Indianapolis. I have proven evidence of
9 Mr. Harris' homestead. I felt that on
10 June 15th, 2016, ignorance of the law was
11 superseded and laws of Indiana were
12 circumvented.

13 CHAIRPERSON BENNETT: Thank you,
14 Ms. Rodriguez, your time is up. You might want
15 to stay there during cross-examination.

16 Mr. Chinn, I recognize you.

17 MR. CHINN: No questions at this time,
18 Mr. Chairman.

19 Any questions from the Commission?

20 VICE CHAIR CELESTINO-HORSEMAN: Yes, sir.

21 QUESTIONS BY VICE CHAIR CELESTINO-HORSEMAN:

22 Q So when Mr. Harris moved to 4114 Butternut
23 Street in Chicago, Illinois, did he take the
24 homestead exemption for that home as well?

25 A No, he kept the homestead exemption here in

1 Indianapolis, though.

2 Q So if he kept the homestead exemption in
3 Indianapolis, because he considers -- oh, I see
4 what you are saying. So he kept it here and did
5 not --

6 A Yes, until June 14th.

7 Q June 14th of 20- --

8 A 2016.

9 Q And that would have been after he filed?

10 A Yes.

11 Q So now we just received these, so I haven't had
12 a chance to go through everything.

13 A That's okay.

14 Q So can you tell me what other documentation you
15 have in here that shows that he's living in
16 Indianapolis?

17 A If you look at his Facebook, you will see a
18 timeline that I -- on the inserts of the
19 Facebook that continues his living here and just
20 visiting East Chicago. During the time of the
21 election, what he did is he would appear for
22 activities and then return back. I believe in
23 March of 2016 he then changes the address of his
24 business, but the business is still here.

25 MEMBER WILSON OVERHOLT: If I might,

1 Ms. Horseman.

2 EXAMINATION,

3 QUESTIONS BY MEMBER WILSON OVERHOLT:

4 Q Ms. Rodriguez, under the law, though, the
5 residence requirement is that it's for one year
6 prior to the election residing in the House
7 District, one year prior to the election.
8 Everything you submitted is what you submitted
9 to your prior challenge.

10 A Right.

11 Q And your timeline stops in 2016, which is
12 obviously more than a year before this election.
13 Do you have any evidence that you're claiming
14 that supports your argument?

15 A I do. All you have to do is get on your phone,
16 go on Facebook --

17 Q No, that's not my job, that's your job.

18 A I understand that.

19 Q What evidence do you have for the election --
20 and sorry, Counselor, I assume we're talking
21 about the election in November, not the primary.
22 So the time period that is at issue is actually
23 November of 2017, whatever day in November is a
24 year before the election, through November of
25 2018. That's when he has to have residency. Do

1 you have anything --

2 A And I can get that. I don't have it here
3 because I didn't go --

4 Q This is your chance.

5 A Okay. But my argument still stands, that at the
6 conception, he was planted in East Chicago. And
7 if you look at the minutes of June 15th, you
8 will see that he says that his father passed
9 away on the 23rd. On the 26th, 27th, because he
10 filed his registration on the 27th, that him and
11 his mother came down here, grabbed some clothes
12 and then went back.

13 Q But again, that time period isn't relevant here.
14 So you've answered my question, you don't have
15 any evidence to present to us today?

16 A Not at this time, no.

17 EXAMINATION,

18 QUESTIONS BY VICE CHAIR CELESTINO-HORSEMAN:

19 Q Just to make sure that I'm clear, so Mr. Harris
20 filed for office when his father died, right,
21 2015?

22 A Yes, he ran for office.

23 Q And that was a special election that he was
24 elected?

25 A No, I'm sorry, I stand corrected. His mother

1 took over the end of the candidacy, then
2 Mr. Harris filed during the election for the
3 next election.

4 Q So his first filing then was in 2016?

5 A Yes.

6 Q Is that right, 2016 or 2017?

7 A No, 2016.

8 MEMBER WILSON OVERHOLT: The one at issue
9 is 2018.

10 Q Okay, so now I understand. That was before, the
11 2016, and the Commission said no.

12 A What occurred was that at the time I didn't know
13 that Mr. Harris did not live in East Chicago. I
14 found out after the election, actually a week
15 after. And so that's when my efforts were to
16 attempt to expose him.

17 But, even after -- and I believe that the
18 Commission circumvented the law because at the
19 time my argument was the homestead, that he
20 continued having the homestead. Their answer to
21 me was that they did not want to disenfranchise
22 the voter. So I'm thinking, okay, I can
23 understand that, for whatever reason, and I
24 really don't know the reason. And he admits
25 that he changed his homestead the day before we

1 came here before the Commission.

2 VICE CHAIR CELESTINO-HORSEMAN: So, in
3 other words, as Commissioner Overholt said, his
4 homestead exemption, everything had been
5 changed --

6 A The day before.

7 Q -- by 2017, the year before this November
8 election, going back to November of last year,
9 everything had been changed?

10 A Yes. And even put that aside, Mr. Harris does
11 not live in East Chicago.

12 CHAIRPERSON BENNETT: Can I just ask then.
13 You need to understand the relevant time period
14 is November 2017 to November 2018. Unless you
15 have some evidence of residency after November
16 2017, that's the only thing relevant in my mind
17 at this point.

18 MS. RODRIGUEZ: And I understand it, and
19 you have to understand I figured all this was
20 going to happen, and that's okay. But you have
21 to understand that I as a resident, I had to
22 bring it forward. Even if I walk away empty
23 handed, that's okay. The residents know and
24 that is enough. My duty was to report that
25 Mr. Harris does not live in my community. And

1 for him to continue representing it is illegal
2 and the voters will have that choice.

3 CHAIRPERSON BENNETT: Anything further, any
4 further evidence?

5 MS. RODRIGUEZ: No, not at this time.

6 CHAIRPERSON BENNETT: At this time, I would
7 recognize counsel for Mr. Harris. And you have
8 no cross-examination; is that correct?

9 MR. CHINN: I don't.

10 CHAIRPERSON BENNETT: So you may be
11 excused.

12 MS. RODRIGUEZ: Thank you.

13 MR. CHINN: Thank you, Mr. Chairman,
14 members of the Commission. For the record, my
15 name is Scott Chinn, I'm a lawyer at Faegre
16 Baker Daniels Law Firm and I'm here today
17 representing Representative Earl Harris, Jr.

18 If I might, members of the Commission, the
19 Commission decided this question, as I think you
20 now know, after listening to some testimony from
21 the challenger and reflecting on the answers to
22 your own questions. The Commission decided this
23 question on 2016. It's a challenge to the
24 candidacy now for the 2018 cycle based on
25 residency brought by the same challenger. It's

1 against the same candidate. The allegations are
2 the same. The evidence is the same. I think
3 you've now had testimony before you that there's
4 no new evidence of anything that was raised in
5 2016.

6 We filed earlier this week a motion for
7 summary ruling in this matter on the basis of
8 collateral estoppel, the idea that this
9 Commission has decided this exact question in
10 2016 based on the same evidence, the same
11 allegations.

12 I did not put a certified copy, but I took
13 the liberty of looking up the minutes from that
14 proceeding, June 15th of 2016, and with
15 reference to page 64 of those minutes.

16 Mr. Chairman, I'd be happy -- again not a
17 certified copy, but just for the record I'd be
18 happy to present this exhibit and hand it to
19 Mr. Simmons, if I may. They're the minutes of
20 your previous meeting on June 15th, 2016.

21 So on page 64 of those minutes, the
22 reflection of this Commission's vote to deny the
23 challenge under the identical circumstances that
24 are presented here. In our motion for summary
25 ruling filed earlier this week, we asked the

1 Commission to take administrative notice of its
2 prior decision in 2016 and would ask for a
3 denial of the challenge on that basis
4 without (inaudible).

5 Now, I certainly will reserve the right if
6 you decide that's not proper under the
7 circumstances to ask Mr. Harris a few questions.
8 But I think under the circumstances and given
9 especially the fact that the challenger had an
10 opportunity to be heard to determine whether

11 there was any new evidence or any new
12 allegations whatsoever, and it's clear that
13 there are not. I would put that motion squarely
14 in front of the Commission.

15 CHAIRPERSON BENNETT: Thank you. Now, when
16 you say that it's the same case, are you saying
17 that because there was no new evidence presented
18 here today?

19 MR. CHINN: Well, it means all the elements
20 of collateral estoppel. So you have the same
21 parties, right, the same circumstances, the same
22 allegations.

23 CHAIRPERSON BENNETT: The circumstances are
24 a little different because there's been more
25 time elapsed.

1 MR. CHINN: Well, okay, but it's a
2 different election cycle, and that's why I
3 didn't object to her putting on her evidence. I
4 didn't stand up and object her putting on the
5 evidence. She had the opportunity to present
6 any new evidence whatsoever. But the parties
7 are the same, the circumstances are the same,
8 except for the new election cycle. So under the
9 doctrine of collateral estoppel, the challenge
10 must be denied with no new evidence. In fact,
11 if you look at her filing --

12 CHAIRPERSON BENNETT: That's the key, no
13 new evidence.

14 MR. CHINN: No new evidence at all. If you
15 look at her filing and compare it to the filing
16 last time, it's virtually the same stack of
17 papers, and I think Ms. Overholt mentioned that
18 the timeline stops in 2016.

19 VICE CHAIR CELESTINO-HORSEMAN: Was she
20 correct when she said that at that meeting they
21 said the challenge was brought after the
22 election, but the concern of the Commission was
23 not to disenfranchise the voters because it was
24 brought after the election, so it seems to me
25 this is a different circumstance than bringing

1 it before the election.

2 MR. CHINN: I think the minutes speak for
3 themselves.

4 VICE CHAIR CELESTINO-HORSEMAN: I haven't
5 seen them.

6 MR. CHINN: I understand. But that's why
7 I'm asking the Commission to take notice of its
8 own prior ruling, because I think the minutes
9 speak for themselves that the Commission decided
10 fully on the merits to deny the merits of the

11 challenge after full testimony from both sides.

12 There was a very voluminous evidentiary record
13 dealing with all of the residence issue.

14 MEMBER WILSON OVERHOLT: I understand your
15 argument. I think because of the requirement
16 that it's a one-year residency, there's a
17 one-year residency requirement prior to each
18 election, so I think we understand that we ruled
19 on this issue with respect to the 2016 election.

20 I think with respect to the 2018 election,
21 because of the fact that the residency
22 requirement was kind of this roll-in -- I would
23 read it as a roll-in requirement, so I think in
24 terms of the notion that collateral estoppel
25 applies because of a ruling with respect to

1 2016, I don't see that that ruling can impact us
2 with respect to 2018, knowing that the
3 evidence -- but knowing also that it's a new
4 time frame that applies, 2016 evidence is not
5 relevant to this election.

6 CHAIRPERSON BENNETT: I agree with your
7 context, but again back to the point of no new
8 evidence.

9 MEMBER WILSON OVERHOLT: Right, right. I
10 mean, we can resolve the issue, I don't know we
11 can resolve it based on our 2016 ruling.

12 VICE CHAIR CELESTINO-HORSEMAN: Right now I
13 am inclined to deny the motion and then also
14 deny the challenge.

15 CHAIRPERSON BENNETT: Is that your motion?

16 VICE CHAIR CELESTINO-HORSEMAN: Yes, I'll
17 make it a motion, deny the motion and deny the
18 challenge.

19 CHAIRPERSON BENNETT: Is there a second?

20 MEMBER KLUTZ: I'll second that.

21 CHAIRPERSON BENNETT: There's been a motion
22 and a second.

23 All in favor, say aye.

24 All opposed, say nay.

25 The ayes have it, the motion passed to deny

1 and deny.

2 MR. CHINN: Thank you, Mr. Commissioner.

3 CHAIRPERSON BENNETT: Next we move to
4 consideration of --

5 I'll move for a vote on a straight denial
6 of the challenge, just so the record is clear.

7 So I move that the challenge be denied. Is
8 there a second to that?

9 VICE CHAIR CELESTINO-HORSEMAN: Second.

10 CHAIRPERSON BENNETT: Any discussion?

11 Hearing none, the motion of the challenge
12 to deny, say aye.

13 Opposed, say nay.

14 The ayes have it, the motion carried,
15 challenge denied.

16 CHERYL ASHLEY-ROBBINS CHALLENGE

17 Cause No. 2018-7

18 CHAIRPERSON BENNETT: We'll now move on to
19 the Cheryl Ashley-Robbins challenge, Cause
20 No. 2018-7, In the Matter of the Challenge to
21 Candidate: Cheryl Ashley-Robbins, Candidate for
22 the Democratic Party State Representative,
23 District 33.

24 The Election Division has been provided a
25 copy of the candidate challenge form, a copy of

1 the notice given in this matter, and I would
2 recognize challenger Fred Davis for a
3 presentation.

4 MR. VONDERSAAR: My name is Harlan,
5 H-A-R-L-A-N, Vondersaar, V-O-N-D-E-R-S-A-A-R,
6 II. I'm the counsel on behalf of Fred Davis.
7 You guys have the evidence currently?

8 We are presenting this petition under
9 3-8-2-7-4A. As you can see in the back of the
10 information we gave you, the last primary
11 election Ms. Robbins voted as a Republican. And
12 if you look at Section 3 of the CAN-2, she made
13 a note on that for her affiliation of "the most
14 recent primary election which I voted was the
15 primary held by the party which I claim
16 affiliation above." So you can see that that is
17 inconsistent with her CAN-2. So we are
18 petitioning for a challenge for her removal.

19 CHAIRPERSON BENNETT: Any questions by any
20 Commission members?

21 VICE CHAIR CELESTINO-HORSEMAN: The county
22 chair did not --

23 MR. VONDERSAAR: No, we spoke with them and
24 they did not sign any forms and there were no
25 forms submitted.

1 CHAIRPERSON BENNETT: Any other questions
2 by the Commission?

3 MEMBER WILSON OVERHOLT: I would like to
4 reserve further questions after we hear from the
5 candidate.

6 CHAIRPERSON BENNETT: Okay. I recognize
7 the candidate.

8 MR. BILBREY: I'm here on behalf of Cheryl
9 Ashley-Robbins. I'm her campaign committee
10 chairman. Kristopher Bilbrey, 318 South
11 Meridian Street, Winchester, Indiana.

12 CHAIRPERSON BENNETT: Can you spell your
13 last name?

14 MR. BILBREY: Yes, sir. B-I-L-B-R-E-Y.
15 And it's Kristopher with a K,
16 K-R-I-S-T-O-P-H-E-R.

17 Can I read a statement?

18 CHAIRPERSON BENNETT: If it fits within
19 your time slot.

20 MR. BILBREY: Sure. Ms. Ashley-Robbins has
21 been a citizen that has opposed action taken by
22 the mayor of Winchester, now a candidate for the
23 same seat in this last year. Ms. Ashley-Robbins
24 is retired from Anchor Glass, which is a
25 facility in Winchester in which she has been a

1 strong Democrat union supporter for the time
2 that she worked there.

3 Ms. Ashley-Robbins is 62 years old and has
4 grown up in a strong Democrat family and has
5 lived those values through her adult life. When
6 Ms. Ashley-Robbins began talking about running,
7 we spoke with many different citizens in and
8 around -- Democrat voters, Republican voters and
9 Independent voters -- in District 33. Because
10 it was very clear that the voters of
11 District 33, Jay County, Randolph County and a
12 small portion of eastern Delaware County, wanted
13 a choice besides Mr. Byrum.

14 Voters especially in Winchester and
15 Randolph County have been aware but it's
16 trickled over that there have been major issues
17 with Mr. Byrum as mayor, and they are worried
18 about that as the candidate for State
19 Representative.

20 Mr. Byrum in his leadership position has
21 been at odds with his citizens, his council, and
22 has had issues with communication and
23 transparency, having at least two if not more
24 public access complaints and at least two or
25 three open door violations.

1 On February 27th, 2017, elected prosecutor
2 of Randolph County stood up in a BZA hearing on
3 the record and stated that he was concerned that
4 the mayor of Winchester through submitting a
5 loan application to the IHCPA could possibly
6 result in any fraudulent transaction. Through
7 all of these issues over the last year, year and
8 a half, the citizens have become concerned and
9 Ms. Ashley-Robbins decided to run.

10 CHAIRPERSON BENNETT: You have 30 seconds
11 left.

12 MR. BILBREY: Okay. The problem is, she
13 denies that -- she did not vote in the 2016
14 primary. We have the signatures here. And also
15 the reason that she did not ask the chairman is
16 we had word that the chairman was going to deny
17 her the right to run because how she had treated
18 the candidate and not because she was not a
19 Democrat. I have a recorded phone conversation
20 from Mr. Davis where he states exactly that
21 after all this happened. On the 17th of this
22 month he stated in a conversation that he would
23 have denied her the right to run due to the fact
24 that she has been critical of the candidate. We
25 knew that beforehand going into this, and then

1 he admitted to that afterwards. That to me is a
2 perversion of the policies and the procedures
3 and not what that is. It's weaponing this
4 procedure in order to pave a smooth way for his
5 handpicked candidate.

6 CHAIRPERSON BENNETT: Thank you. Your time
7 is up.

8 Any questions from the Commission?

9 MEMBER WILSON OVERHOLT: Yeah, I have a
10 couple. So you said that you have -- you made
11 it sound as if you have something in front of
12 you that would somehow demonstrate that she did
13 not vote in -- are you saying that
14 Ms. Ashley-Robbins didn't vote in 2016 primary?

15 MR. BILBREY: She's stating that she did
16 not. And we pulled the voter registration, the
17 signature cards from the Randolph County Clerk's
18 office, and there is a question of her
19 signature --

20 MEMBER WILSON OVERHOLT: It's not the
21 signature card, what we would actually need to
22 see would be the poll book. Proving a negative
23 is kind of a hard thing to do when we have
24 something that would prove in the affirmative.
25 You said you have something showing that she did

1 not somehow vote in that primary in 2016.

2 MR. BILBREY: I don't know how I would
3 prove that she didn't other than we're calling
4 into question --

5 MEMBER WILSON OVERHOLT: Do you have a
6 sworn statement from the candidate that she did
7 not vote in the 2016 primary?

8 VICE CHAIR CELESTINO-HORSEMAN: Let's take
9 it another way. Let's say she didn't vote in
10 the 2016 primary. The law says that she has to

11 -- "candidate is considered to be affiliated
12 with a political party only if any of the
13 following applies: The most recent primary
14 election in Indiana in which the candidate voted
15 was a primary election party held by the party
16 with which the candidate is claiming
17 affiliation."

18 So that means she had to vote at some time
19 in the most recent primary as a Democrat. And
20 according to this history that we have here, she
21 hadn't voted in a primary since -- they don't
22 have anything listed on here since 2002.

23 MR. BILBREY: Yes, ma'am.

24 VICE CHAIR CELESTINO-HORSEMAN: I mean, the
25 law is very, very clear. And I certainly

1 appreciate anybody who jumps in the process and
2 wants to get involved. But you either have to
3 vote in the primary or have the consent or
4 approval of the county chairman. So you don't
5 have either one of those.

6 MR. BILBREY: May I ask a question to kind
7 of -- so if someone does not have that and the
8 law states that they need to ask the party
9 chair, what's the policy in that situation? Is
10 there something that states what is the grounds
11 that they make the decision? Because people do
12 that all the time. There are people that poll,
13 vice versa, and run all the time, and party
14 chairs generally -- and my understanding is
15 they're trying to determine if they kind of hold
16 and espouse -- you know, if as a Republican, I
17 poll a Democratic ballot in the primary and then
18 I want to run, the Republican chairman is trying
19 to determine if yes, I actually hold Republican
20 values and I'm true to the Republican Party,
21 such, that's what they're trying to make it the
22 basis on.

23 VICE CHAIR CELESTINO-HORSEMAN: I'll cut to
24 the chase for you. Each one of the parties has
25 rules that are on the state party website,

1 Republican and Democrat. So if you want to go
2 and see how they're guided by that, I would
3 suggest that you go there and take a look at
4 that. But that's outside of this. I mean, the
5 bottom line is that legally I just don't see
6 anything here that supports her to be able to do
7 this.

8 CHAIRPERSON BENNETT: Any other questions
9 by the Commission?

10 MEMBER WILSON OVERHOLT: No.

11 CHAIRPERSON BENNETT: Is there a motion?

12 VICE CHAIR CELESTINO-HORSEMAN: I make a
13 motion to grant the challenge.

14 MEMBER WILSON OVERHOLT: I second.

15 VICE CHAIR CELESTINO-HORSEMAN: Is that
16 improper phrasing?

17 CHAIRPERSON BENNETT: Motion to grant the
18 challenge.

19 Is there anything that the challenger would
20 like to say?

21 MR. VONDERSAAR: No.

22 IEC MEMBER HORSEMAN: Should I make it more
23 clear? I'll make a motion that Ms. Cheryl
24 Ashley-Robbins, based upon the challenge, is not
25 allowed to be on the ballot. Is that more

1 clear?

2 CHAIRPERSON BENNETT: I will close the
3 public hearing at this point and call for a
4 vote. All those in favor of upholding the
5 challenge, say aye.

6 All opposed, say nay.

7 The ayes have it, the challenge is upheld.

8 Thank you kindly.

9 The Election Division is now directed to
10 amend the certified list of primary candidates
11 to indicate the name of this candidate is not to
12 be printed on the ballots.

13 JIM HIATT

14 Cause No. 2018-8

15 CHAIRPERSON BENNETT: The next hearing will
16 be in consideration of Cause No. 2018-8 In the
17 Matter of the Challenge of Jim Hiatt, Candidate
18 for the Democratic Party Nomination for State
19 Representative, District 34. The Election
20 Division has been provided a copy of the
21 candidate filing challenge form and a copy of
22 those in this matter.

23 At this time, I recognize the challenger
24 Alice Bennett for a presentation.

25 MR. VONDERSAAR: Thank you. Again, my name

1 is Harlan Vondersaar, representing Ms. Bennett.
2 We are filing our petition on the same cause as
3 our last petition, Section 3-8-2-7-4A, and our
4 evidence, we have submitted the Delaware County
5 Board of Registration voting record for
6 Mr. Hiatt. And as you can see, in 2016, it is
7 an R next to the primary vote.

8 And as again on the CAN-2 form under
9 Section 3, the box checked "the most recent
10 primary election in Indiana which I voted was a
11 primary held by the party in which I claim
12 affiliation above."

13 That is all.

14 CHAIRPERSON BENNETT: Thank you.

15 MEMBER WILSON OVERHOLT: Mr. Chairman, I
16 don't see a certification on this. There's a
17 stamp but I don't see anything indicating that
18 this is a true and accurate copy. It makes me a
19 little nervous because there's a lot of
20 handwritten information. I guess that's a point
21 that the Commission can consider, but I would
22 point out that it does not appear to be a
23 certified copy, and it is not clearly marked
24 as --

25 CHAIRPERSON BENNETT: What about the

1 receipt stamp in the corner?

2 MEMBER WILSON OVERHOLT: Well, that's
3 received from the Secretary of State. I don't
4 know what that -- it looks like a stamp from the
5 Board of Voter Registration, it looks like it
6 was received from the Election Division as part
7 of this challenge, I would presume. I guess
8 that's an evidentiary matter for the Commission
9 to consider.

10 CHAIRPERSON BENNETT: Are there any other
11 questions?

12 VICE CHAIR CELESTINO-HORSEMAN: Do you have
13 with you, sir, anything that's certified or
14 anything?

15 MR. VONDERSAAR: No. It was our impression
16 that it is certified. I don't know how Randolph
17 County handles their -- or, sorry, how Delaware
18 handles their forms.

19 CHAIRPERSON BENNETT: Any
20 cross-examination?

21 MR. HIATT: No, sir, I have no questions.

22 VICE CHAIR CELESTINO-HORSEMAN: I have a
23 question for you, sir. Did you vote Republican
24 in the 2016 primary?

25 MR. HIATT: I did.

1 VICE CHAIR CELESTINO-HORSEMAN: Thank you
2 for being honest, sir, I appreciate it.

3 MR. HIATT: I would like to address that
4 when I have the opportunity.

5 CHAIRPERSON BENNETT: Now is the time.

6 MR. HIATT: Is this my part of the
7 presentation?

8 CHAIRPERSON BENNETT: Yes.

9 MR. HIATT: Okay. Jim Hiatt, J-I-M
10 H-I-A-T-T.

11 Mr. Chairman, Commissioners, Election
12 Committee staff and Dr. Bennett. Thank you for
13 allowing me to make this presentation to you.
14 Please grant me a little bit of patience because
15 I don't have a suit on, I'm representing myself.
16 I have had some people help me do this, but I am
17 not really good at it.

18 I am Jim Hiatt, Registered Pharmacist,
19 Community Mental Health Care Pharmacy Director,
20 Certified Forensic Investigator and a long-time
21 Deputy Coroner from Muncie, Indiana.

22 I don't have a deep history of political
23 engagement, but I feel I've been called to run
24 for a seat in the Indiana House on account of
25 the tragic, almost unbelievable number of

1 deaths, ruined lives and devastated families due
2 to the opiate and methamphetamine drug problem.
3 It's rampant in my community, as in many others,
4 and these are issues that I have to deal with in
5 my practice on a daily basis.

6 In the past couple weeks I've had quite an
7 education in the abstract and metaphysical world
8 of the Indiana election law that the legislation
9 basically created and you oversee.

10 Now, I can totally empathize with
11 ~~Lieutenant Governor Doctor Chancellor lifelong~~
12 ~~Republican Sue Ellspermann upon her rude~~
13 ~~awakening that, notwithstanding evidence to the~~
14 ~~contrary, under Indiana Code 3-8-2-7,~~
15 ~~Dr. Ellspermann was not a Republican like she~~
16 ~~thought. No, she was a Democrat.~~

17 As you know, application of the Indiana
18 Code 3-8-2-7 is the subject to more than nine
19 out of ten candidate challenges, much like the
20 one you just heard, and hours and hours of
21 commission hearings. Former Commission Chairman
22 Tom Wheeler said on the record in 2010 that the
23 General Assembly pushed that statute through to
24 address the problem of stealth candidates in I
25 believe Lake County, and that the statute really

1 needed to be interpreted by the courts. And the
2 Indiana Court of Appeals did that after the
3 loser in the Ellspermann case appealed.

4 The Ellspermann case is on the books as
5 good common law. Except if you look at the
6 legislative history of that code, it has been
7 amended at least four times since Ellspermann
8 case.

9 To get to my point, under the law, which I
10 respect --

11 CHAIRPERSON BENNETT: I'll give you at
12 another minute. You're over now.

13 MR. HIATT: Okay. As a result of the
14 ballot I voted in 2016 in the primary, my
15 affiliation with the Democratic Party ended and
16 I officially became a Republican. By law, I've
17 been a Republican since the first Tuesday in May
18 of 2016.

19 Before I was given one to fill out and file
20 at the Secretary of State's office a few weeks
21 ago, I had never seen a CAN-2 form. So I want
22 to tell you sincerely that I made an unknowing
23 honest mistake on my CAN-2 form, and based on my
24 life experience that I marked that I was a
25 Democrat on the Candidate-2 form. I forgot I

1 voted on the Republican Party ballot in the 2016
2 primary, and as a result of that I was not a
3 Democrat, I was a Republican.

4 I have had supporters assisting to do
5 everything I can, short of hiring David Brooks
6 or Tom John, which I can't afford, to be on this
7 year's primary election ballot. To correct my
8 mistake, earlier today I filed amendments to my
9 campaign filing and the House Economic interest
10 disclosure. I prepared and respectfully offer
11 to you -- could I offer this into evidence, sir?

12 CHAIRPERSON BENNETT: You may.

13 MR. HIATT: The original is on the top,
14 copies are below. Do I give copies to
15 individuals now?

16 CO-DIRECTOR KING: I'll pass them on.

17 MR. HIATT: I would like to give one to his
18 counsel, please.

19 I submit to you my corrected CAN-2
20 accurately showing my Republican Party
21 affiliation. I humbly ask is this council, I
22 beg, I pray, or request that the Commission
23 entertain a motion that my corrected filing be
24 accepted, as has been in some cases in the past.
25 I believe this corrected CAN-2, if accepted,

1 addresses Dr. Bennett's complaint. And since no
2 candidate entered the Republican Party, the
3 CAN-2 correction does not abridge another
4 candidate's challenge rights, and since I voted
5 in their last primary, the Republican Party
6 can't really object.

7 Thank you for your consideration in this
8 matter, and I do have a bottle of champagne in
9 the car for Dr. Bennett so she and her candidate
10 could joyfully celebrate her primary election in
11 May.

12 CHAIRPERSON BENNETT: Thank you. Any
13 questions?

14 VICE CHAIR CELESTINO-HORSEMAN: So can you
15 come back and amend this?

16 CHAIRPERSON BENNETT: Let's ask legal
17 opinion on that.

18 CO-GENERAL COUNSEL SIMMONS: No, our view
19 is you can only -- we're bound by statute to not
20 accept any filing after the deadline. We do
21 accept amended declarations before the deadline,
22 because the deadline has not passed. So if you
23 will see amended declarations in our files, it's
24 because they're tendered before the deadline.
25 But after the deadline, the legislature has not

1 given us any discretion. As a matter of fact,
2 it's our administrative duty to deny these
3 filings.

4 VICE CHAIR CELESTINO-HORSEMAN: Is there a
5 Republican running for the seat?

6 MR. HIATT: No, ma'am.

7 VICE CHAIR CELESTINO-HORSEMAN: Can the
8 Republican county chairman then name him as a
9 candidate?

10 CO-GENERAL COUNSEL SIMMONS: Yes, after the
11 primary there is a period in which the parties
12 can fill their ballot vacancies if they had no
13 candidate run in the primary up until noon,
14 June 30th.

15 MR. HIATT: I understand it, but I believe
16 that is incorrect. There are cases on file.
17 For instance, there was a gentleman by the name
18 of Colonel in 2016 that this commission allowed
19 him to amend his application after the fact to
20 eliminate part of his name, so this commission
21 does have the power to allow that, sir. I can
22 get you that record and probably other ones
23 where that has happened.

24 VICE CHAIR CELESTINO-HORSEMAN: It was a
25 name change?

1 MEMBER WILSON OVERHOLT: That's a little
2 bit different than party affiliation.

3 MR. HIATT: The same thing exists, though,
4 ma'am.

5 CHAIRPERSON BENNETT: I think we've heard
6 all the evidence and testimony that we need. We
7 have a legal opinion from counsel.

8 Does the Democratic counterpart --

9 CO-GENERAL COUNSEL KOICHEVAR: I concur, and
10 I will add on one small item. I do know that in
11 Indiana Code 3-8-7 -- the section escapes me at
12 this time -- there is a provision that if you do
13 file a CAN-2, run in the primary, win the
14 primary, you can change your legal name if you
15 have a legal name change. That is specific in
16 state law that I would only note against
17 anything else. That's the only thing I know of
18 in the whole scheme of election law through one
19 cycle where something could be changed that was
20 stated on the CAN-2.

21 But I will concur in full with Mr. Simmons
22 his opinion for filing CAN-2s in the primary and
23 our deadlines that we have to --

24 CHAIRPERSON BENNETT: We have no discretion
25 to --

1 CO-GENERAL COUNSEL KOICHEVAR: I will say
2 that I know of nothing in the Indiana Election
3 Code allowing the commission to have such
4 discretion.

5 CHAIRPERSON BENNETT: I'll close the public
6 hearing and ask if there's a motion you'd like
7 to make.

8 VICE CHAIR CELESTINO-HORSEMAN: Is there
9 anything you want to give us that you've just
10 been handed?

11 MR. HIATT: No, there are several cases
12 that I had looked up that --

13 VICE CHAIR CELESTINO-HORSEMAN: So I'm
14 going to --

15 CHAIRPERSON BENNETT: Did you want to make
16 a motion?

17 MEMBER KLUTZ: I'll make a motion and grant
18 the challenge.

19 VICE CHAIR CELESTINO-HORSEMAN: I will
20 second the motion. And I would also like to
21 encourage you to go back to your party chairs
22 and then you can run.

23 CHAIRPERSON BENNETT: We have a motion and
24 second. All in favor, say aye.

25 Opposed, say nay.

1 The challenge is granted.

2 The Election Division is directed to amend
3 the certified list of primary candidates to
4 delete the name of this candidate and is not to
5 be printed on the ballot.

6 ROSEMARY KHOURY

7 Cause No. 2018-9

8 CHAIRPERSON BENNETT: We'll next move to
9 the consideration of Cause No. 2018-9, In the
10 Matter of Challenge to Rosemary Khoury,

11 Candidate for the Democratic Party Nomination

12 for Judge of the Madison Circuit Court No. 3.

13 The Election Division was provided a copy of the
14 candidate challenge form, and a copy of the
15 notice given in this matter.

16 At this time I will recognize the
17 challenger, James Randolph Willis, for a
18 presentation.

19 MR. WILLIS: May I pass these out to the
20 Commission, sir?

21 CHAIRPERSON BENNETT: Yes, sir.

22 MR. WILLIS: There's a copy for all the
23 Commission members and counsel.

24 My name is James Randall Willis, I live in
25 Anderson. J-A-M-E-S, R-A-N-D-A-L-L,

1 W-I-L-L-I-S.

2 I file this challenge today challenging
3 both Rosemary Khoury's residency, candidacy and
4 also her right to vote in Madison County.

5 I would ask if Rosemary's counsel is going
6 to call any witnesses, I'd ask for a separation
7 of witnesses at this time.

8 MS. CRAWFORD: May I respond?

9 CHAIRPERSON BENNETT: Do you have any
10 witnesses?

11 MS. CRAWFORD: I may call Rosemary Khoury
12 as a witness.

13 MR. WILLIS: I don't think we'd have to
14 separate her.

15 CHAIRPERSON BENNETT: Yes, she's your
16 client, correct?

17 MS. CRAWFORD: Yes.

18 CHAIRPERSON BENNETT: Nobody except her?

19 MS. CRAWFORD: No.

20 CHAIRPERSON BENNETT: Motion is granted.

21 MR. WILLIS: Thank you, I appreciate that.

22 Mr. Chairman, members of the council, I do
23 not offer this challenge with any animosity
24 towards Ms. Khoury or with any malice
25 aforethought.

1 My first issue is that Ms. Khoury doesn't
2 meet the candidate requirements under Indiana
3 law for a circuit court judge election in
4 Madison County under 3-8-1-16. I have offered
5 evidence to that fact, and my first exhibit says
6 that under 3-8-1-16 that a candidate, and that's
7 very specific, must reside in the circuit and
8 also be admitted to the practice of law in the
9 state. No doubt that Rosemary has been admitted
10 to the practice of law in the state, but she
11 does not reside in the circuit.

12 If we look at the dates when the -- and if
13 there's any ambiguity in this about when judges
14 can take office, look at the date when the
15 statute and constitutional provision were
16 written. The state constitution provision was
17 written in 1970, and it says that a judge shall
18 reside within the circuit and be admitted to the
19 practice of law. In 1986 the state statute was
20 clarified, was written after the last
21 constitutional upgrade, and the statute expands
22 the requirement for holding the office of
23 circuit court judge by adding a candidate for
24 the office.

25 Since the statute was written after the

1 constitution, it seemed that the legislature
2 needed to expand the language to include
3 candidates rather than those elected to office.

4 I'm sure you are all aware of the Charlie
5 White case and that the Democrat's challenge
6 denied due to untimeliness. I believe that we
7 have timeliness here with this challenge, and
8 that if we allow judges that were elected to
9 reside outside the county, we'd have no way to
10 unseat them, if we allowed candidates to do
11 that. Once the election is over, we would force
12 the will of the voters because they have cast
13 their ballots for that judge.

14 VICE CHAIR CELESTINO-HORSEMAN: Can I ask
15 you a question? By the way, I'm very familiar
16 with the Charlie White case.

17 MR. WILLIS: Good, I'm glad.

18 VICE CHAIR CELESTINO-HORSEMAN: I would
19 like to ask our counsel down there, the
20 provision of law upon which he is relying that
21 he handed out to us says that the candidate for
22 judge of a circuit court must reside in the
23 circuit upon taking office. Unlike the other
24 candidate offices, it's not where you have to
25 live in the district for a year, but upon the

1 date that you are sworn in you have to be a
2 resident. Is that correct?

3 CO-GENERAL COUNSEL KOICHEVAR: When I look
4 upon taking office and when I read the statute,
5 which I believe you're referring to Indiana Code
6 3-8-1-16, it makes a reference back to the state
7 constitution, Article VII, Section 7, which we
8 seem to have the same meaning upon taking
9 office, I've always viewed that as being
10 elected, being qualified, and then assuming
11 office at the statutorily appropriate time.

12 VICE CHAIR CELESTINO-HORSEMAN: So what our
13 counsel is saying is that unlike the other
14 candidates that you heard argue here today, in
15 the case of a judge they don't have to reside in
16 that district or that county until they take
17 office, which is when they're sworn in.

18 MR. WILLIS: I would contest that, I would
19 contest that because of the very specific
20 language a "candidate," not an "officeholder."
21 And I think that the legislature expanded that
22 language to allow a candidate to run for that
23 office that may not be admitted to the bar yet
24 but knowing they would be by the time they take
25 office. And this provision was directed at

1 those candidates that would allow them to run
2 even though they were not members of the bar but
3 would be admitted to the practice of law in
4 Indiana by the time they took office. That's
5 how I would interpret that code, because of the
6 semicolon in the language which creates two very
7 independent clauses.

8 MEMBER WILSON OVERHOLT: I think one of the
9 rules of statutory construction is that you
10 attempt to give whole meaning to the words in
11 the statute equal meaning, to the extent
12 possible. What you are asking us to do is kind
13 of a tortured reading of the statute. I know it
14 uses the term candidate, but it talks as a
15 candidate for office has to meet the
16 requirements upon taking office.

17 And I, in my view anyway, the pretty clear
18 intent, surprisingly clear intent to me of the
19 legislature would be that the candidate, that
20 it's once candidate is sworn in and becomes a
21 judge is when they are required -- they could
22 move into the county a minute before taking the
23 oath of office, but they just have to be a
24 resident of that district, that circuit upon
25 being sworn in.

1 VICE CHAIR CELESTINO-HORSEMAN: Let me ask
2 the question. Does the Republican counsel --

3 CHAIRPERSON BENNETT: I'd be interested,
4 Dale, of your view of the statute.

5 CO-GENERAL COUNSEL SIMMONS: Yes, I read it
6 the same way, upon taking office. There are
7 several different ways you have to pay attention
8 to the particular office and the way it's
9 described. Some folks who run for election
10 don't have to be a resident until election.

11 Some say upon taking office, others require a
12 year before the election. So each of those you
13 have to give meaning to, and I read it the same
14 way as Matthew, my co-counsel.

15 CHAIRPERSON BENNETT: We know your
16 contention and argument in that regard. Do you
17 have anything else you want to say?

18 MR. WILLIS: Secondly, I challenge her
19 voter registration in Madison County as not
20 being a resident of the county.

21 VICE CHAIR CELESTINO-HORSEMAN: Is she
22 registered to vote?

23 MR. WILLIS: To my knowledge, she is
24 registered to vote in Madison County.

25 VICE CHAIR CELESTINO-HORSEMAN: Do you have

1 proof of that?

2 MR. WILLIS: I have.

3 CHAIRPERSON BENNETT: Which document number
4 is that?

5 MS. CRAWFORD: I don't have a copy of the
6 exhibits, and I would request a copy.

7 CHAIRPERSON BENNETT: Do you have extras?

8 MR. WILLIS: There are copies in there for
9 counsel.

10 MS. CRAWFORD: Do you need it? If you need
11 it --

12 VICE CHAIR CELESTINO-HORSEMAN: I can share
13 with you.

14 MS. CRAWFORD: Thank you.

15 MR. WILLIS: Yes, Rosemary, Ms. Khoury
16 became a registered voter in Madison County on
17 or about June 8th of 2016, is when her -- and I
18 think that Ms. Khoury, her counsel will attest
19 to that fact under oath.

20 CHAIRPERSON BENNETT: We're shuffling
21 papers here. What fact are you talking about?

22 MR. WILLIS: The fact that I'm talking
23 about is that Ms. Khoury did register to vote in
24 Madison County in 2016.

25 VICE CHAIR CELESTINO-HORSEMAN: Her voter

1 registration, what address is claimed?

2 MR. WILLIS: Her address is claimed as
3 2105 Arrow Avenue.

4 VICE CHAIR CELESTINO-HORSEMAN: So do you
5 have anything to show that she's not living at
6 2105 Arrow Avenue?

7 MR. WILLIS: Absolutely. The documents
8 that I turned in to you there at this time make
9 that claim.

10 CHAIRPERSON BENNETT: What document are you
11 referring to? Can you identify the document
12 you're referring to?

13 MR. WILLIS: Let's go with Willis 6, which
14 is the settlement agreement, in the
15 pre-dissolution of marriage.

16 VICE CHAIR CELESTINO-HORSEMAN: Is that
17 2011?

18 MR. WILLIS: Yes.

19 CHAIRPERSON BENNETT: How does this relate
20 to 2016?

21 MR. WILLIS: Because she was awarded the
22 property at 7353 Layman Road in the divorce, and
23 she is sole owner of that property.

24 MEMBER WILSON OVERHOLT: That's
25 six-and-a-half years ago.

1 MR. WILLIS: And she still maintains that
2 residence.

3 MEMBER WILSON OVERHOLT: Where is your
4 proof of that?

5 Actually he has a tax bill in here from
6 Madison County where the tax bills are sent to
7 that Layman Street address.

8 MR. WILLIS: You asked for voter
9 registration, and I have that here.

10 Ms. Khoury maintains a homestead exemption
11 on the property at 7353 Layman Avenue in
12 Indianapolis.

13 CHAIRPERSON BENNETT: Is that document that
14 you just handed Ms. Horseman, is that in the
15 packet of information for us?

16 MR. WILLIS: That's the voter registration.

17 VICE CHAIR CELESTINO-HORSEMAN: That's
18 Madison County registration.

19 MR. WILLIS: I also submitted Willis
20 Exhibit 9. Willis Exhibit 9 lists from -- it's
21 from in.gov that Ms. Rosemary Farid Khoury from
22 the Madison County prosecutor's office, the
23 Indiana roll of attorneys, attorney of record
24 lists her address as 7353 North Layman Avenue,
25 but gives the city of Anderson and the zip code

1 of Indianapolis at 46250.

2 Now, by law she's required to update that
3 information, give truthful information so that
4 she can be emailed or what have you.

5 The tax records from the property at
6 2105 Arrow Avenue, upon which there is also a
7 homestead exemption, those tax records are
8 mailed to 7353 North Layman Avenue in
9 Indianapolis, Indiana. And the point that I'm
10 trying to make is, that she never abandoned this
11 residence, when she stated that she moved to the
12 Arrow Avenue residence, that that's still her
13 residence. And she has a significant financial
14 motivation to maintain the residence in
15 Indianapolis, because in the divorce decree,
16 part of the property settlement, her ex-husband,
17 Paul Khoury, is ordered in the divorce decree to
18 make the payments on that property for as long
19 as her and the children live in that house.

20 And we can see in Willis Exhibit 13 that
21 Rosemary Khoury and Mary Hamer, according to
22 this property tax document, they're both listed
23 at 7353 North Layman Avenue. Mary Hamer being
24 Rosemary's mother.

25 CHAIRPERSON BENNETT: Can you wrap it up?

1 I think you've gone well over your five minutes.

2 MR. WILLIS: I apologize, sir. Let me have
3 one minute to close here, if you would, grant me
4 one thing.

5 If I was here to challenge Rosemary Khoury
6 on her ability to run as a Marion court judge,
7 based upon the fact that I believe she lived at
8 2105 Arrow Avenue, which she says she does, the
9 evidence before you listing the property
10 addresses and legal documents and legal things
11 that she needs to take care of, would convince
12 all of you unanimously that she lived at
13 7353 Layman Road.

14 That's the case that we -- if we stand this
15 case on its head, we see that Rosemary Khoury
16 does indeed live at the Layman Street address,
17 and the address on Arrow Avenue was manufactured
18 in order for her to run for public office.

19 Thank you for your consideration.

20 CHAIRPERSON BENNETT: All right, thank you.

21 At this time I would recognize Rosemary
22 Khoury or her attorney for presentation.

23 MS. CRAWFORD: Thank you. First of all, I
24 would like to, if I need to, have additional
25 time, I would request to reserve some time to

1 call Rosemary if I need to as a witness.

2 At this time I would move to dismiss the
3 challenge. First of all, on the first statute
4 of 3-8-1-16, I believe it states, as the
5 commission members have pointed out, it only
6 concerns when she moves into office, so that one
7 is not ripe yet. It's not an issue and should
8 be dismissed.

9 On the issue of 3-8-1-1, which concerns her
10 candidacy, first of all, I'm not certain that
11 that even applies to circuit court judges. It
12 states in the statute that it concerns certain
13 local offices, state offices, and you have to
14 reside in the district where the people you want
15 to represent. Judges do not represent anyone.
16 They preside over cases. So I'm not certain
17 that 3-8-1-1 even applies. But if it does, on
18 the face of the code says that she needs to have
19 a voter registration. That's been placed in
20 front of you, she has a voter registration which
21 shows that she resides at the Arrow Avenue
22 address.

23 She ran for judge in 2016. No challenge
24 came forward. She's maintained her residence in
25 Madison County since that time, and --

1 VICE CHAIR CELESTINO-HORSEMAN: So she ran
2 in 2016 and was elected?

3 MS. CRAWFORD: No, she was not, she did not
4 win that election. But she ran and there was no
5 challenge. She was registered at that time.
6 She remains registered.

7 VICE CHAIR CELESTINO-HORSEMAN: So then my
8 question, Mr. Kochevar, is this. If a
9 candidate, let's say worst-case scenario, since
10 I don't know voter registration laws, does that
11 keep someone from being a candidate? Because if
12 they're not required to reside in the county
13 until the day they take office for purposes of
14 barring them from being on the ballot, can you
15 do that on the basis of an illegal voter
16 registration?

17 CO-GENERAL COUNSEL KOICHEVAR: That is an
18 interesting question. I would say that based on
19 how I understand Article VII, Section 7, and
20 again 3-8-1-16, and I would premise this as
21 may -- because while I am an attorney, I'm not a
22 judge, I don't have the power to officially say
23 what statute that is, that would be the
24 court's -- based on my understanding is that you
25 have to meet these qualifications to be circuit

1 judge when you assume office, which my
2 understanding that earliest point would be the
3 January after the election.

4 But I also do want to state clearly for the
5 record that having a illegal voter registration
6 would be something for a court of law to
7 determine, as that would seem to imply that
8 potential criminal wrongdoing was made.

9 CHAIRPERSON BENNETT: I've got a question
10 for our Republican counterpart in legal issues.
11 Does the statute in question apply to judges,
12 local offices?

13 CO-GENERAL COUNSEL SIMMONS: Mr. Chairman,
14 3-8-1-1 applies to judges. It's the use of the
15 term local office. And I know that that
16 particular term is some source of confusion for
17 particular candidates, but it is defined in
18 election code very clearly, and it's defined in
19 3-5-10-29, and it includes a circuit office, so
20 it would include a circuit judge.

21 The requirements read, one to be a
22 registered voter of the election district by the
23 deadline for filing the declaration, which would
24 have been noon, February 9th, applies on its
25 face.

1 CHAIRPERSON BENNETT: Thank you.

2 VICE CHAIR CELESTINO-HORSEMAN: Well,
3 excuse me, but 3-8-1-1, Section A, says this
4 section does not apply to a candidate for any of
5 the following offices -- oh, judge of the city
6 court, judge of county court. So by expressly
7 exempting -- okay.

8 MS. CRAWFORD: I don't know how the two can
9 exist together, if the circuit court judge
10 doesn't have to live in the district until
11 they've actually won the election, then I don't
12 know how you can simultaneously require that
13 they have a valid registration for that area.
14 So I think they conflict. And I think when they
15 conflict, certainly the more clear construct of
16 3-8-1-1 says exactly what the circuit court
17 judge needs to do.

18 CHAIRPERSON BENNETT: Anything else you
19 want to present?

20 MS. CRAWFORD: So I guess on my motion to
21 dismiss, I move to dismiss the challenge. But
22 in the event that is not granted, I would like
23 to call Rosemary as a witness.

24 CHAIRPERSON BENNETT: Is there a motion
25 with regard to the pending motion to dismiss,