

Indiana Election Commission
Minutes
February 19, 2016

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

Members Absent: None.

Staff Attending: Angela M. Nussmeyer, Co-Director of the Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Matthew Kochevar, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division

Others Attending: Mr. Dan Ball; Mr. Jim Bopp; Ms. Ginger Bradford; Mr. David Brooks; Mr. Richard Carter; Mr. Jeff Embry; Mr. Ryan E. Farrar; Mr. Michael E. Gerrish; Ms. Roxanna Hanford; Mr. Kevin Howell; Mr. Tom John; Mr. Cody Kendall; Mr. Bob Kern; Ms. Jodi Lohrman; Ms. Cynthia Lopez; Mr. Gerald Magliocca; Ms. Stephanie McGowan; Mr. Clay Patton; Mr. Martin Shields; Mr. Alexander Will.

1. Call to Order:

The Chair called the February 19, 2016 meeting of the Commission to order at 1:30 p.m. EST in Conference Center Room A, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana.

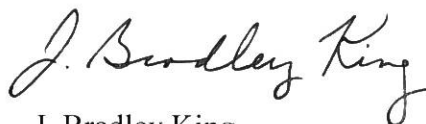
2. Transaction of Commission Business:

The Commission proceeded to transact the business set forth in the Transcript of Proceedings for this meeting prepared by Jenny L. Reeve of Connor Reporting. This document is incorporated by reference into these minutes, with the following corrections of scrivener’s errors:

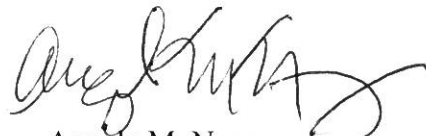
Page 24, line 12, replace “certifies” with “certificates”.

Page 56, line 6, replace “Democrat’s” with “Democrats”.

Respectfully submitted,

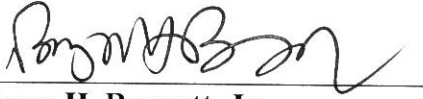


J. Bradley King
Co-Director



Angela M. Nussmeyer
Co-Director

APPROVED:

A handwritten signature in black ink, appearing to read "Bryce H. Bennett, Jr.", written over a horizontal line.

Bryce H. Bennett, Jr.
Chairman

In the Matter Of:

INDIANA ELECTION COMMISSION HEARING

TRANSCRIPT OF PROCEEDING

February 19, 2016



CONNOR REPORTING

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Transcript of Proceeding
February 19, 2016

1 INDIANA ELECTION COMMISSION
2 PUBLIC SESSION AGENDA

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Conducted on: Friday, February 19, 2016

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

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A STENOGRAPHIC RECORD BY:

19

Jenny L. Reeve, CSR-RPR
Notary Public
Stenographic Reporter

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A P P E A R A N C E S

INDIANA ELECTION COMMISSION:

- Mr. Bryce Bennett - Chairman
- Mr. Anthony Long - Vice Chairman
- Ms. Suzannah Overholt - Commission Member
- Mr. Zachary Klutz - Commission Member

INDIANA ELECTION DIVISION STAFF:

- Mr. Dale Simmons - Co-Legal Counsel/
Co-Director Pro Tempore
- Ms. Angela Nussmeyer - Co-Director
- Mr. Matthew Kochevar - Co-Legal Counsel

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1 CHAIRMAN BENNETT: I'd like to call to
2 order this meeting of the Indiana Election
3 Commission public session for Friday,
4 February 19, 2016. The time is approximately
5 1:30 p.m., and I will call the meeting to order.

6 The following members of the Commission are
7 present: Myself, Chairman Bryce Bennett;
8 Vice-Chairman Anthony Long; Member Suzannah
9 Wilson Overholt; and Member Zachary Klutz.

10 The Election Division staff with us here
11 today, we have Co-Director, Angela Nussmeyer.
12 And Co-Director Brad King is absent today, but
13 we have General Co-Counsel Dale Simmons and
14 Matthew Kochevar.

15 Our court reporter today is Jenny Reeve of
16 Connor & Associates.

17 Before we begin today, I want to remind
18 everyone to identify yourself before you speak,
19 spell your name when identifying yourself, speak
20 clearly, and do not speak at the same time as
21 others.

22 This hearing today is being videotaped and
23 electronically streamed over the Internet. For
24 those of you who may be watching online, please
25 bear with us if we experience any technical

1 difficulties. And for those of you who are here
2 today in person, rest assured that we will not
3 pause or delay these proceedings based on any
4 technical difficulties that might be experienced
5 in our electronic video system.

6 At this point I would ask for documentation
7 of compliance with the Open Door Law. And I
8 call upon Ms. Nussmeyer and Mr. Simmons to
9 confirm that the Commission meeting has been
10 properly noticed as required under the Open Door
11 Law.

12 MR. SIMMONS: Thank you. Mr. Chairman and
13 Members of the Commission, the meeting has been
14 properly noticed under the Open Door Law.

15 CHAIRMAN BENNETT: Thank you. Next will be
16 the approval of minutes. And I call upon
17 Ms. Nussmeyer and Mr. Simmons to present the
18 minutes of the January 5, 2016 Indiana Election
19 Commission meeting.

20 MR. SIMMONS: Thank you. Mr. Chairman,
21 Members of the Commission, copies of the
22 January 5, 2016 meeting minutes have been
23 reviewed by Ms. Nussmeyer and Mr. King,
24 Co-Directors, and have been signed off on. They
25 are presented for approval and signature today.

1 CHAIRMAN BENNETT: Is there a motion to
2 approve these minutes as presented?

3 VICE CHAIRMAN LONG: So move.

4 CHAIRMAN BENNETT: We have a motion. Is
5 there a second?

6 COMMISSION MEMBER KLUTZ: Second.

7 CHAIRMAN BENNETT: Motion and a second.
8 Any discussion?

9 (No response.)

10 CHAIRMAN BENNETT: Hearing none, all in
11 favor say aye.

12 THE COMMISSION: Aye.

13 CHAIRMAN BENNETT: All opposed say nay.

14 (No response. Motion carried.)

15 CHAIRMAN BENNETT: The ayes have it, and
16 the motion to approve the minutes is adopted.

17 The Commission has followed certain
18 procedures for conducting candidate challenge
19 hearings, and I move that the Commission use the
20 following procedures today.

21 When each candidate challenge is called,
22 the hearing will begin by recognizing Election
23 Division staff to provide information about the
24 documents provided to the Commission members,
25 including candidate challenge forms and the

1 notice given to the candidates and challenger.

2 Unless there's objection, the documents
3 provided to the Commission by the Election
4 Division will be entered into the record of the
5 meeting.

6 After the Election Division staff completes
7 its presentation, the challenger will be
8 recognized first.

9 Except as when more than one person has
10 challenged the same candidate, the challenger or
11 challenger's representative may present their
12 case for no more than five minutes, unless the
13 Commission votes to allow additional time to the
14 presenter. That is the general rule.

15 In cases where more than one person has
16 challenged the same candidate, the Commission
17 will begin with the cause first listed on the
18 agenda, and ask that the challenger present
19 their case. The first challenger may present
20 their case for no more than five minutes, unless
21 the Commission votes to allow additional time
22 for the presenter.

23 Each subsequent challenger will be given a
24 maximum of two minutes to present new or
25 different evidence in the matter, but may not

1 repeat evidence previously presented, other than
2 to simply affirm that the previously presented
3 evidence is true.

4 However, with respect to the challenge to
5 Todd Young, we have multiple challenges and a
6 good number of documents already filed with the
7 Commission. We will discuss the time limits
8 when we get to that case on our agenda.

9 Commission members may ask questions during
10 the presentation. But the time spent answering
11 these questions will not be counted against the
12 presenter's time.

13 The Election Division may signal the chair
14 when their presenter's time is up. If the
15 presenter offers additional documents or other
16 physical evidence not previously received by the
17 Commission, then the document must be provided
18 to the Election Division, Mr. Simmons, to
19 preserve the record.

20 The candidate or the candidate's authorized
21 representative will be recognized following the
22 last presentation by a challenger. The
23 candidate may present their case for the same
24 amount of time allotted to the challengers,
25 unless the Commission votes to allow additional

1 time for the candidate's presenter.

2 Following each presentation by a
3 challenger, the candidate may cross-examine the
4 challenger. Following the presentation by a
5 candidate, a challenger may cross-examine the
6 candidate. The cross-examination in all cases
7 is limited to two minutes.

8 Unless the Commission votes to allow
9 additional time, the cross-examination must be
10 limited to questions regarding statements made
11 by the presenter.

12 Is there a second to my motion for the
13 Commission to adopt these procedures for today's
14 candidates-challenged hearings?

15 VICE CHAIRMAN LONG: I'll second it, and
16 then I would like to ask a question.

17 CHAIRMAN BENNETT: Okay. We have a motion,
18 and we have a second.

19 Do we have discussion?

20 VICE CHAIRMAN LONG: I didn't hear a
21 section in there that the Commission can ask
22 questions, or did I miss that?

23 CHAIRMAN BENNETT: Yes. Commission members
24 may ask questions during the presentation.

25 VICE CHAIRMAN LONG: I'm sorry. I did not

1 hear that.

2 CHAIRMAN BENNETT: Any further discussion?

3 (No response.)

4 CHAIRMAN BENNETT: All in favor of adopting
5 the motion say aye.

6 THE COMMISSION: Aye.

7 CHAIRMAN BENNETT: All opposed say nay.

8 (No response. Motion carried.)

9 CHAIRMAN BENNETT: The ayes have it.
10 Motion carries.

11 Next we will move to the administration of
12 the oath for individuals testifying before the
13 Commission. Everyone present who plans to
14 testify before the Indiana Election Commission
15 regarding any matter here today, please stand
16 for the administration of the oath.

17 MR. SIMMONS: Please raise your right hand
18 and say "I do" after the administration of the
19 oath.

20 (At this time, the oath is administered.)

21 CHAIRMAN BENNETT: We will now begin
22 consideration of candidates. I remind everyone
23 to please identify yourself before you begin
24 speaking.

25

1 IN THE MATTER OF
2 THE CHALLENGE TO MARCO RUBIO
3 CHAIRMAN BENNETT: We will begin with
4 consideration of Cause No. 2016-2, In the Matter
5 of the Challenge to Marco Rubio, Candidate for
6 the Republican Party Nomination for President of
7 the United States.

8 I will now recognize staff for a
9 description of what is in the binders.

10 MR. SIMMONS: Mr. Chairman, Members of the
11 Commission, under the Marco Rubio tab of your
12 binder, we have placed the challenge filed by
13 Richard Carter, the appearance of Tom John for
14 Marco Rubio, and a brief filed by Mr. Rubio's
15 attorney, Tom John.

16 Also is included proof of notice of the
17 meeting. And we have an additional proof of
18 notice that we printed out this morning, if
19 that issue comes up. We didn't include it in
20 the packet. We were including that as we went
21 along.

22 CHAIRMAN BENNETT: Very well. I now
23 recognize Richard Carter or his representative
24 for presentation.

25 MR. CARTER: I am Richard Carter from

1 Madison, Indiana. That's Richard,
2 R-I-C-H-A-R-D, C-A-R-T-E-R.

3 I have filed a CAN-1 form per the laws of
4 the State of Indiana challenging that Marco
5 Rubio does not qualify because he is not a
6 natural-born citizen.

7 And I affirm the information I have sent to
8 the Commission is true and to the best of my
9 belief in what I can find on it. And I have one
10 other document to provide you for consideration
11 whenever you request it.

12 I would like to start off today with the
13 comment on the Indianapolis Star, which said
14 that the Cruz campaign was -- the Election Board
15 was dismissed on there. I'd like to point out
16 that Illinois has a Commission that has
17 absolutely no stated rules as to what qualifies
18 for a candidate to run for president in the
19 State of Illinois.

20 And under Rubio, I'd like to say they were
21 defended in Florida. Florida law has absolutely
22 no law and no reference in their constitution to
23 any requirements for a candidate for the
24 president or vice president of the United
25 States. Indiana does.

1 So the only other thing I can do here is
2 say that I stand behind what I sent. And I
3 would like to remind people that a natural-born
4 citizen cannot be determined by a political
5 body, nor the U.S. Supreme Court. Our
6 Constitution was based on the Declaration of
7 Independence, which stated that our republic
8 will be under the laws of nature and the nature
9 of God, God's nature.

10 So therefore, all that mankind gets into
11 this cannot alleviate the fact of the
12 natural-born citizen as known in the time of our
13 Founding Fathers.

14 If there's no questions, that's my
15 statement, pretty much.

16 CHAIRMAN BENNETT: Thank you. Did you have
17 a document you wanted to admit into the record?

18 MR. CARTER: Yes, I certainly do. I'll
19 pass it down.

20 VICE CHAIRMAN LONG: He'll see that they
21 get distributed.

22 CHAIRMAN BENNETT: So you've submitted a
23 document.

24 MR. JOHN: Might I get a copy?

25 MR. CARTER: Sorry about that.

1 CHAIRMAN BENNETT: Do you have copies for
2 the other Commissioners?

3 MR. CARTER: Yes. Thank you.

4 (Exhibit 1-Carter was marked for
5 identification.)

6 CHAIRMAN BENNETT: You're done with your
7 presentation; is that correct?

8 MR. CARTER: Yes, I am, because I think my
9 documentation that I sent you previously, plus
10 this latest, confirms that.

11 Well, I do have one other statement, yes.
12 Under Indiana law, it is up to the government to
13 have the candidates prove their situation. In
14 other words, I do not have to prove they are not
15 a natural-born citizen. The government is
16 responsible to prove that they are.

17 And just like when I come to get a driver's
18 license in the State of Indiana, I had to have
19 proof of citizenship, birth, and several other
20 documents. I think being president and vice
21 president and commander in chief of our country
22 is a lot more important than a driver's license.
23 And Indiana law is very specific as to the
24 requirements for president and vice president.

25 CHAIRMAN BENNETT: Thank you. I now

1 recognize Tom John, an attorney who has filed a
2 written appearance on behalf of Marco Rubio.

3 MR. JOHN: Do you have a preference one way
4 or the other (indicating)?

5 CHAIRMAN BENNETT: As long as you speak
6 directly into the microphone, you can do it from
7 where you like.

8 MR. JOHN: I'll just sit, if that's okay.

9 Mr. Commissioner, Mr. Vice-Commissioner,
10 Commission Members, thank you. I'm Tom John
11 from Ice Miller, LLP, appearing on behalf of
12 Senator Marco Rubio, who is running for United
13 States president.

14 This is a pretty simple matter, in my mind,
15 simply because we've been here before. Based on
16 an Indiana Court of Appeals decision from 2009,
17 this specific rule and this specific issue has
18 been addressed.

19 And that is this: Marco Rubio, in his
20 filings, has affirmed that he is a citizen of
21 the United States, and he was born -- and it's
22 uncontroverted -- that he was born in the State
23 of Florida.

24 Based on long history going back hundreds
25 of years of common law, back to actually England

1 and then the United States through the
2 Constitution, and the drafting of Article II,
3 Section 1, it's been unequivocated that, in
4 fact, when someone is born to this soil, that
5 they are, in fact, a United States citizen,
6 regardless of the citizenship of their parents.

7 Article II, Section 1 states, "No person
8 except a natural-born citizen or a citizen of
9 the United States, at the time of the adoption
10 of the Constitution, shall be eligible for the
11 office of president." That has been many times
12 construed by the United States Supreme Court,
13 going back to the mid-1800s.

14 And, in fact, in the Wong Kim Ark case, in
15 1852 -- or 1874, the Court looked at this
16 specific issue. And the Court was reviewing
17 whether or not a child of two Chinese parents
18 who were not citizens of the United States, but
19 had been born in the United States, left the
20 country, were presuming to come back to the
21 country, and, in fact, were denied entry as not
22 being a citizen of the United States.

23 The Court found that the fundamental rule
24 of citizenship by birth within the dominion of
25 the United States, notwithstanding alienage of

1 parents, has been affirmed since the adoption of
2 the Fourteenth Amendment of this Constitution.
3 That is pretty clear in and of itself.

4 But then in 2008, President Obama's
5 citizenship was challenged before the Indiana
6 Court of Appeals. The Indiana Court of Appeals
7 looked at this issue in-depth and said, quote,
8 "Nothing is better settled at the common law
9 than the doctrine that the children, even of
10 aliens, born in a country while the parents are
11 resident there under the protection of the
12 government, and owing a temporary allegiance
13 thereto, are subjects by birth." That seems
14 pretty clear.

15 But the Court went on in its holding and
16 stated, "Based upon the language of Article II,
17 Section 1, clause 4, and the guidance provided
18 by Wong Kim Ark, we conclude that persons born
19 within the borders of the United States are
20 natural-born citizens for Article II, Section 1
21 purposes, regardless of the citizenship of their
22 parents."

23 This challenge that was put forth by
24 Mr. Carter clearly is relying not upon where
25 Marco Rubio was born, because that has not been

1 disputed, but simply on whether or not there was
2 true citizenship running through the lineage of
3 his parents.

4 And that is not the issue here. It is well
5 settled law in our state. It is well settled
6 law in our country.

7 And, in fact, if this interpretation were
8 to be given by this Commission, six of our
9 presidents would not have actually been eligible
10 to have served, inferring the last 150 years
11 having been mistaken at various times, including
12 our current president.

13 But, in fact, I would argue that's not the
14 case, and that this case should be dismissed.
15 On its face, it states that Marco Rubio was born
16 in Florida, and thus, under clear Indiana law,
17 should not proceed, or, in the alternative, this
18 Commission should deny that challenge to Marco
19 Rubio, and he should remain on the ballot.

20 Thank you. I'll take any questions.

21 CHAIRMAN BENNETT: Thank you. So we'll
22 close the public portion of the hearing, and
23 take questions from the Commission.

24 Is there anything else? Do you wish to
25 cross-examine?

1 MR. CARTER: I would like to remind the
2 person here that the Fourteenth Amendment only
3 made Kim Wong Ark [sic] a citizen. It did not
4 make him a natural-born citizen in any way,
5 shape, or form. Yes, and they were right in
6 approving him as a citizen.

7 But in the Fourteenth Amendment, did it
8 mention natural-born citizen? In fact, they
9 went to very big trouble -- you'll notice that
10 the Fourteenth Amendment did not address the
11 natural-born citizenship for the qualifications
12 for a president. They very definitely left that
13 out. So the Fourteenth Amendment here is not a
14 qualified item to make a natural-born citizen.

15 The other item, the Appeals Court -- I
16 don't know exactly which one it was. I know
17 that there were nine states that filed lawsuits.
18 All of them but one were rejected on a
19 technicality, or a term that they -- no
20 standing. That did not settle anything. That
21 was a judge, circuit court judges passing the
22 buck, trying to find loopholes to not have to
23 rule on it.

24 The State of New Jersey did allow an appeal
25 to go to the United States Supreme Court. And

1 that was mishandled. I won't say it was
2 unlawful, but it was mishandled by the clerk of
3 courts for Justice Souter to the point --

4 CHAIRMAN BENNETT: You have 30 seconds
5 left.

6 MR. CARTER: That's in my paperwork.

7 So the ones that he's talked to have no
8 bearing on natural-born citizen. There's no
9 mention of it, and it is not approved by any
10 court. Thank you.

11 CHAIRMAN BENNETT: Thank you. Any
12 rebuttal?

13 MR. JOHN: I guess I will simply reiterate
14 the language from the McCain case, wherein it
15 said that, "We conclude that persons born within
16 the borders of the United States are
17 natural-born citizens for Article II, Section 1
18 purposes, regardless of citizenship of their
19 parents." That's Indiana precedent, which seems
20 directly on point, and, at the end of the day,
21 should control. Thank you.

22 CHAIRMAN BENNETT: Thank you. The public
23 hearing, admission of evidence and testimony is
24 concluded.

25 Questions from the Commissioners?

1 COMMISSION MEMBER OVERHOLT: Mr. John, are
2 you now withdrawing your argument regarding the
3 subject matter jurisdiction to this Commission?

4 MR. JOHN: No. I remain on the briefs on
5 all the arguments I made. But I had five
6 minutes, and I can't talk about everything. And
7 this is the most direct point concerning the
8 whole thing.

9 COMMISSION MEMBER OVERHOLT: Oh, because I
10 would have thought subject matter jurisdiction
11 was the most direct point and the more basic
12 argument, so I just wanted to clarify.

13 MR. JOHN: I've not waived any arguments
14 that I've made in the briefs for purposes of the
15 Commission.

16 COMMISSION MEMBER OVERHOLT: Thank you.

17 CHAIRMAN BENNETT: Any further questions?

18 VICE CHAIRMAN LONG: I just want to make
19 sure we're all on the same page factually.
20 Senator Rubio's parents were of Cuban descent?

21 MR. JOHN: Right.

22 VICE CHAIRMAN LONG: And they came to the
23 United States and were residents of the United
24 States lawfully?

25 MR. JOHN: Correct.

1 VICE CHAIRMAN LONG: Is that disputed?

2 MR. CARTER: No.

3 VICE CHAIRMAN LONG: Okay. And he was born
4 here in the United States?

5 MR. JOHN: Correct.

6 MR. CARTER: May I ask one more question?

7 CHAIRMAN BENNETT: One question.

8 MR. CARTER: One question. Has the person
9 against my challenge provided the State of
10 Indiana any proof of the birth certificate of
11 either of those candidates? Because I firmly
12 believe that those birth certifies will state a
13 citizen of Cuba.

14 CHAIRMAN BENNETT: Mr. John, you may
15 respond, if you'd like, or not.

16 MR. JOHN: I will simply say that Senator
17 Rubio affirmed that he has met all the
18 requirements of Article II, Section 1. So that
19 is proof in and of itself, absent some other
20 proof.

21 CHAIRMAN BENNETT: Anything further from
22 the Commission on those questions?

23 (No response.)

24 CHAIRMAN BENNETT: Hearing none, I will
25 entertain a motion.

1 VICE CHAIRMAN LONG: My question is,
2 comments? Or make the motion, and then
3 comments? In which order do you want me to
4 proceed, Mr. Chairman?

5 CHAIRMAN BENNETT: Well, go ahead with your
6 comments first, if you like.

7 VICE CHAIRMAN LONG: As Ms. Overholt said,
8 I have given some serious thought to the subject
9 matter jurisdiction part of your argument. And
10 I had almost convinced myself that maybe that
11 was a mainstay.

12 But I came down to the point of saying, at
13 least reconciling in my mind, that somebody's
14 got to make a decision at this level. And we're
15 charged with enforcing the laws of the State of
16 Indiana. The State of Indiana charges us with
17 responsibility in dealing with challenges.

18 And as we're going to deal with another
19 challenge in a few minutes that is somewhat
20 similar, but that does have some decided
21 differences, I think we do have subject matter.
22 And I'm convinced that we should go forward on
23 that point.

24 That's where I come from. That's the only
25 comment that I have, pre-motion, anyway.

1 CHAIRMAN BENNETT: Well, I would ask for a
2 motion, then, on either issue, I suppose.

3 VICE CHAIRMAN LONG: I would move that the
4 challenge be denied.

5 COMMISSION MEMBER KLUTZ: Second.

6 CHAIRMAN BENNETT: We have a motion and a
7 second. Is there any further discussion?

8 VICE CHAIRMAN LONG: One of the discussions
9 which I think is significant here is that this
10 has been one of the most interesting research
11 projects I've been on in a few years. And
12 obviously, I've done this for a long time.

13 I agree with Mr. John's comment that we
14 have to go back to English common law, because
15 that's where our Constitution evolves. That was
16 the next step.

17 And I'm not overly impressed with arguments
18 that I've read by some treatises that
19 legislative enactments by Congress that might
20 naturalize someone affect that. I guess that
21 would make me an originalist in my
22 interpretation of the Constitution. And I say
23 that in all deference to late Justice Scalia.

24 But those folks were here lawfully under
25 the jurisdiction and supervision of the

1 government, our government. And I think that's
2 a significant thing.

3 As I read the common law from England, that
4 was what the common law was in England. If a
5 foreign citizen were there and subject to the
6 jurisdiction of the country, and a child was
7 born, that child was a citizen of that country.
8 And I think that there's a big difference
9 between a natural-born citizen and a naturalized
10 citizen.

11 And my position is that in this case, I
12 don't think that a legislative enactment, absent
13 an amendment to the Constitution, that's the
14 only way that would be changed. But I don't
15 think the legislative enactment can broaden the
16 definition of what a natural-born citizen is.

17 And I think, also, the Indiana courts have
18 ruled that, at least as it relates to our laws,
19 that it complies with the Constitution of the
20 United States and is enough authority for us to
21 approve Senator Rubio's position on the ballot.

22 CHAIRMAN BENNETT: We have a motion and a
23 second. All in favor of the motion to deny say
24 aye.

25 THE COMMISSION: Aye.

1 CHAIRMAN BENNETT: All opposed say nay.

2 (No response. Motion carried.)

3 CHAIRMAN BENNETT: The ayes have it. The
4 motion is denied, and the Election Division is
5 directed to include the name of Marco Rubio on
6 the certified list of candidates and printed on
7 the ballot.

8 Thank you for your time.

9 MR. JOHN: Thank you.

10 VICE CHAIRMAN LONG: Mr. Carter, thank you
11 for taking the time to do this. As a citizen,
12 we appreciate you coming forward.

13 And Mr. John, we appreciate your presence
14 here again.

15 MR. JOHN: Thank you. It was a pleasure to
16 appear.

17 IN THE MATTER OF
18 THE CHALLENGE TO TED CRUZ

19 CHAIRMAN BENNETT: The next item on the
20 agenda is the Ted Cruz challenge. This is the
21 consideration of Cause Nos. 2016-3 and 2016-4,
22 which have been filed In the Matter of the
23 Challenge to Ted Cruz, Candidate for the
24 Republican Party Nomination for President of the
25 United States.

1 I will recognize the staff for a
2 description of what is in our binders.

3 MR. SIMMONS: Mr. Chairman and Members of
4 the Commission, under the Ted Cruz tab of your
5 binder, we have placed two challenges, one filed
6 by Richard Carter under Cause No. 2016-3, and
7 one filed by Bob Kern under Cause No. 2016-4.

8 Behind the red tape of this tab is the
9 appearance of Alexander P. Will on behalf of Ted
10 Cruz. And there's a brief, also in your packet,
11 filed by Mr. Will.

12 CHAIRMAN BENNETT: Thank you. I would
13 recognize the first challenger listed on our
14 agenda, Richard Carter, for presentation.

15 MR. CARTER: As I said earlier, you have
16 the same information, except under Ted Cruz.

17 Ted Cruz was born to Cuban nationals in
18 Calgary, Canada, and had a birth mother as a
19 citizen of the United States, according to the
20 documentation.

21 But you cannot be a natural-born citizen
22 due to one fact there. And that fact is until
23 1934, no citizenship was passed down from the
24 wives of -- or the mothers of the children. The
25 mothers of children being given citizenship,

1 like to Ted Cruz, came about through laws of the
2 land, not constitutional amendments, and so
3 forth, not even the Fourteenth Amendment.

4 Therefore, he definitely cannot be a
5 natural-born citizen.

6 And No. 2, I do not believe that this
7 committee should rule until they have a valid
8 copy, certified by the candidates, that yes,
9 they are citizens of the United States on their
10 birth certificate. Thank you.

11 CHAIRMAN BENNETT: Thank you. I would now
12 recognize Bob Kern for presentation.

13 I would ask that you not repeat what has
14 already been presented.

15 MR. KERN: Good afternoon, ladies and
16 gentlemen. My name is Bob Kern, B-O-B, K-E-R-N.
17 I'm a resident of Indianapolis, Indiana, and I
18 am challenging Ted Cruz.

19 I would like to approach. I don't have
20 many -- I didn't realize how many people were
21 going to be on the panel. I have six birth
22 certificates because I have copies that I would
23 like to render to you.

24 CHAIRMAN BENNETT: You may approach.

25 MR. KERN: Thank you.

1 (Exhibit 1-Kern was marked for
2 identification.)

3 MR. KERN: As you can see, that's the birth
4 certificate of Ted Cruz. Well, actually, it's
5 Rafael. He has a different name, Rafael. And
6 he says that his name is Ted Cruz on the birth
7 certificate.

8 Like the gentleman said, you have to be a
9 naturalized-born [sic] citizen in the United
10 States to be president.

11 And we also, here in Indiana, have a law
12 that was created back in 1998, also stating that
13 whatever name appears on the ballot needs to
14 appear on your birth certificate.

15 Nowhere on that birth certificate does it
16 say Ted Cruz. Nowhere. It says Rafael. It
17 does not say Ted Cruz anywhere on the birth
18 certificate.

19 And by Indiana state law, your own law that
20 was made law in 1998, we have to follow it. The
21 Constitution says that you have to be born a
22 naturalized [sic] citizen of the United States.

23 This came forth when -- before it was even
24 law, I was challenged myself to ballot access,
25 winning the ballot in 1998. They had said that

1 because my name did not appear as I had ran
2 under, that I would have to have been removed
3 from the ballot, even though it was not law.
4 But yet they still removed me.

5 And then I had to go to court, fighting the
6 challenge to get back on the ballot, proving who
7 I was by showing my birth certificate. And I am
8 a naturalized [sic] born citizen here in the
9 United States.

10 Where Rubio was born in Florida, is what
11 you guys were stating, but clearly, the birth
12 certificate clearly states where Mr. Cruz was
13 born, in Calgary. It doesn't say anywhere else,
14 and nowhere in the Constitution does it say that
15 you can live in another country --

16 CHAIRMAN BENNETT: Ninety seconds left.

17 MR. KERN: -- and run for president.

18 We have to protect the Constitution. We
19 have to protect Indiana law. There's a reason
20 why we made Indiana law.

21 And if you're going to hold me to it and
22 others accountable to it, you have to hold Ted
23 Cruz to it as well, because his name does not
24 appear on his birth certificate as it appears on
25 the ballot here in Indiana.

1 So I ask that you remove his name from the
2 Indiana ballot.

3 CHAIRMAN BENNETT: Thank you. I would now
4 recognize Alexander Will, who has entered his
5 written appearance as attorney for the
6 candidate, Ted Cruz.

7 MR. WILL: Thank you. Good afternoon. As
8 stated, my name is Alexander Will, last name
9 spelled W-I-L-L. I represent Senator Ted Cruz,
10 candidate for president of the United States. I
11 will be brief.

12 I think that a lot of the discussion here
13 has addressed many of the issues, many of the
14 same issues that are presented in the challenges
15 to Senator Cruz.

16 I will start by picking up on a point that
17 was raised earlier, which is the issue of
18 jurisdiction. In fact, we have the same
19 argument in our brief that we've submitted.

20 In particular, we'd like to point out that
21 both Article I, Section 2, and the Fourteenth
22 Amendment, control how presidents are eligible,
23 and how that eligibility is determined by
24 Congress.

25 Because the manner and approach of that

1 eligibility determination is constitutionally
2 controlled by Congress, under the political
3 question doctrine, we believe that issue is not
4 jurisdictionally before this Commission, before
5 Indiana courts. Instead, it lies solely before
6 the U.S. Congress.

7 The argument is there in the materials, and
8 I think it was raised by at least two of the
9 Commissioners this afternoon, but we wanted to
10 address it.

11 Second, with regard to even if the
12 Commission does approach the merits of this
13 determination, we believe that the natural-born
14 citizen language is clear both in plain meaning
15 and in historical interpretation and judicial
16 interpretation and congressional interpretation,
17 that a citizen that is born of a U.S. citizen,
18 even if that birth takes place abroad, is still
19 a U.S. citizen eligible for the presidency of
20 the United States.

21 When I say "plain language" and "plain
22 ordinary meaning," I want to make clear that a
23 natural-born citizen should be distinguished --
24 I think the term "naturalized" was thrown
25 around -- to say natural-born citizen, under the

1 plain and ordinary meaning, which is the course
2 of interpretation here in Indiana courts.

3 Plain and ordinary meaning would be someone
4 who is natural and a citizen upon birth. That
5 says nothing for the location of birth, and it
6 says everything for whether that person was a
7 citizen at the time of their birth. And that's
8 the case with Senator Cruz.

9 Additionally, with regard to historical
10 interpretation, our Founding Fathers had
11 discussions about what the natural-born citizen
12 requirement meant, and I don't think they could
13 fathom a situation where an American citizen
14 abroad, particularly those that might have been
15 serving their country abroad -- so, for example,
16 as discussed in our text, somebody like John
17 Jay, who fathered three children and who
18 discussed this particular provision, couldn't
19 fathom the idea that his children would not be
20 eligible for the presidency just because they
21 were born abroad while he was doing his duty.

22 So I think that the historical context of
23 that provision, as well, supports our position.

24 With regard to case law and congressional
25 intent, almost universally, cases have upheld

1 this interpretation and found that Article I --
2 or Article II, Section 1, discussion of
3 natural-born citizen, means natural born at the
4 time of birth, and not as to location.

5 So again, coming back to our point here,
6 both the case law, and particularly from 2008,
7 around Senator McCain's candidacy for president,
8 this issue was brought up again because he was
9 born in the Panama Canal Zone to U.S. citizens
10 while they were off doing their duty as U.S.
11 citizens.

12 And so I think this issue has been decided
13 in the past. I think that the historical and
14 judicial context of this are clear.

15 And to the extent that Congress weighed in
16 on Senator McCain's candidacy in 2008, they have
17 expressed their intent on that as well. And I
18 don't think there's any support for a different
19 interpretation.

20 With that, I will rest my brief and take
21 any questions that you have. Thank you.

22 CHAIRMAN BENNETT: Thank you. No
23 cross-examination having been requested by
24 either party, we will close the public hearing
25 portion.

1 MR. KERN: I'd like to question him.

2 CHAIRMAN BENNETT: Okay. You may.

3 MR. KERN: I think you just stated that --
4 if I'm correct; if I'm incorrect I apologize --
5 that a child that comes here doesn't have --
6 really, you know, it's not by choice, that
7 they're just here, or they're not -- you know,
8 it's not their fault.

9 But it is their fault if they have to be
10 responsible. And everybody has to be
11 responsible. If there's things that you want to
12 do in life that keep you from doing the things
13 that you want to do in life, you have to follow
14 the rules.

15 And the rules are that you get your name
16 changed. You go through a court system, and you
17 get your name changed.

18 I also want to approach, again, one more
19 time, to give you a copy of the mother's birth
20 certificate and the father's birth certificate,
21 which clearly is different from the birth
22 certificate that I gave you the first time.

23 (Exhibit 2-Kern was marked for
24 identification.)

25 MR. WILL: Mr. Chairman, could I also

1 request copies of this as well? I didn't see a
2 copy of the initial one.

3 CHAIRMAN BENNETT: Yes, you have a copy in
4 front of you now.

5 MR. WILL: I don't have the new exhibit.

6 MR. KERN: I'll give it to him.

7 VICE CHAIRMAN LONG: I think we have an
8 additional one up here.

9 MR. WILL: Thank you, sir.

10 MR. KERN: So on the birth certificates,
11 the names look pretty different. I don't see
12 anywhere where the name Cruz is on either
13 parent's name.

14 And I think, when you come into this world,
15 you have to have the name Cruz somewhere from
16 either the mother or the father. And neither
17 one of them have the name Cruz as a last name.

18 CHAIRMAN BENNETT: Your two minutes are up.
19 Thank you.

20 MR. WILL: Was there a question presented
21 there? I understood it was cross-examination.

22 CHAIRMAN BENNETT: Well, I think it was
23 argument. Do you have any rebuttal argument?

24 MR. WILL: Just very briefly. To the
25 extent that the issue was raised that the name

1 appeared in the manner that it appeared on the
2 ballot, in that manner, I don't think that was
3 raised in the challenge.

4 And I would state that certainly it's
5 outside the scope of the challenge. We weren't
6 prepared to address that today. And I guess
7 it's not -- it hasn't been previously addressed
8 or approached.

9 In any event, it should be rejected by this
10 Commission.

11 VICE CHAIRMAN LONG: The issue,
12 Mr. Chairman, I think is resolved in the
13 statute.

14 Mr. Kern, according to Indiana Code
15 3-5-7-5, talks about the designation of names on
16 the ballot. And I well remember his challenge a
17 few years ago using a different name than he's
18 using here today.

19 And I think, had he read a little further,
20 the requirements of this section, which would be
21 Indiana Code 3-5-7, do not apply to candidates
22 in a presidential primary election.

23 So I think that question troubled me also.
24 And we did some research preparing for this.
25 And I think, at least as far as my

1 interpretation, I submitted it to our counsel
2 for confirming.

3 And I thank our counsel down here, Matt,
4 for finding that section for me, because I
5 raised that question myself.

6 CHAIRMAN BENNETT: Do you have anything to
7 add to that?

8 MR. SIMMONS: Yes. Specifically, 3-5-7-5
9 is the applicable section in that code. And I'm
10 not sure what the argument is, but it's with
11 respect to use of a nickname. And clearly, a
12 nickname can be used as first designation on the
13 ballot, if you are commonly known by that.

14 VICE CHAIRMAN LONG: It's also my
15 understanding that the filing that he made was
16 under the name of Rafael Edward Cruz. Am I
17 correct?

18 MS. NUSSMEYER: Correct.

19 VICE CHAIRMAN LONG: So the actual filing
20 for president of the candidate's declaration was
21 in his name. The only place we've got Ted, I
22 think, is on this challenge.

23 MS. NUSSMEYER: It's his ballot name. I
24 can pull that.

25 VICE CHAIRMAN LONG: But I asked that same

1 question, and I was told that he was -- it was
2 in his given name.

3 CHAIRMAN BENNETT: All right. All parties
4 having made their presentation, the public
5 hearing portion is now closed.

6 And I would ask the Commission if there's
7 any further discussion.

8 VICE CHAIRMAN LONG: Give Mr. Kern --

9 MS. NUSSMEYER: Sure.

10 VICE CHAIRMAN LONG: Just let him look at
11 it. This is the actual filing.

12 MR. KERN: Well, I have a question about
13 that law. Is that federal law?

14 You just said something about the president
15 -- the president -- that if I challenge that,
16 that it doesn't apply to the president.

17 But yet it applies to every American
18 citizen under the law, myself included, when I
19 ran for U.S. Congress. And that was my name
20 when I was born, was the name Kern.

21 But yet I was taken off the ballot, due to
22 the fact that even though it wasn't the law, for
23 you guys to tick me off about, but now it is the
24 law, to uphold the law here in Indiana that you
25 guys did create, especially because of myself --

1 CHAIRMAN BENNETT: Mr. Kern, you're --

2 MR. KERN: So my question --

3 CHAIRMAN BENNETT: -- out of order at this
4 point.

5 MR. KERN: -- to you is --

6 CHAIRMAN BENNETT: The public portion of
7 the hearing is concluded, and --

8 MR. KERN: Well, my question to you is --
9 and I'd like an answer.

10 CHAIRMAN BENNETT: Please do not talk while
11 I'm speaking.

12 This is not about your election, your
13 experience. You've made your case.

14 MR. KERN: I understand.

15 CHAIRMAN BENNETT: I'll ask you to sit down
16 and let the Commission do its work.

17 MR. KERN: Okay. Well, I want you to show
18 me under the law where it says that a president
19 has more rights than -- a presidential candidate
20 has more rights than another federal candidate
21 or any other candidate in the State of Indiana.

22 CHAIRMAN BENNETT: Mr. Kern, I'm asking you
23 to sit down, please. Sit down.

24 MR. KERN: Thank you.

25 CHAIRMAN BENNETT: Is there a motion?

1 COMMISSION MEMBER KLUTZ: Thank you for the
2 presentations.

3 After hearing the evidence, I do not think
4 that either petitioner met their burden to show
5 that Ted Cruz is not a natural-born citizen, and
6 I move that both petitions be denied.

7 CHAIRMAN BENNETT: We have a motion. Is
8 there a second?

9 I'll second the motion for purposes of
10 discussion.

11 Is there any discussion?

12 VICE CHAIRMAN LONG: Yes, sir. First of
13 all, the exhibit of the birth certificate of the
14 mother I wouldn't expect to have the name Cruz
15 on it since she didn't become a Cruz until she
16 married Rafael Cruz, the father. So her name
17 you gave us, Eleanor -- and I can't pronounce
18 the last name. The mother's given name is
19 Eleanor, and on the birth certificate.

20 I'll tell you this is the most interesting
21 case that I've had in all my years, and they've
22 been several, on this Commission. It's markedly
23 different than the Marco Rubio case.

24 I'm concerned, and what troubles me the
25 most is that nobody addressed the fact that he

1 was -- I think he was born in Alberta. That's
2 not disputed.

3 I'm not for sure what his father's
4 citizenship was. I've tried my best to look
5 into this. But from the evidence that we've
6 had, nobody's established what -- and I'm going
7 to call him -- he goes by the name Rafael. If I
8 say Rafael from here on, it means Ted Cruz's
9 dad. It's my understanding he was a Canadian
10 citizen and had become such more than a year
11 before Ted was born.

12 His mother appears to be a citizen of the
13 United States by her birth. I don't think
14 that's disputed.

15 But my trouble is, it's my understanding --
16 and I think we need to have some explanation of
17 what Canadian law would have been. It's my
18 understanding, and this is certainly not
19 evidentiary, but at that point in time, Canada
20 did not recognize dual citizenship. And if a
21 person, foreign born, was married to a Canadian
22 citizen for a year, they became Canadian
23 citizens.

24 That being the case, I question as to
25 whether or not Ted Cruz's mother was a citizen

1 of the United States.

2 It's also my understanding that
3 expatriates, Americans living abroad, when they
4 have children on foreign soil, there's some
5 documentation that must be filed to declare that
6 citizenship.

7 If all of that is true, and Senator Cruz
8 has renounced his Canadian citizenship, I'm not
9 for sure he's a citizen of the United States,
10 period. But he's affirmed under penalties of
11 perjury that he is. And that's not for us to
12 decide at this juncture.

13 Mr. Will, you made a great presentation. I
14 read your material. I think born on the soil is
15 what it meant at the time the Constitution was
16 written, because at the time they were forming
17 the Constitution, we were forming the country of
18 the United States. And so there wouldn't be any
19 citizens until you form a country.

20 And then, once you form the country, the
21 folks that were there then would set the test
22 for citizenship.

23 And then we'll see some corollary when they
24 look at the age requirement. We have a case
25 coming up on that later.

1 But back at that time when they passed
2 this, nobody would have been a resident of the
3 United States for the requisite number of years
4 in order to qualify for this because the country
5 just came into existence.

6 I am really, really troubled. I mean I
7 would rather err on the side of ballot
8 placement, on ballot -- on being on it as much
9 as anybody. But it troubles me deeply that
10 nobody seems to have provided us evidence as to
11 what the facts of this case are that I think are
12 germane.

13 I think in English common law, if you are
14 on the service of the country of England outside
15 of there as a diplomat, or whatever, and their
16 children were born, they were natural-born
17 citizens. There wasn't any question that was a
18 common law. And everything I've read supports
19 that.

20 I think that fully addresses when Senator
21 McCain's folks were down in Panama. I think his
22 dad was in the military. But they were clearly
23 on the business of the United States, and
24 there's no question in my mind regarding him
25 being a natural-born citizen.

1 Under Indiana judicial authority, a person
2 born here of foreign citizens, born on the soil
3 here, can be accepted as a natural-born citizen.
4 And I think we have to follow the law.

5 But we do not have any precedent that's
6 been submitted that satisfies me that Senator
7 Cruz -- his father, who I understood was a
8 Canadian citizen, and he was married to the
9 mother for more than a year, and that made her a
10 Canadian citizen. And I read somewhere that she
11 was a registered voter in that country. And
12 that really is troublesome to me.

13 I wish that there was a way that we could
14 transfer this directly to the Supreme Court and
15 let them rule, because I don't think that it's
16 going to be resolved until the Supreme Court
17 addresses it.

18 And as I sit here right now -- and I'm
19 filibustering, but I'm two minutes away from a
20 vote, or less, and I'm not for sure how I'm
21 going to vote, because I'm so troubled with the
22 fact that I just have to say that I don't think
23 either of the challengers nor the candidate has
24 afforded me anything that would allow me to say
25 that he is a citizen, or perhaps, maybe, that he

1 is not.

2 And that's where I am on it.

3 CHAIRMAN BENNETT: Thank you, Commissioner
4 Long. I appreciate all of your very thoughtful
5 and well-researched comments.

6 I think what we have here is insufficient
7 evidence in the record which would indicate that
8 Mr. Cruz is not eligible for the presidency,
9 based on citizenship. As you pointed out, we do
10 have an affirmation of citizenship, and a dearth
11 of evidence that his mother was not a citizen of
12 the United States when he was born.

13 It seems to me that the naturalization laws
14 passed by Congress answered this question based
15 on the facts we have before us, and that Senator
16 Cruz is a natural-born citizen as it pertains to
17 the laws of Indiana and the United States.

18 So with that, I would call for a vote. All
19 in favor of the motion on the table to deny the
20 challenge say aye.

21 COMMISSION MEMBER KLUTZ: Aye.

22 VICE CHAIRMAN LONG: Aye.

23 CHAIRMAN BENNETT: Aye.

24 All opposed say nay.

25 COMMISSION MEMBER OVERHOLT: Nay.

1 CHAIRMAN BENNETT: 3-1, the ayes have it.
2 The motion is denied, and the Election Division
3 is directed to include the name of Mr. Cruz on
4 the certified list of candidates, and on the
5 ballot. Thank you all.

6

7

IN THE MATTER OF

8

THE CHALLENGE TO TODD YOUNG

9

CHAIRMAN BENNETT: Next up we have the Todd
10 Young challenge. This next proceeding will be
11 in consideration of Cause Nos. 2016-5, 2016-12,
12 and 2016-13, which have been filed In the Matter
13 of the Challenge to Todd Young, Candidate for
14 the Republican Party Nomination for United
15 States Senator.

16 I will take a moment and let everyone get
17 settled before we proceed.

18 (Discussion off the record.)

19 CHAIRMAN BENNETT: If everybody is settled,
20 we'll now talk about how we're going to proceed
21 here.

22 As I mentioned at the outset, for this
23 challenge there are multiple challenges and a
24 good number of documents that have already been
25 filed with the Commission. If we're going to be

1 asked to review this documentation and other
2 documentation here today, we may need additional
3 time.

4 I move that we give the challengers
5 10 minutes each to present their case, with
6 20 minutes to the candidate in response, and
7 that each side get 10 minutes combined in
8 rebuttal, which would be 5 minutes each for the
9 two challengers, and that each side get
10 10 minutes in surrebuttal, if necessary.

11 Is there a second to this motion?

12 VICE CHAIRMAN LONG: I'll second it.

13 CHAIRMAN BENNETT: We have a motion and a
14 second. Any discussion?

15 (No response.)

16 CHAIRMAN BENNETT: Hearing none, all in
17 favor of that motion, please say aye.

18 THE COMMISSION: Aye.

19 CHAIRMAN BENNETT: All opposed, say nay.

20 (No response. Motion carried.)

21 CHAIRMAN BENNETT: They ayes have it.
22 Motion carried.

23 The attorney for Todd Young has filed a
24 motion to consolidate these hearings under three
25 separate cause numbers with respect to these

1 challenges. I'd like to give both sides an
2 opportunity to address this motion.

3 At this time, does the representative of
4 Todd Young, the moving party, wish to speak to
5 the issue of consolidation?

6 MR. BROOKS: Sure, Mr. Chairman. My name
7 is David Brooks, of Brooks Koch & Sorg. And as
8 you mentioned, I'm representing the Todd Young
9 campaign.

10 The reason for the motion to consolidate is
11 really, as scintillating as this will be, to
12 keep you from hearing this -- the same evidence
13 on multiple fronts.

14 I know that Mr. Bopp, on behalf of the
15 Stutzman campaign, doesn't want to consolidate.
16 But he didn't mention the fact that there are
17 three separate cause numbers. 2016-5 is
18 actually essentially the same complaint as the
19 Stutzman campaign.

20 So from my point of view, I do agree with
21 Mr. Bopp that we should figure out this
22 situation about the certified signatures, and
23 then worry about proceeding with any additions
24 to the number that I might have, or the
25 decertifications that the Democrat party appears

1 to be advocating.

2 And it would seem to me that -- I mean
3 here's what I want to know. And we can try to
4 simplify this. I need to know how they counted
5 them, who they are, and what data they looked
6 at, because as soon as I know that, I'm willing
7 to proceed and tell you why there are others
8 that were properly certified that they're not
9 counting.

10 But right now, I don't have any idea. So I
11 assume that they're going to provide a list of
12 names so that we know who they counted, and move
13 forward from there.

14 I will, however, just to let the Commission
15 know, be requesting that the Commission dismiss
16 or deny all three challenges based on some state
17 law, which I can discuss later, some very
18 consistent precedents from this body, the
19 Commission, without having to get into that.

20 And it's basically -- there's only one
21 number that's been certified by election
22 officials, and that's 501. And in the past --
23 and again, I don't want to get too far ahead of
24 myself here. Once that certified number is
25 known, this Commission has consistently ruled

1 that the candidates don't have a responsibility
2 to go back and try to figure out whether the
3 voter registration people performed all their
4 functions well; that once that single
5 certification number is known, that is enough.
6 And since 501 is beyond 500, the challenges
7 should be dismissed straightaway.

8 So that's just a little preview of where
9 I'm going. And I want to do that before we get
10 into the other arguments about who's been
11 certified and who's not been certified.

12 CHAIRMAN BENNETT: Good. Thank you.

13 Mr. Bopp, I want to hear your arguments on
14 this consolidation issue, but I'll give you a
15 preview of my thoughts in advance.

16 It seems to me that one of your best points
17 is that we could somehow moot out part of this
18 argument here today and go home early if we took
19 the thing that you'd like to take first.

20 My concern about that is, we're going to
21 have to have a record for all of the challenges
22 anyway. And if this thing would go up on
23 appeal, then they would not have a record,
24 unless you hear their case here today.

25 So I'm not sure that what I see as your

1 strongest, most compelling argument is really a
2 good one.

3 But with that, I'll let you make your case.

4 MR. BOPP: Well, thank you for that. I've
5 found that preserving judicial economy is always
6 a great argument to make to a fact-finder.

7 But our challenge is, we think, based on
8 the law and the past practices of this
9 Commission in conformance with the law, which is
10 your -- your job is to examine whether or not,
11 when the declaration of candidacy was filed,
12 whether or not that declaration of candidacy met
13 the legal requirements.

14 The legal requirements are that there would
15 be petitions filed with 500 certified signatures
16 per each congressional district. And so it's a
17 simple matter of counting.

18 The petitions that have been filed with the
19 Commission before the deadline, it's a simple
20 matter of counting how many -- and in this case,
21 our challenge is to the first congressional
22 district -- and that that, under the law,
23 resolves the matter.

24 Now, the Democrats have added an additional
25 challenge, which is -- which would be to

1 challenge the certification made by the county
2 voter registration officials. We believe that
3 those certifications are final, and so we are
4 actually adverse to them on certain aspects of
5 this case.

6 But I think -- I guess my final point would
7 be, I think the Commission should pursue this in
8 an orderly way so that each of these challenges,
9 as they should be, I think, under the law
10 presented, can be understood to be dealt with by
11 the Commission.

12 So the first one would be ours, in my view,
13 which is -- and we are prepared to have somebody
14 testify who has examined the original petitions
15 and counted the petitions in terms of the number
16 of certified signatures.

17 And then at that point, I would think it
18 would be -- sorry -- it would be the Young
19 campaign's responsibility to rebut that, or
20 whatever that case may be.

21 Now, of course, our argument is also a
22 legal one there, is that they have not filed a
23 CAN-1 challenge to the failure of certification,
24 or whatever they may be wanting to present. So
25 I'm really not sure, under the law, whether or

1 not they can do that.

2 And I think only at that point, if
3 there's -- if there is over -- if there is 500
4 or more determined by this Commission to have
5 been filed with the candidacy, then we would go
6 to the Democrat's challenge, which we do not
7 join in, and actually think under the law is not
8 sustainable.

9 But in any event, they're entitled to their
10 day in court.

11 CHAIRMAN BENNETT: Thank you.

12 Mr. Brooks, any rebuttal?

13 MR. BROOKS: Well, the notion that somehow
14 we should have filed a challenge to our own 501
15 signatures is a little mysterious to me.

16 So that's all I have to say about that.

17 CHAIRMAN BENNETT: All right. Thank you.

18 MR. PATTON: I'm Clay Patton, C-L-A-Y,
19 P-A-T-T-O-N, here on behalf of John Zody,
20 Chairman of the Indiana Democratic Party.

21 With regard to the motion to consolidate,
22 we would agree that there are some overlapping
23 arguments presumably to be made by the Stutzman
24 campaign and by Mr. Zody. However, there are
25 separate arguments, as Mr. Bopp pointed out. So

1 we would oppose that motion.

2 I agree with the Chair that due to the very
3 high possibilities that this would be taken up
4 on appeal, that a record should be made of all
5 arguments that all parties have.

6 We would also concur with Mr. Bopp's views
7 with regards to the lack of a CAN-1 challenge by
8 the CAN-1 -- or by the filing of a CAN-1 by the
9 Young campaign.

10 And it says right in that Section 7 that if
11 they're filing a challenge of the candidate,
12 "The following facts are known to me and lead me
13 to believe that the denial of certification of
14 my petition of nomination due to insufficient
15 signatures or the county voter registration
16 office's failure to certify qualified
17 petitioners is not in accordance with law, and I
18 therefore request a hearing on this matter."

19 When they presented the signatures, they
20 either thought there was 501 signatures, or they
21 thought there was less than that.

22 But they clearly could have argued, since
23 they had these petitions by mid-January, that it
24 should have been higher, and that the voter
25 registration officials made some errors, and

1 some of the signatures that were not certified
2 should have been. They failed to do that.

3 So I think, at the very least, we have 497
4 or 498 -- and we can get into that later -- and
5 at the very most, it's 501 signatures. And they
6 certainly can't -- they can't resuscitate any of
7 these signatures that were not certified.

8 We have reason to believe that the
9 certified signatures are either in that 497 or
10 498 number, and further, we believe that number
11 should be less based on arguments presented in
12 Mr. Zody's CAN-1 filing.

13 CHAIRMAN BENNETT: Anything else on the
14 consolidation issue?

15 MR. BROOKS: I would just say,
16 Mr. Chairman, that I totally disagree, based on
17 precedent, that we would not be able to
18 supplement that number.

19 And I would call into the -- citation
20 the -- the Wallace petition matter, in which
21 case he was offered an opportunity to add -- and
22 I'm going to discuss this case a little bit
23 later. The discussion --

24 CHAIRMAN BENNETT: This is all about
25 consolidation?

1 MR. BROOKS: -- ability to add -- there has
2 never been an ability to decertify or subtract
3 from certifications.

4 CHAIRMAN BENNETT: Anything else about
5 consolidation?

6 VICE CHAIRMAN LONG: Can I ask a question?
7 I don't have cause numbers.

8 I know that Mr. Zody, Chairman Zody, filed
9 a challenge. And that's No. 5?

10 MS. NUSSMEYER: Correct. It's the one on
11 the top.

12 VICE CHAIRMAN LONG: And then we have -- is
13 his supplement, is that the 13? Are there
14 three? I've got three.

15 MR. SIMMONS: Mr. Chairman, I can review
16 what's in the packet.

17 CHAIRMAN BENNETT: Okay.

18 VICE CHAIRMAN LONG: I'm asking for each
19 one -- to identify what the issues in each one
20 are so that I'm prepared to make a motion that
21 sort of splits the --

22 CHAIRMAN BENNETT: I'd like to recognize
23 staff at this point to give us a description of
24 what's in the binders, and maybe that will
25 answer your question.

1 MR. SIMMONS: Mr. Chairman, Members of the
2 Commission, the first matter placed behind that
3 binder is the challenge filed by John Zody on
4 February 10. And that was placed under Cause
5 No. 2016-5. It's based on the lack of numbers.

6 Mr. Zody then supplemented that filing with
7 a filing on February 12 on the same grounds.
8 And it's the next document there. But in that
9 one, he had many attachments to it.

10 So in discussion with counsel and
11 Co-Director Nussmeyer, we thought that should be
12 under the same cause number. So we kept that
13 under Cause No. 2016-5.

14 Now, all the attachments to that
15 supplemental filing are in your binder, except
16 for this separately bound document, which was
17 also an attachment. We didn't think it would
18 fit, and we thought it would be easier for the
19 Commission to use that instead of flipping
20 through a binder. And it is numbered. These
21 are numbered petitions. So it might be easier
22 for you to refer to those.

23 In addition to that, Ms. Nussmeyer and I
24 brought down the original petitions. And we put
25 them in the same order as this exhibit here, in

1 case the Commission wanted to look at the
2 original petitions.

3 So that covers those filings.

4 Then the document that's behind the blue
5 tab in your binder, still the same section, is a
6 separately filed challenge filed by Mr. Zody on
7 several grounds on February 12. And we placed
8 that under Cause No. 2016-13.

9 And I don't want to go into too much
10 characterizing of that challenge, but it does
11 raise other issues regarding some signatures
12 that should have not been certified, and some
13 petition carrier issues.

14 Then behind the green tab is a challenge
15 filed by Jodi Lohrman on February 12, which we
16 placed under Cause No. 2016-12. And again,
17 that's based on numbers. So it's similar to the
18 first challenge filed by Mr. Zody.

19 COMMISSION MEMBER OVERHOLT: I'm sorry.
20 Did you say that we're supposed to have three
21 challenges in our binders filed by Mr. Zody?

22 VICE CHAIRMAN LONG: Two.

23 COMMISSION MEMBER OVERHOLT: Oh, I thought
24 this was a third one.

25 MR. SIMMONS: One was a supplement with --

1 COMMISSION MEMBER OVERHOLT: But should we
2 have two CAN-1s or three CAN-1s?

3 MR. SIMMONS: You should have three CAN-1s.

4 VICE CHAIRMAN LONG: No, for Mr. Zody.

5 COMMISSION MEMBER OVERHOLT: For Mr. Zody.

6 VICE CHAIRMAN LONG: Two for Mr. Zody.

7 MR. SIMMONS: Well, the CAN-1 with the
8 exhibits attached, he did have a CAN-1 with
9 exhibits attached. It should be second.

10 COMMISSION MEMBER OVERHOLT: So I've got --
11 I just want to make sure. The first one I've
12 got is the one dated February 10?

13 VICE CHAIRMAN LONG: Yeah.

14 COMMISSION MEMBER OVERHOLT: And the second
15 is the one dated February 12, followed by two
16 pieces of paper.

17 MR. SIMMONS: Do you have a blue tab there?

18 COMMISSION MEMBER OVERHOLT: Right, yes.

19 MR. SIMMONS: Is there a third one?

20 COMMISSION MEMBER OVERHOLT: No. That's
21 what I'm trying to point out. So I have two
22 CAN-1s for Mr. Zody, and then we go straight to
23 the CAN-1 that's followed by Jodi Lohrman. And
24 then after that we have the appearances.

25 VICE CHAIRMAN LONG: That's what this -- I

1 made my own notebook from what I had at home,
2 and I've got two by John Zody and one by Jodi
3 Lohrman.

4 MR. SIMMONS: Does anybody have the blue
5 tab?

6 COMMISSION MEMBER OVERHOLT: Yes, I have a
7 blue tab. The blue tab is connected to the
8 February 12 CAN-1 from Mr. Zody --

9 MR. SIMMONS: Yes.

10 COMMISSION MEMBER OVERHOLT: -- that you
11 said was also part of 2016-5.

12 MR. SIMMONS: No, this is a new one. This
13 one is -- I believe I said this was 2016-13.

14 COMMISSION MEMBER OVERHOLT: Well, I guess
15 that's my original question. Are we supposed to
16 have three sheets of paper for Mr. Zody that are
17 CAN-1s, or are we supposed to have two? Because
18 I have two.

19 CHAIRMAN BENNETT: I have two.

20 COMMISSION MEMBER OVERHOLT: And I thought
21 you said we were supposed to have three. That's
22 why I'm asking. I'm not trying to be a pain.
23 I'm just trying to make sure.

24 MR. SIMMONS: I have one and two, and
25 they're right behind each other, right at the

1 beginning of the tab.

2 VICE CHAIRMAN LONG: Yeah.

3 MS. NUSSMEYER: We have three challenges
4 filed by Mr. Zody. The one on the 10th and the
5 12th are substantially similar, with respect to
6 the count of 498.

7 And I think what you're missing is the one
8 filed on the 12th.

9 VICE CHAIRMAN LONG: I've got that one.

10 MS. NUSSMEYER: Well, and he also filed a
11 third challenge on the 12th, which is with
12 respect to the -- not being the -- signatures
13 not being compliant with IC 3-8-2-8.

14 COMMISSION MEMBER OVERHOLT: So we have
15 that. That's the one we have, on the 12th.

16 MS. NUSSMEYER: Right.

17 CHAIRMAN BENNETT: Maybe the best way to
18 break this down would be by the issues.

19 VICE CHAIRMAN LONG: I'm prepared to make a
20 motion on the issues, and we'll figure out what
21 the cause numbers are later.

22 CHAIRMAN BENNETT: Right.

23 VICE CHAIRMAN LONG: I would move that we
24 grant the motion to consolidate as it relates to
25 the issue of counts, 500 signatures, and

1 consolidate all of those issues to be heard at
2 one time, and that anything other than that be
3 held not consolidated, and they can be addressed
4 separately as the challengers of the candidates
5 may choose.

6 CHAIRMAN BENNETT: Thank you for your
7 motion.

8 Is there a second?

9 COMMISSION MEMBER KLUTZ: I'll second it.

10 CHAIRMAN BENNETT: We have a motion and a
11 second. Any discussion?

12 (No response.)

13 CHAIRMAN BENNETT: All in favor say aye.

14 THE COMMISSION: Aye.

15 CHAIRMAN BENNETT: All opposed say nay.

16 (No response. Motion carried.)

17 CHAIRMAN BENNETT: The ayes have it.

18 Motion carries. So we will consolidate all
19 proceedings with regard to the issue of the
20 number of signatures in the first portion of
21 this proceeding, and reserve other issues of
22 challenge to a second portion. Any questions on
23 that?

24 (No response.)

25 CHAIRMAN BENNETT: Very well. Let's

1 proceed then.

2 I would recognize Clay Patton, who has
3 filed an appearance as attorney for challenger
4 John Zody.

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

6 With regards to the matter that was just
7 discussed, for point of clarification, it was
8 Cause No. 2016-5, which was Mr. Zody's first
9 petition or first CAN-1 challenge. And that is
10 the challenge with regard to the count.

11 As you see in the filings for Mr. Zody, he
12 indicates that these petitions submitted by
13 Mr. Young are not in accordance with state law,
14 as counts show 498, not the minimum of 500
15 required in the first congressional district.

16 If you go through the actual petitions
17 filed by the Young campaign and count line by
18 line, and count on the back page, the
19 certification, there's 498 signatures that have
20 been certified.

21 There has been some discrepancy and some
22 confusion, I think, in the media with the count.
23 And that can be referenced to one CAN-4 petition
24 that was filed in LaPorte County. And as you
25 are aware, LaPorte County is made up of both the

1 first and second congressional district.

2 On that petition, there are eight
3 signatures, four of which show that they are in
4 the first congressional district, and four of
5 which are in the second congressional district.
6 So four and four.

7 However, on the back page it shows the
8 correct number of voters in the first district
9 is five, and in the second district is three.

10 So it's the front, or the first and second
11 page of this CAN-4 in LaPorte County that causes
12 the confusion whether it's the 497 or 498.
13 Either way, it's less than 500.

14 In some fashion, some way, on this SVRS
15 document that is prepared by combining
16 information amongst the various clerks, there's
17 501 names on this document.

18 However, this is not the document that
19 carries the day. It is the actual petitions
20 that are submitted by the candidate. The
21 candidate does not submit the SVRS form.
22 There's no reference to this SVRS document in
23 state code with regard to the candidate
24 submitting this document. It's the actual
25 petitions that are filed with the Election

1 Division office that count, that matter, that
2 decide whether or not the 500 threshold was met.

3 So how did these three names or more get on
4 this document? We don't know. But there are at
5 least three names on this SVRS form that,
6 culling through all of these petitions that have
7 been filed by the Young campaign, the names are
8 on the SVRS, but there are not certified names
9 on the petitions. And those are the documents
10 that count.

11 And based on what they've submitted,
12 they've failed to meet the 500 threshold. And
13 we believe that Mr. Young should not be placed
14 on the ballot based on his failure to meet that
15 500 threshold.

16 CHAIRMAN BENNETT: Thank you.

17 Any questions by the Commissioners?

18 VICE CHAIRMAN LONG: You gave us these
19 today. Now, that was submitted by ...

20 MS. NUSSMEYER: Mr. Zody.

21 VICE CHAIRMAN LONG: Do we have one that
22 we've submitted in order where we can refer to
23 page numbers?

24 MS. NUSSMEYER: There are page numbers at
25 the top. It depends on how the page is flipped.

1 Go to Page 4.

2 VICE CHAIRMAN LONG: Let me take the cover
3 off.

4 MS. NUSSMEYER: The first thing that you'll
5 find is the declaration of candidacy.

6 VICE CHAIRMAN LONG: Oh, okay.

7 MS. NUSSMEYER: And then next is when the
8 petitions began.

9 VICE CHAIRMAN LONG: And that number is
10 a -- that's a sequential page number?

11 MS. NUSSMEYER: Correct. So you'll see on
12 this first page it says LaPorte 1. That's the
13 signature side. And then the second page for
14 LaPorte 1 is the certification side.

15 VICE CHAIRMAN LONG: My question to
16 Mr. Patton would be, for the sake of the record,
17 you made reference to a LaPorte petition. What
18 page is it on?

19 MR. PATTON: That would be LaPorte 3,
20 Commissioner Long.

21 VICE CHAIRMAN LONG: LaPorte, Page 3?

22 MR. PATTON: LaPorte 3. I don't believe
23 the pages are numbered. I believe each petition
24 is numbered with the name of the county, and
25 then numerical order, and then it starts again

1 at 1 at the next county.

2 VICE CHAIRMAN LONG: LaPorte 3. So, okay,
3 the page labeled LaPorte 3 is the one you were
4 referencing on the 5-3 and the 4-4?

5 MR. PATTON: Yes, Commissioner Long. If
6 you'll note, there are eight signatures on that
7 page, all of which were certified. It notes
8 that four were in the first congressional
9 district and four were in the second
10 congressional district.

11 VICE CHAIRMAN LONG: Yes.

12 MR. PATTON: And when you turn the page and
13 see the certification, it shows that five voters
14 were certified in the first --

15 VICE CHAIRMAN LONG: And I see that.

16 MR. PATTON: -- and only three in the
17 second.

18 VICE CHAIRMAN LONG: Are you contending
19 that one of these is in error and one is
20 correct, or are they both in error?

21 MR. PATTON: Well, based on our review of
22 these actual voters, it's our belief that the
23 clerk made an error on the front page, and that
24 the individual who signed on Line 2 who lives in
25 Wanatah, Precinct 2, and it indicates the second