

1 Motion carries for all of those motions  
2 other than the one recusal.

3 We just need a majority, I understand,  
4 for the motions. So let's vote on the cause  
5 number for which recusal has been stated.

6 All in favor of granting that motion for  
7 continuance say aye.

8 All opposed say nay.

9 The ayes have it. 3-0 vote with one  
10 abstention.

11 IEC MEMBER CLAYTOR: Thank you.

12 MS. TAYLOR: We also have a staff  
13 request.

14 CHAIRMAN BENNETT: I've got the  
15 administrative dissolution that we need to deal  
16 with. Does that anything to do with your  
17 request?

18 MS. TAYLOR: We also have the  
19 administratively dissolve.

20 CHAIRMAN BENNETT: Why don't we finish  
21 these items here and we'll handle yours, unless  
22 it's urgent at this point.

23 MS. TAYLOR: Doesn't matter to me.

24 CHAIRMAN BENNETT: Go ahead and do it  
25 now. What is your request?

1 MS. TAYLOR: We are asking to dismiss  
2 Cause No. 2018-4943-128. It's Clark Dietz PAC.  
3 Their 2018 pre-primary report was received in  
4 our office but placed in the wrong mailbox so we  
5 didn't get it and file-stamp it until a few days  
6 after the deadline.

7 CHAIRMAN BENNETT: Is there a motion to  
8 dismiss that matter?

9 IEC MEMBER CLAYTOR: So moved.

10 CHAIRMAN BENNETT: Is there a second?

11 IEC MEMBER KLUTZ: Second.

12 CHAIRMAN BENNETT: Any discussion?

13 Hearing none, all in favor say aye.

14 All opposed say nay.

15 The ayes have it. Motion carried. The  
16 matter is dismissed.

17 At this time I would recognize our staff  
18 to present information regarding administrative  
19 dissolution of certain campaign financial  
20 committees.

21 MS. TAYLOR: We have two committees to  
22 administratively dissolve today. The first is  
23 Hoosiers for West Bishop. It's the pink tab at  
24 the back of your campaign finance section in  
25 your binder. Hoosiers for West Bishop. Moving

1 forward, these committees have not filed reports  
2 in over three years and they will both have  
3 balances of less than \$1,000. The chairman and  
4 treasurer of each have been notified.

5 CHAIRMAN BENNETT: So none of these  
6 committees have filed a report during the  
7 previous three calendar years and the last  
8 report shows cash on hand not exceeding \$1,000?

9 MS. TAYLOR: Correct.

10 CHAIRMAN BENNETT: I move that the  
11 Commission do the following:

12 1, make a finding there is no evidence  
13 that any of these committees continue to receive  
14 contributions, make expenditures or otherwise  
15 function as a committee.

16 2, make a finding that according to the  
17 best evidence available to the Commission the  
18 dissolution of these committees will not impair  
19 any contract or impede the collection of any  
20 debt or judgment by a person.

21 3, make a finding that the prudent use of  
22 public resources makes further efforts to  
23 collect any outstanding civil penalty imposed  
24 against these committees wasteful or unjust and,  
25 therefore, any such penalties be waived.

1 4, administratively dissolve each of  
2 these committees.

3 Is there a second to this motion?

4 IEC MEMBER CLAYTOR: Second.

5 CHAIRMAN BENNETT: Any discussion?

6 All in favor of the motion say aye.

7 All opposed say nay.

8 The ayes have it. Motion carried.

9 Is anyone present to testify on any  
10 remaining campaign finance hearings scheduled  
11 for today? Hearing none, I declare the hearings  
12 on all remaining campaign finance matters  
13 scheduled for today are closed.

14 Is there a motion to impose the entire  
15 amount of the proposed penalty plus mailing  
16 costs in all remaining campaign finance  
17 enforcement actions?

18 IEC MEMBER CLAYTOR: So moved.

19 CHAIRMAN BENNETT: Is there a second?

20 IEC MEMBER KLUTZ: Second.

21 CHAIRMAN BENNETT: Any discussion? If

22 not, all in favor of the motion say aye.

23 All opposed say nay.

24 Motion carried. Penalty is adopted.

25 At this time we'd like to take a short

1 break. We will hold this meeting in recess for  
2 10 minutes. We will resume and move to the  
3 issue of candidate challenge hearings.

4 (A short break was taken.)

5 CHAIRMAN BENNETT: I call the meeting of  
6 the Indiana Election Commission back to order.

7 At this time I would like to ask for the  
8 consent of the Commissioners to take a couple of  
9 agenda items out of order. The first would be  
10 the staff report and the second a motion to  
11 withdraw candidate challenge.

12 Is there consent of the Commissioners to  
13 taking that out of order?

14 IEC MEMBER CLAYTOR: Consent.

15 IEC MEMBER OVERHOLT: Consent.

16 IEC MEMBER KLUTZ: Consent.

17 CHAIRMAN BENNETT: Consent. Thank you.

18 At this time I'd ask for a staff report on the  
19 status of candidate challenges.

20 MR. KING: Mr. Chairman, Members of the  
21 Commission, noon August 4, 2018, is the deadline  
22 fixed by statute for a CAN-1 challenge to be  
23 heard by the Election Commission. I can report  
24 that as of noon today no additional challenges  
25 were filed.

1 CHAIRMAN BENNETT: Thank you. I  
2 understand there's a motion to withdraw a  
3 candidate challenge.

4 MR. KING: Yes, Mr. Chairman, I believe  
5 the Members have been furnished with a copy of a  
6 motion filed in the Jeffrey L. Chittister  
7 challenge to Cole Stutz by Mr. William Groth.  
8 The motion is to withdraw the challenge to the  
9 candidacy of Mr. Stutz as a candidate for Senate  
10 District 4.

11 CHAIRMAN BENNETT: Is there a motion to  
12 grant the motion to withdraw?

13 IEC MEMBER CLAYTOR: So moved.

14 CHAIRMAN BENNETT: Is there a second?

15 IEC MEMBER KLUTZ: Second.

16 CHAIRMAN BENNETT: Is there any  
17 discussion? Hearing none, all in favor of  
18 granting a motion to withdraw candidate  
19 challenge say aye.

20 All opposed say nay.

21 The ayes have it. Motion granted.  
22 Candidate challenge under the Stutz matter is  
23 withdrawn.

24 Which brings us to the adoption of  
25 candidate challenge hearing procedures for

1 today. In the past the Commission has followed  
2 certain procedures for conducting candidate  
3 challenge hearings, and I move that the  
4 Commission use the following procedures today.

5 After the candidate challenge is called,  
6 the hearing will be begin by recognizing  
7 Election Division staff to provide information  
8 about the documents provided to Commission  
9 Members, including candidate challenge forms and  
10 the notice given to the candidate and  
11 challenger. Unless there is objection, the  
12 documents provided to the Commission by the  
13 Election Division will be entered into the  
14 record of this meeting.

15 After the Election Division staff  
16 completes its presentation, the challenger will  
17 be recognized first. The challenger or the  
18 challenger's representative may present their  
19 case for no more than ten minutes, unless the  
20 Commission votes to allow additional time for  
21 the presenter. Commission Members may ask  
22 questions during a presentation, but the time  
23 spent answering these will not be counted  
24 against the presenter's time. The Election  
25 Division may signal the Chair when a presenter's

1 time is up.

2 If the presenter offers additional  
3 documents or other physical evidence not  
4 previously received by the Commission, then the  
5 original must be provided to the Election  
6 Division staff, which is Mr. Simmons, to  
7 preserve for the record.

8 The candidate or the candidate's  
9 authorized representative will be recognized  
10 following the last presentation by a challenger.  
11 The candidate may present their case for no more  
12 than ten minutes, unless the Commission votes to  
13 allow additional time for the presenter.

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

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



1 dismiss the cause of any challenger who has  
2 failed to appear or testify before the  
3 Commission.

4 Is there a second to my motion for the  
5 Commission to adopt these procedures for today's  
6 candidate challenge hearings?

7 IEC MEMBER CLAYTOR: Second.

8 CHAIRMAN BENNETT: Is there any objection  
9 from Commission Members or any individual  
10 present to these procedures?

11 Hearing none, is there further discussion  
12 by the Members?

13 At this time all in favor of adoption say  
14 aye.

15 All opposed say nay.

16 The ayes have it and the motion is  
17 approved.

18 We'll begin with consideration of Cause  
19 No. 2018-122: In the Matter of the Challenge to  
20 Christina M. Espar, Candidate for Prosecuting  
21 Attorney of LaPorte County, 32nd Judicial  
22 Circuit.

23 The Election Division has provided a copy  
24 of the Candidate Filing Challenge form. A copy  
25 of the notice is given to the candidate and

1 challenger in this matter and documentation of  
2 their delivery. The challenge and related  
3 documents are found behind the orange tab in  
4 your binder.

5 An appearance has been entered in this  
6 matter by the challenger, Mr. James E. Kimmel of  
7 Lake Law Office, and an appearance on behalf of  
8 the candidate has been entered by Mr. Tom John  
9 and Mr. Derek Molter of Ice Miller. These  
10 documents are included in your binder.

11 We will now open the public hearing on  
12 Cause No. 2018-122. I would recognize Mr.  
13 Kimmel for presentation of the challenge.

14 (All prospective people intending to  
15 testify before the Indiana Election Commission  
16 stood and were jointly sworn in.)

17 MS. LAKE: My name is Mary Lake. I  
18 represent James Kimmel in the challenge against  
19 Christina Espar, the Republican candidate for  
20 LaPorte County Prosecuting Attorney.

21 You received packets that are tabbed with  
22 the exhibits that were previously submitted,  
23 with the exception of the first, which was the  
24 Affidavit of Public Records by the custodian.

25 The law is clear and unambiguous on this

1 challenge. Indiana Code Section 3-13-1-6(b)  
2 gives us three ways to fill an early ballot  
3 vacancy. If you look at Exhibit 5, that  
4 document is indicative of the choice the  
5 Republican Party in LaPorte County made to give  
6 appointment authority to their executive  
7 committee caucus. That's option 3 under the  
8 statute. To appoint a candidate in this matter  
9 they must hold a caucus comprised of the chair,  
10 vice-chair, secretary and treasurer, according  
11 to statute.

12 If you flip forward to Exhibit 6, you  
13 will see the resolution of Republicans of  
14 LaPorte County did adopt at their executive  
15 committee caucus meeting on June 27, 2018. They  
16 did hold such a caucus and according to Indiana  
17 Code Section 3-13-1-8-2, the county chairman  
18 shall call a meeting for the purpose of slating  
19 a candidate. According to IC 3-13-1-9, the call  
20 for the meeting must be in writing issued ten  
21 days before the such meeting and be filed with  
22 the Election Division. That is, a CAN-30 must  
23 have been filed by the June 17th date, which was  
24 ten days before the caucus committee meeting was  
25 held on June 27th.

1 Exhibit 1 is the custodian of records for  
2 the Election Division affidavit and Paragraph 3  
3 recites the list of documents filed with the  
4 Election Division in this matter. CAN-30 is  
5 noticeably absent from the list, I will point  
6 out. Paragraph 5 makes it clear that no other  
7 documents were filed as well. The Republicans  
8 never filed a CAN-30 as required in this matter  
9 to announce that caucus committee meeting.

10 Indiana Code Section 13-1-21 states  
11 clearly that the Election Division, i.e., the  
12 official responsible for receiving a Certificate  
13 of Candidate Selection, may not receive a filing  
14 if any of the prerequisites are not timely  
15 filed, any one of which would make the candidacy  
16 fail, and one of which is a Notice of Caucus  
17 which was not filed.

18 Exhibit 3 in the binders I presented to  
19 you indicates the CAN-31 that was filed on July  
20 2, 2018. That was filed five days after the  
21 candidate selection occurred on June 27th, 2018.  
22 The stamp on that document says June 32nd. You  
23 will note that that was an internal clock error  
24 apparently because obviously there's no such  
25 date.

1 Indiana Code Section 3-13-1-10.5(a)  
2 requires that the CAN-31 be filed 72 hours  
3 before a caucus is held. The deadline for  
4 filing thus would have been June 24th. Indiana  
5 Code Section 3-13-1-10.5(c) requires that a  
6 Statement of Economic Interest also be filed  
7 with the CAN-31 and file marked by the Office of  
8 Judicial Administration.

9 If you look at Exhibit 4, the Statement  
10 of Economic Interest filed with the Office of  
11 Judicial Administration was done on June 27,  
12 2018. That was three days after the deadline  
13 for such filing. The filing deadline with the  
14 Election Division was also June 24th, 72 hours  
15 prior to that committee caucus meeting, but that  
16 was not filed until July 2, 2018. So eight days  
17 late.

18 Once again, the provisions of 3-13-1-21  
19 are clear. The Election Division cannot accept  
20 a filing from a candidate selection if the  
21 CAN-31 was not timely filed. Therefore, this  
22 has to invalidate the candidacy even if it was  
23 filed and received in error.

24 For the forgoing reasons, we respectfully  
25 request the Commission sustain the challenge

1 filed by James Kimmel and direct the Election  
2 Division to amend the certified list of general  
3 election candidates so that the name of  
4 Christina Espar not be printed on the ballot.

5 Thank you. If you have any questions,  
6 I'd be happy to answer.

7 CHAIRMAN BENNETT: Any questions by the  
8 Commission?

9 Mr. John, cross-examination?

10 MR. JOHN: None.

11 MS. LAKE: Before I conclude, I'd like to  
12 move for the admission of the exhibits offered  
13 in the packet.

14 CHAIRMAN BENNETT: Any objection to the  
15 admission of the exhibits?

16 MR. JOHN: None.

17 CHAIRMAN BENNETT: The exhibits are  
18 admitted.

19 I call for the presentation from the  
20 candidate.

21 MR. JOHN: Tom John, Ice Miller, on  
22 behalf of the candidate, Christina Espar.

23 In short, just a brief introduction.  
24 This centers around the meaning of caucus. The  
25 challenger would have us believe that it's

1 clear-cut absolute law what it is. What I'll  
2 tell you and all of you know from working around  
3 the election code, very seldom is it clear-cut.  
4 In fact, we'll just start with the definition of  
5 caucus in the code at 3-5-2-7.5. As used in  
6 3-9, caucus refers to a caucus to fill a  
7 candidate vacancy under 3-13-1 or 3-13-2. The  
8 term does not include a caucus to fill a vacancy  
9 under 3-13-5 or IC 3-13-11. It's not clear.  
10 It's far from it. The code is replete with  
11 references to caucuses and meetings.

12           Why does this matter? Well, because at  
13 the end of the day they're saying that a county  
14 committee of four people that all were given  
15 notice because they were all at the meeting had  
16 to have notice given to them ten days before.  
17 This is not like an open door statute where you  
18 have notice that is out there for the community.  
19 Quite the contrary. This is simply to ensure  
20 that the rights of participants in meetings is  
21 protected. So in the case of a county  
22 committee, which there again the use of the word  
23 committee, which in here is through all the  
24 statutes referenced by the challenger, and a  
25 county caucus is referred.

1           Why are those two words used? A county  
2 committee is comprised of the entirety of the  
3 county precinct body. A caucus is comprised of  
4 the people in that district. Sometimes they're  
5 conterminous; sometimes they aren't. But in  
6 either case, those are places where you're  
7 having large groups that have to have their  
8 rights protected to ensure that they get to  
9 participate in the process to which they were  
10 elected -- for which they were elected by the  
11 voters.

12           In this case everybody participated in  
13 the process. I'm to argue it's not even clear  
14 that you have any need for this 10-day  
15 requirement. If you don't have a need for the  
16 10-day requirement, we have testimony that we  
17 will submit on DVD to you that is Mr. Simmons  
18 telling my client that in fact she could not  
19 even file her CAN-31 because she didn't have the  
20 package from the chairman or the committee.

21           Furthermore, you look at the 2018  
22 candidate guide and on page 21 it says,  
23 "However, if the county committee has adopted a  
24 resolution to delegate this candidate (ballot)  
25 vacancy filling authority to the county chairman



1 (or to the chairman, vice-chairman, secretary  
2 and treasurer of the county committee), then the  
3 candidate vacancy may be filled by direct  
4 appointment." There's no mention of a caucus  
5 there. This is the candidate guide.

6 All in all, we're dealing with a system  
7 where you had all of the people who are members  
8 of the group, the caucus, the committee,  
9 whatever we care to call it, who were in  
10 attendance and filed the papers.

11 Moreover, you could hear from my client,  
12 although given the shortness of time and I'd be  
13 happy to provide her testimony, but that in  
14 fact, she came down -- and you'll have this DVD  
15 or the tape which will show you the interaction.  
16 They were trying to file their candidate filing  
17 at the Election Division and were told, no, you  
18 can't do that. Moreover, there was a discussion  
19 about the 72-hour period of filing ahead because  
20 the county committee, which Mr. Renquist could  
21 also testify to, said that they were going to  
22 set the time for 72 hours after Miss Espar made  
23 her filing, but in fact, when they were told by  
24 Mr. Simmons that in fact they didn't have a 72-  
25 hour requirement, they went ahead and filed it

1 so they could submit it.

2 Moreover, I'll raise the very important  
3 concept of harmless error in the Election Code.  
4 IC 3-8-1.1 says if a candidate filing error is  
5 made by the Election Division or circuit court  
6 clerk, the error does not invalidate the filing.

7 My client relied on what they were told. In  
8 fact, the division wouldn't accept her filing  
9 until after the committee had acted.

10 We are dealing with a case where nobody  
11 was harmed. In fact, the only person that will  
12 be harmed if you rule with the candidate is her  
13 opponent who wants to run unopposed, and replete  
14 throughout the Election Code is the fact that we  
15 should always strive to ensure that we have fair  
16 elections and every vote is counted.

17 By ruling with the challenger in this  
18 case, you will have essentially denied all the  
19 voters of LaPorte County the right to vote in  
20 the prosecutor's election, a constitutional  
21 office. This is something that when you look at  
22 all of how this fits together, there is no  
23 reason why this challenge should be there. All  
24 due process was met. All of the people who are  
25 a member of that county committee who would have

1 been the only people to receive that notice were  
2 there. They made sure all the filings were  
3 there. Now, 121 was raise by the challenger as  
4 saying that our filing was untimely. If you  
5 look at that, that talks about filings at the  
6 June 3rd date. It's not filings that have to do  
7 with the actual coming in on the 72-hour. So  
8 that doesn't even apply with respect to that.  
9 What we have is a confusing statute that uses  
10 caucus and meeting in a myriad ways that confuse  
11 any given candidate that apparently, if the  
12 challenger is right, confused the Commission.

13 One note is there's some discussion about  
14 whether a candidate challenge refers to it takes  
15 three votes or two votes for the Commission.

16 One brief note on that is that it takes -- if  
17 you look at the underlying statutes -- I'm happy  
18 to discuss this further. I would argue that she  
19 is on the ballot until such time as declared off  
20 the ballot by the Commission. I'd be happy to  
21 explore that further and it may not be an issue  
22 because I don't know how the Commissioners will  
23 vote. I don't want to belabor an issue that may  
24 not be at issue.

25 What we have is a case where if the

1 Commission strikes this, you'll have taken a  
2 process which basically down to a centimeter.  
3 The central committee if the process had given  
4 to the county chairman the direct appointment  
5 right, we wouldn't be here. There would be zero  
6 discussion, but because they gave it to the  
7 central committee, then we're here. Under no  
8 circumstance have I ever seen a central  
9 committee referred to as a caucus. In fact, a  
10 central committee is the governing body of a  
11 county party and it's the body that is given the  
12 authority to act on behalf of the county party,  
13 and they acted in a meeting. You do not have to  
14 notice every central committee meeting. There's  
15 nothing in there that says that. I would argue  
16 the reference to caucus is frankly a sloppy  
17 reference to something that has no import to  
18 this case. With the idea that there's no 10-day  
19 notice to a caucus, then in fact all three of  
20 their claims fall apart because they fall into  
21 two categories. One, being the fact that the  
22 notice was not filed 10 days. They claim that  
23 that invalidates it. Then the two filings by my  
24 client, the candidate, and both of those there's  
25 no dispute, and we have evidence from the

1 Election Division that clearly said that all  
2 comes in together.

3 So at worst, there is harmless error here  
4 and detrimental reliance, and we have a statute  
5 that even says that in such cases that the tie  
6 goes to the candidate. Moreover, we have myriad  
7 voters in LaPorte County that will be denied an  
8 opportunity to have a choice simply because of  
9 scrivener's errors at best. Because had the  
10 county committee simply delegated to the  
11 chairman and not the committee, we would never  
12 be here. This is yet another example of why  
13 this Commission is here. You're here to solve  
14 these problems that are difficult that come up  
15 and interpret the laws. This is a case where we  
16 have a vague statute that should be interpreted  
17 justly to find that we have an election this  
18 fall, not to ensure that a candidate gets to run  
19 unopposed.

20 I'll take any questions. Thank you.

21 CHAIRMAN BENNETT: Thank you. Any  
22 cross-examination?

23 MS. LAKE: Am I to receive any time for  
24 rebuttal after the question period? Just as a  
25 point of order.

1 CHAIRMAN BENNETT: Yes. Is there any  
2 other evidence or any further testimony at this  
3 point?

4 MR. JOHN: I would offer, if it would be  
5 helpful to the Commission, my client and Mr.  
6 Renquist, but I also want to be cognizant of the  
7 fact that it's 4:25 on a Friday. I articulated  
8 that evidence and I was sworn so for purposes of  
9 this committee, I think the gist of it is  
10 preserved.

11 CHAIRMAN BENNETT: What is this video or  
12 disc that you said we were going to --

13 MR. JOHN: I just gave it to you. What  
14 that is, it's a 12-minute video of the  
15 interaction when they were trying to file their  
16 documents with Mr. Simmons. Actually for  
17 purposes of --

18 MS. LAKE: I would object to that at this  
19 time. I have not had a chance to review that.  
20 I'm not even sure that it's authenticated or  
21 relevant to the proceedings.

22 MR. JOHN: This is actually the key.

23 CHAIRMAN BENNETT: Have you exchanged  
24 exhibits?

25 MR. JOHN: No.

1 MS. LAKE: I just handed it to them.

2 IEC MEMBER OVERHOLT: Is there a  
3 transcript of this?

4 MR. JOHN: This is a key part of it.  
5 There's not a complete transcript. Frankly, we  
6 just filed our appearance yesterday and didn't  
7 have time to transcribe, although that's the  
8 most salient part of it.

9 MS. LAKE: I just received it now.

10 CHAIRMAN BENNETT: Have you got a copy of  
11 the transcript?

12 MS. LAKE: Yes, I do.

13 CHAIRMAN BENNETT: From your standpoint,  
14 Mr. John, what does this transcript show?

15 MR. JOHN: It shows that she was told  
16 there's no 72-hour rule with respect to the  
17 filing when the county committee's involved.  
18 So as to Claims 2 and 3, that obviates them when  
19 you look at the -- when you consider it in  
20 conjunction with 3-8-1-1.1. That's a backup  
21 argument frankly because I believe, as I started  
22 when I read from the candidate guide, that in  
23 fact there's no requirement for a caucus. In  
24 fact, this is just an example of the code is  
25 unclear in its treatment of the committee acting

1 versus the chairman acting versus a caucus  
2 acting. We all know a caucus and we all  
3 understand why that notice requirement is so  
4 important in the caucus setting because you have  
5 a lot of people who have worked hard as precinct  
6 committeemen. They've been elected precinct  
7 committeemen who have a right to be protected.  
8 In this case the four people we're talking about  
9 were there and voted, and it's really almost  
10 nonsensical to think in terms of calling a  
11 caucus of your central committee that in a  
12 functioning party should be operating and  
13 working together weekly, if not daily.

14 CHAIRMAN BENNETT: Mr. Simmons appears to  
15 agree that this is not a caucus?

16 MR. JOHN: Well, this is specifically --  
17 he says if the chair has the authority of the  
18 central committee has the authority to fill the  
19 vacancies and -- so the start of the  
20 interaction. So 72 hours does not apply  
21 referring to her filings, both her CAN-31 and  
22 economic interest. Mr. Simmons: Doesn't apply  
23 here. Espar: Okay. Mr. Simmons: If the chair  
24 has authority or the central committee has the  
25 authority to fill vacancies. Taken in total,



1 that would indicate and give her reason to  
2 believe that she had no 72-hour requirement with  
3 regard to her filings.

4 IEC MEMBER OVERHOLT: I have to say I'm  
5 concerned about -- because he's saying there's a  
6 12-minute conversation and that this -- we have  
7 a portion of the --

8 MR. JOHN: I'd be --

9 IEC MEMBER OVERHOLT: I'm talking.  
10 Excuse me. We've got a brief part of that here,  
11 and I'm reluctant without -- I'm reluctant to  
12 consider this because, first of all, this is not  
13 what I would consider a trans -- I mean this is  
14 someone who has typed up what is purportedly on  
15 this DVD. I don't know if there's any way for  
16 us to actually -- you haven't provided --

17 MR. JOHN: We brought the ability to do  
18 it for you.

19 IEC MEMBER OVERHOLT: Mr. John. I think  
20 we either need to listen to the whole thing or  
21 we don't consider it. I guess that's -- in  
22 weighing it, but it seems to me that if this is  
23 something they want us to consider, we ought to  
24 be listening to it.

25 IEC MEMBER KLUTZ: I'm open to listening

1 to it.

2 MR. JOHN: Mr. Chairman, we brought the  
3 stuff to do it, if you wish. I'm just trying to  
4 be conscious because you said 10 minutes. We've  
5 got a laptop and a computer. Take five minutes.

6 CHAIRMAN BENNETT: Take 12 minutes plus  
7 five.

8 IEC MEMBER OVERHOLT: So are we giving  
9 them the additional time to do that?

10 CHAIRMAN BENNETT: Maybe there are some  
11 procedural things that we could discuss.

12 IEC MEMBER KLUTZ: I want to get this  
13 right. So if it's here, I don't want to say we  
14 only gave them five minutes and let's not listen  
15 to it. I say we amend our rules and have some  
16 discretion and listen to it.

17 IEC MEMBER CLAYTOR: Or we could just ask  
18 Mr. Simmons the gist of the conversation.

19 CHAIRMAN BENNETT: We can do that, but  
20 then why don't we see the tape to verify.

21 IEC MEMBER OVERHOLT: I think it would be  
22 better to listen to the actual conversation.

23 CHAIRMAN BENNETT: Are you --

24 MR. JOHN: It's warming up right now.

25 CHAIRMAN BENNETT: Are there any

1 questions from any of the Commissioners while  
2 we're waiting on that? Mr. John mentioned that  
3 the decision on this it's not clear what the  
4 impact of a 2-2 vote would be. Is there any  
5 thought from counsel on that issue how many  
6 people we need to -- how many Commissioners need  
7 to vote to either sustain the challenge or deny  
8 it?

9 MR. SIMMONS: Mr. Chairman, it takes  
10 three affirmative votes to do either, sustain it  
11 or deny it.

12 CHAIRMAN BENNETT: Do you agree with  
13 that, Mr. Kochevar?

14 MR. KOCHEVAR: I do, yes.

15 MR. JOHN: Mr. Chairman, this is ready.

16 CHAIRMAN BENNETT: Is everybody ready?  
17 Can you turn it our way?

18 MR. JOHN: Of course. I can bring it up  
19 there, if that's all right.

20 (DVD played at this time.)

21 CHAIRMAN BENNETT: I'd be interested to  
22 hear from counsel what we just saw.

23 MR. JOHN: Which counsel? Me?

24 CHAIRMAN BENNETT: Both.

25 MS. LAKE: I think it's clear that the

1 word "if" was used several times. If the chair  
2 appointed and made a selection of candidate on  
3 his own, we wouldn't be here. However, there  
4 was a caucus comprised of four members, the  
5 chair, the vice-chair, secretary and treasurer.  
6 I think it's clear that Mr. Simmons explained  
7 the law accurately, but the facts were not  
8 necessarily made clear, and there seemed to be a  
9 large amount of confusion there on the part of  
10 the prospective candidate as to what was  
11 supposed to be filed and how the appointment  
12 process was supposed to go. This portion seems  
13 accurate, but also the clear word is "if," and  
14 the chair didn't make the candidate selection on  
15 his own.

16 As far as the tape goes. I have other  
17 arguments to rebut, but I'll leave it at that as  
18 far as the transcript.

19 CHAIRMAN BENNETT: Counsel for the  
20 candidate.

21 MR. JOHN: As far as the tape, I'll make  
22 a couple of comments.

23 If you look at CAN-29, Section 1(C),  
24 which is the applicable section for our  
25 purposes. This is on the Election Division

1 form. "If no meeting described in paragraph (B)  
2 was conducted, the County Committee has  
3 authorized the county chairman or the officers  
4 of the county committee to fill the ballot  
5 vacancy, and a copy of the authorization is  
6 attached." There's discussion of the  
7 authorization, but there's no discussion of,  
8 okay, they called a caucus of the county  
9 committee or anything like that.

10 Once again, I understand counsel's  
11 reading, but when we're talking about denying  
12 somebody their ability to be a candidate and  
13 tens of thousands of people ability to have a  
14 choice in the election, are these the  
15 technicalities we're going to get into here?

16 I think that there are distinct  
17 arguments, which I won't go back over, that the  
18 statutes are very unclear about committee,  
19 caucus, meeting. Once again, it's nonsensical  
20 that four members would need a caucus notice  
21 and, at worst, it's harmless error because they  
22 were all there and signed it.

23 IEC MEMBER KLUTZ: Mr. John, is the  
24 purpose of trying to figure out whether this is  
25 a meeting or a caucus simply for purposes of

1 whether there should have been notice? That's  
2 the sole purpose?

3 MR. JOHN: Claim 1 it's a 10-day notice  
4 that they've made, and then 2 and 3 are the  
5 72-hour notice.

6 IEC MEMBER KLUTZ: But the reason we're  
7 talking about was this a caucus or a notice is  
8 if it was a caucus, there should have been a  
9 notice provided, but everybody that should have  
10 received a notice if it were a caucus was in  
11 attendance at the meeting that should have been  
12 noticed.

13 MR. JOHN: And signed the document.

14 IEC MEMBER KLUTZ: That's not accurate?

15 MS. LAKE: I would argue otherwise. The  
16 potential candidates that could have filed if a  
17 notice was filed according to state statute,  
18 they were denied their right to run as potential  
19 candidates.

20 Counsel has referenced other information  
21 from people that's not on the record so I'll do  
22 the same. We had discussions with other  
23 attorneys --

24 MR. JOHN: Except I was sworn; she was  
25 not.

1 MS. LAKE: I was earlier today. Other  
2 attorneys have expressed the opinion that they  
3 would have filed had they known that this was  
4 the only candidate selection made. They were  
5 never given that right or that opportunity. So  
6 there are more people involved than just the  
7 caucus comprised of these members of the  
8 executive committee. The statute is clear as to  
9 a caucus comprised of chairman, vice-chairman,  
10 secretary and treasurer. It is clear that a  
11 CAN-30 must be filed to give notice in the event  
12 that a caucus committee is used.

13 IEC MEMBER KLUTZ: Notice to who?

14 MS. LAKE: Notice to the members of the  
15 party that there will be a candidate selection  
16 in this matter.

17 IEC MEMBER KLUTZ: What about notice --  
18 you said other candidates would have wanted to  
19 show up. How would they have gotten notice?

20 MS. LAKE: If it were filed with the  
21 Election Division in a timely manner, they could  
22 have found out and then filed their own  
23 candidacy. That was not done. So we really  
24 won't ever know if other people had the  
25 opportunity who were denied that opportunity.

1 IEC MEMBER KLUTZ: Assuming it was a  
2 caucus.

3 MS. LAKE: Yes, as defined by the  
4 statute. Further, counsel makes reference to  
5 the campaign finance manual and to alleged  
6 advice that Mr. Simmons is giving to the  
7 candidate in that tape. It's not the province  
8 or the job of the Election Division to give  
9 legal advice. It's clear in the manual that if  
10 there is any inconsistency between the candidate  
11 manual or the campaign finance guide or anything  
12 of that nature and the statutory language, then  
13 the statutory language prevails. So the  
14 argument that the campaign finance manual said  
15 something or Mr. Simmons said something that was  
16 possibly misinterpreted, that must fail. I  
17 think the statutory language is clear.

18 Counsel also referenced a 72-hour  
19 timeline that would have been different.  
20 There's no arbitrary way to set the 72-hour  
21 timeline. It's set by the caucus committee that  
22 met on June 27th, and that is the only logical  
23 time from which to set that 72-hour timeline for  
24 filing.

25 Further, the harmless error argument, as