

1 Somewhere there's got to be a limit how
2 long they can talk. You know, this is
3 laboriously -- I don't think any of these
4 exhibits are admitted. I've never heard anybody
5 admit them into evidence. They're not legible.
6 They're not certified. And I don't know what
7 kind of records they are.

8 I don't accept them as exhibits and -- but
9 Mr. Chairman, you set the rules of this hearing,
10 and I'm asking you to follow them. Let's cut
11 him off.

12 MR. BROOKS: I'm doing the same thing that
13 you offered, Mr. Long.

14 VICE CHAIRMAN LONG: I'm not talking to
15 you. I'll address --

16 MR. BROOKS: Well, I'll --

17 VICE CHAIRMAN LONG: I'll address you when
18 I want to speak to you.

19 But I'm asking the chairman to impose your
20 rules, or we'll just stop the whole hearing and
21 you'll come back tomorrow.

22 MR. BROOKS: I'm happy to come back
23 tomorrow if you want to come back tomorrow. If
24 you want --

25 CHAIRMAN BENNETT: We're not coming back

1 tomorrow.

2 MR. BROOKS: -- to take a break -- but I'm
3 not wanting to leave until I've given you all
4 the evidence that was offered.

5 CHAIRMAN BENNETT: How many more do you
6 have?

7 MR. BROOKS: I've got a smallish number
8 that are individual, and then I can submit a
9 bunch that are all the same.

10 VICE CHAIRMAN LONG: I move we recess this
11 hearing, and let's get these other people that
12 have sat out here all day and listened to this,
13 and get them in and out of here, and let them
14 wait. If they're --

15 UNIDENTIFIED SPEAKER: Thank you.

16 (Unintelligible multi-voice discussion.)

17 CHAIRMAN BENNETT: I cannot do it tomorrow
18 or the next two days after that.

19 So if we're going to recess, maybe we will
20 recess for all purposes. But we've got --

21 VICE CHAIRMAN LONG: That's okay with me.

22 CHAIRMAN BENNETT: -- 10 more challenges on
23 our agenda, and I don't think we're going to get
24 that done unless we --

25 VICE CHAIRMAN LONG: I mean there's people

1 from all over the place here. This is just
2 terrible. We should have put this one on last,
3 and then they could come back.

4 I'm not being critical of --

5 CHAIRMAN BENNETT: Let's recess. We're not
6 going to talk as a committee, but I want to --

7 VICE CHAIRMAN LONG: Well, let's --

8 (Unintelligible multi-voice discussion.)

9 THE REPORTER: Are we still on the record,
10 Mr. Chairman?

11 CHAIRMAN BENNETT: We're still on the
12 record until we adjourn. I think we need to
13 recess.

14 Let's call a recess here for five minutes.

15 (A recess was taken from 6:41 p.m. to
16 6:51 p.m.)

17 CHAIRMAN BENNETT: This meeting of the
18 Indiana Election Commission is brought back to
19 order.

20 It's about 6:51 p.m., and we have come up
21 with a new timetable to try to get this done
22 tonight.

23 We're going to allow both the petitioners
24 and the candidate to have five minutes to put
25 into evidence whatever else that you have, and

1 summarize what your position is. And then we'll
2 call for a vote.

3 And then, after that, we're going to allow
4 a maximum of 10 minutes for each challenge left.
5 And we will hold to that 10-minute rule and get
6 this thing done tonight.

7 Thank you all for your patience.

8 MR. BROOKS: Commissioners, what I've just
9 handed you was documentation for two voters,
10 both of whom have registration cards in there.
11 They have their correct address on the
12 registration card. There's a few numbers off on
13 the registration, and they are registered. They
14 were living at the address that they registered
15 at, but there was a -- actually, a confusion of
16 numbers by the registration people.

17 Also, both of those voters, which were not
18 certified on ours, were certified by the same
19 voter registration people for the Stutzman
20 campaign. And the Stutzman sheets are on there.

21 MR. PATTON: Just for the record, I don't
22 have a copy of those.

23 MR. BROOKS: I'm trying to hurry. I've got
24 most of them copied. There's a couple I don't.

25 CHAIRMAN BENNETT: Put in all the evidence

1 you have, and give us a summary.

2 MR. BROOKS: Yeah, I'm going to give you
3 this last one, and then I'm going to give you a
4 whole batch, and then I'm done.

5 MR. SIMMONS: The last one was 44, so the
6 next one will be 45.

7 (Exhibit 45-Young was marked for
8 identification.)

9 MR. BROOKS: This is 45. This is another
10 example of a registered voter that was
11 registered in Lake, wasn't certified, but at the
12 same address was certified for the Stutzman
13 campaign.

14 So I have one batch of these. These are
15 all the same circumstances. Every single one is
16 registered in the county that they're -- that
17 they signed the petition in, but had moved
18 within the county. They were registered.

19 And only because the form asked for
20 residence, not residence as shown on your
21 record. So they're telling the truth because
22 that's what the form asked them to do, but
23 they're registered and should have been able to
24 be certified.

25 I have copies of these -- well, they're all

1 together. I'd have to separate them out now.

2 So can we just --

3 CHAIRMAN BENNETT: Let's just put them into
4 evidence in the interest of time, and --

5 MR. BROOKS: And then can we, when we're
6 done, come up and take the copies? There's
7 multiple copies of each one.

8 So let's just call this -- what number are
9 we on?

10 MR. SIMMONS: Forty-six.

11 MR. BROOKS: Exhibit 46.

12 (Exhibit 46-Young was marked for
13 identification.)

14 CHAIRMAN BENNETT: Is that all of the
15 evidence?

16 MR. BROOKS: It is.

17 CHAIRMAN BENNETT: Now, do you want to give
18 us a summary of this?

19 MR. BROOKS: What I've shown here is,
20 regardless of the 498 -- so let's say we're at
21 498. All three of those -- or 497. Three of
22 them were -- clearly should have been certified.
23 They were registered voters. They signed the
24 petition. We disagreed about whether they were
25 certified, but most clearly, without any doubt,

1 they should have been certified.

2 Then you have the list of others. You have
3 people who were registered people whose name was
4 their name, and they said -- said no signature.
5 There was a signature. I've given you the
6 registration stuff for that.

7 There are people who had a legal name
8 change, same address, same birthdate, same
9 everything. So it will go on and on.

10 CHAIRMAN BENNETT: How many add-ins did you
11 put into evidence?

12 MR. BROOKS: Twenty-five.

13 CHAIRMAN BENNETT: Twenty-five are in
14 evidence now with the Election Commission?

15 MR. BROOKS: Yes.

16 CHAIRMAN BENNETT: Anything else?

17 MR. BROOKS: No.

18 CHAIRMAN BENNETT: Thank you.

19 Anything further, Mr. Patton?

20 MR. PATTON: We have deadlines and
21 thresholds for a reason. They failed to meet
22 the threshold, and they failed to meet it by the
23 deadline.

24 It's very clear that in the last week to 10
25 days in a very hurried fashion, the Young

1 campaign has gathered information to try to
2 rehabilitate some of these signatures, despite
3 the fact that they failed to sign a CAN-1 and
4 file it themselves, when they knew well before
5 that deadline that they were being challenged on
6 the fact that they didn't have 500 signatures.

7 If they had spent half of the time spent in
8 the last 10 days trying to rehabilitate these
9 signatures, we would all be having dinner right
10 now. But they didn't. They failed to meet the
11 threshold, and they failed to meet the threshold
12 by the deadline.

13 These were their petitions. They knew what
14 they had before they walked them into the
15 Election Division office upstairs.

16 With regards to some of the issues, of the
17 many issues raised, despite the fact that I
18 don't think you have grounds to do so, because
19 he didn't file -- the Young campaign did not
20 file a CAN-1, I direct you to the petition or
21 signature processing of the exhibit that was
22 submitted, a document created by, essentially,
23 this very body.

24 If an address is missing a ZIP code,
25 directional location, town, city, name, or other

1 variation, the petitioner's signature is
2 rejected.

3 The interpretation of variation is left for
4 the voter registration official. And state law
5 does offer guidance, 3-5-6-4 and 6-5, regarding
6 minor and substantial variations, and how best
7 to deal with that. Minor variation is if it's a
8 number off on the street or doesn't have the
9 directional information.

10 But he's wanting you to count signatures
11 for people who weren't even registered to vote
12 at the address that they put on the CAN-4.

13 "Each of the undersigned" -- No. 1. It's
14 the very first one. The individual resides at
15 the address after the individual's signature.
16 So these supposed voters are purporting a fraud
17 that they live there, but they don't. So the
18 clerks didn't certify the signature.

19 And Code 3-5-6-5, substantial variation in
20 name or address. The signature is invalid and
21 may not be certified.

22 With regards to signature, I believe there
23 was one lady who was married and divorced, and
24 whether it was her or not, that wasn't
25 certified. 3-5-6-6, conformance with

1 registration records. "In determining whether a
2 signature substantially conforms with the
3 voter's signature in the records of the county
4 voter registration office, the office must
5 certify the signature if the office determines
6 the lack of conformity may reasonably be
7 attributed to age, disability, impairment, or
8 impairment of the voter."

9 Now, I don't practice a lot of family law,
10 but I don't think getting married and divorced
11 is attributed to your age, disability, or your
12 impairment. She changed her name. She didn't
13 change her voter registration office. They
14 didn't certify her. And 3-5-6-6, they shouldn't
15 have.

16 What you have before you by this
17 Commission, by what they presented in the first
18 hearing, was -- were, at the very most, at 500.
19 And we've given you the one signature where the
20 young lady signed the CAN-4 when she wasn't
21 registered to vote. It was certified when she
22 wasn't registered to vote. And the signatures
23 are vastly different.

24 We ask you to sustain the challenge of
25 Mr. Zody under Cause No. 2016-13, and not place

1 Mr. Young on the ballot for the May primary.

2 Thank you.

3 CHAIRMAN BENNETT: Thank you.

4 Do we have a motion?

5 VICE CHAIRMAN LONG: I make a motion to
6 sustain the challenge.

7 MR. BROOKS: Do I get a closing statement?

8 VICE CHAIRMAN LONG: You've got --

9 MR. BROOKS: I just did my evidence.

10 VICE CHAIRMAN LONG: You've got five
11 minutes.

12 MR. BROOKS: That's fine. I'll do less
13 than that.

14 VICE CHAIRMAN LONG: You've already --

15 MR. BROOKS: I want to --

16 VICE CHAIRMAN LONG: -- used it.

17 MR. BROOKS: You're using up five of it.
18 Let me finish. I'll be fast.

19 3-7-26 --

20 VICE CHAIRMAN LONG: I'm going to move that
21 he's out of order. You set the rule here.

22 CHAIRMAN BENNETT: I think there was a
23 misunderstanding.

24 VICE CHAIRMAN LONG: Well, I heard five
25 minutes on either side. I thought that --

1 MR. BROOKS: I thought --

2 VICE CHAIRMAN LONG: -- with the Young
3 campaign. I don't know.

4 MR. BROOKS: -- I had five minutes to
5 present my evidence. I'm not going to take very
6 much time. I could have been done by now.

7 CHAIRMAN BENNETT: That was my thought. I
8 wasn't clear. Two minutes.

9 MR. BROOKS: That's fine. I want to draw
10 your attention to 3-7-26.3, where we talked
11 about the SVRS list.

12 In accordance with U.S. Code, "The
13 computerized list serves as the single system
14 for storing and managing the official list of
15 voters throughout Indiana." It's the official
16 voter registration list. It is the official
17 entries of the voter registration groups onto an
18 official list as a matter of statute.

19 Let me just say, three people that we --
20 clearly are eligible, get us up to 500. You've
21 got -- some of them are a little different. But
22 most of the first 10 are pretty straightforward.
23 They have a different name, whatever.

24 You know, you've got to be able to change
25 names. You're going to disenfranchise somebody

1 because they're legally separated when their
2 address is the same, the signature is the same?
3 I don't think so.

4 But there's a fundamental misunderstanding,
5 I think, by the Democrats, about the argument on
6 the -- the group that has a different address.
7 The argument's not that if you were just reading
8 the statute. The argument is that the form
9 misleads the voter. If they wouldn't put their
10 registration address, which is all the state
11 statute requires, it's your residence address as
12 shown on the voter registration.

13 That doesn't say it has to still be your
14 residence. It says, "As shown on the voter
15 registration."

16 But the form says, "Where do you live now?
17 Where is your residence?"

18 So people answer that question honestly,
19 and they get rejected by the --

20 CHAIRMAN BENNETT: Ten seconds.

21 MR. BROOKS: -- voter registration people
22 because it doesn't comply with statute. But the
23 form doesn't ask them for what the statute is,
24 and they shouldn't be penalized. They're all
25 registered voters in the first district.

1 CHAIRMAN BENNETT: Two minutes. Thank you.

2 VICE CHAIRMAN LONG: Move to sustain the
3 challenge.

4 CHAIRMAN BENNETT: Two minutes. Go ahead.

5 MR. PATTON: Mr. Brooks' client wants to be
6 your U.S. Senator, but he doesn't want to take
7 responsibility for anything. It's always
8 someone else's fault.

9 You just heard Mr. Brooks say that this
10 form, the form created by this -- and approved
11 by this body misleads the voters. Now it's your
12 fault or it's the clerk's fault or it's the
13 voter's fault because they didn't sign it
14 because there was a scribble on a line. That
15 was in the first line. Why doesn't he just go
16 down to the second line and fill that out? It's
17 always someone else's fault.

18 They had the responsibility to meet the
19 deadline, and they failed to meet it. How is he
20 going to be a responsible United States Senator
21 if he can't even do this?

22 CHAIRMAN BENNETT: Thank you.

23 VICE CHAIRMAN LONG: I move to sustain the
24 challenges for the third time, and hopefully the
25 final.

1 COMMISSION MEMBER OVERHOLT: Second.

2 CHAIRMAN BENNETT: We have a motion and a
3 second. Is there any discussion?

4 VICE CHAIRMAN LONG: I'm going to take one
5 minute and say we've been asked to certify a
6 signature that's not in existence. That's a
7 first. I've been on this Commission maybe 18
8 years, and I've never heard anybody in good
9 faith look me in the eye and say, "You ought to
10 certify this guy because there was something in
11 the way of him signing on the line he was
12 supposed to sign on, but he didn't sign
13 anything, and he signed an affidavit he intended
14 to sign." I'll be using that argument in a lot
15 of criminal cases. "I didn't mean to do that,
16 Judge. I intended to do the right thing."

17 We've been asked to certify a voter by the
18 Young campaign that, in my opinion, is an
19 obvious and blatant forgery. Somebody forged
20 that girl's name on one of those two forms.

21 And for them to say, "Well, we can't tell
22 which one it is," I agree with that. I don't
23 know which one's the forgery, but I'm betting
24 one of them is.

25 And to come in and ask us to certify voters

1 when they've not gone -- the last time I looked,
2 the voter registration office had a Republican
3 and a Democrat member. If the Democrats were
4 told not to sign anything for you, then I
5 believe that you could have maybe got the
6 Republican member to sign one for you, and
7 you've not done that.

8 You're asking us to certify based on your
9 word and your records that an uncertified -- I
10 don't accept them as exhibits, these things. I
11 can't even read half of them.

12 And so that's why I vote this way. This is
13 atrocious, to base your argument on a
14 nonsignature and a forgery, to put a man on the
15 ballot for a United States Senator. I'm
16 embarrassed by it.

17 CHAIRMAN BENNETT: All right. I will say
18 that I want to incorporate my previous thoughts
19 about what the purpose of these laws are. And I
20 think we've heard ample evidence to show that
21 there is a significant issue in question about
22 the number of qualified voters that have signed
23 the petition, registered voters.

24 It is the burden of petitioners to
25 demonstrate that there was not a sufficient

1 amount of signatures, and I don't believe that
2 burden has been carried.

3 Anything else?

4 (No response.)

5 CHAIRMAN BENNETT: Call for the question.
6 All those in favor of the motion to sustain say
7 aye.

8 VICE CHAIRMAN LONG: Aye.

9 COMMISSION MEMBER OVERHOLT: Aye.

10 CHAIRMAN BENNETT: All opposed say nay.

11 COMMISSION MEMBER KLUTZ: Nay.

12 CHAIRMAN BENNETT: Nay.

13 We have two opposed. We are split 2-2.
14 The motion is sustained. It did not carry.

15 I would like to ask for the opposite motion
16 at this point, which I will make, that the
17 petition be denied.

18 VICE CHAIRMAN LONG: The challenge be
19 denied.

20 CHAIRMAN BENNETT: That the challenge be
21 denied.

22 COMMISSION MEMBER KLUTZ: I'll second that.

23 CHAIRMAN BENNETT: We have a motion and a
24 second. Any discussion?

25 (No response.)

1 CHAIRMAN BENNETT: All those in favor of
2 the motion to deny the challenge say aye.

3 COMMISSION MEMBER KLUTZ: Aye.

4 CHAIRMAN BENNETT: Aye.

5 All opposed say nay.

6 VICE CHAIRMAN LONG: Nay.

7 COMMISSION MEMBER OVERHOLT: Nay.

8 CHAIRMAN BENNETT: We are split, 2-2.

9

10 IN THE MATTER OF

11 THE CHALLENGE TO JOHN MEYER

12 CHAIRMAN BENNETT: Let's proceed with the
13 John Meyer challenge. As you heard, we are
14 limiting the presentations to ten minutes total,
15 five minutes per side.

16 I do not see anyone here representing
17 Mr. Meyer, so I'll ask if anyone in the audience
18 is Mr. Meyer or his representative, and if so,
19 now is the time to come forward. If not, we
20 will proceed in his absence.

21 MR. PATTON: Thank you, Mr. Commissioner.
22 Clay Patton, C-L-A-Y, P-A-T-T-O-N, here with
23 Cynthia Lopez, L-O-P-E-Z, for Cause No. 2016-6.

24 Ms. Lopez filed a CAN-1 challenge against
25 Mr. Meyer. He has filed to run in Congressional

1 District 1 as a Republican, indicating that,
2 "The most recent primary election in Indiana in
3 which I have voted was a primary held by the
4 party with which I claim affiliation above."
5 And again, he has filed as a Republican.

6 (Exhibit 1-Lopez was marked for
7 identification.)

8 MR. PATTON: And if I may approach, I have
9 Lopez Exhibit 1. Voting records show that he
10 voted in the 2015 municipal election, but did
11 not vote in the primary.

12 (Exhibit 2-Lopez was marked for
13 identification.)

14 MR. PATTON: And the reason being that he
15 did not vote in the primary, as is shown on
16 Lopez Exhibit 2, is that he did not register to
17 vote until July 10 of 2015.

18 Mr. Meyer is an attorney with offices in
19 Chicago. He has an apartment in Chicago.

20 (Exhibit 3-Lopez was marked for
21 identification.)

22 MR. PATTON: And on Lopez Exhibit 3 is the
23 certified copy of the -- a certification of a
24 BMV record regarding a John Albert Meyer, with
25 the same date of birth as this candidate,

1 showing that he obtained an Indiana driver's
2 license in July of 2015.

3 And as you will note, on the third page,
4 the interim issue date of July 10 of '15, the
5 reason, "New issued driver's license out of
6 state," meaning he did not have a previous
7 Indiana driver's license. He had an
8 out-of-state driver's license. And I can only
9 presume that it would have been an Illinois
10 driver's license.

11 So he did not move, if he has ever moved to
12 Indiana.

13 (Exhibit 4-Lopez was marked for
14 identification.)

15 MR. PATTON: Under Lopez Exhibit 4 is a
16 quitclaim deed for the property where he claims
17 to have his voter registration. And it
18 indicates that he and his wife deeded it to a
19 trust in the summer of 2013. And it indicates
20 that the tax bills for that property are to go
21 to an apartment in downtown Chicago.

22 So the reason we're here is because he's
23 never voted in a primary to be able to claim
24 affiliation.

25 But at the same time, I think that he might

1 not even be a resident of Indiana. And we've
2 got some other issues.

3 But the crux of the challenge is the fact
4 that he claimed that, "The most recent primary
5 election in Indiana in which I voted was a
6 primary held by the party to which I claim
7 affiliation above." That would have been May of
8 2014, or perhaps the municipal election of 2015.

9 I can tell you that as a long-time resident
10 of Porter County and former attorney for the
11 Porter County Election Board, Ogden Dunes is a
12 small municipality on Lake Michigan. State
13 Senator Karen Tallian lives in Ogden Dunes.

14 They don't have primaries for municipal
15 elections. They don't even have political party
16 caucuses. They have what's called the
17 Ogden Dunes Party that has a caucus.

18 So even if he participated in a caucus
19 sometime after registering to vote in July of
20 2015, it would not have been a Republican caucus
21 because it doesn't exist.

22 So we would request that the Commission,
23 under the notice of the hearing, find that
24 Mr. Meyer is in default for not having
25 participated in these proceedings, and grant

1 the -- and sustain the candidacy challenge
2 brought by Ms. Lopez, and not place John Meyer
3 on the ballot for the first congressional
4 district.

5 CHAIRMAN BENNETT: Let me ask the
6 Commission. Do we have evidence of Mr. Meyer
7 being notified of this hearing?

8 MS. NUSSMEYER: We do, Mr. Chairman. I
9 have a printout from the UPS website, proof of
10 delivery to Mr. Meyer. And then you'll also
11 note in your packet, you'll see the address.

12 VICE CHAIRMAN LONG: That's at the
13 Ogden Dunes, whatever the name of it is?

14 MS. NUSSMEYER: Right. The address that I
15 show is 90 Shore Drive.

16 CHAIRMAN BENNETT: Let's put that in as
17 Exhibit 5.

18 (Exhibit 5-Lopez was marked for
19 identification.)

20 MR. PATTON: And Mr. Chairman, I also, when
21 I entered my appearance the other day, I sent a
22 letter to that Shore Drive address. But I also
23 scanned and emailed a copy of my letter and my
24 appearance to Mr. Meyer at his Chicago law firm,
25 and it did not bounce back. I heard no response

1 from him.

2 But I suspect that if my letter and the UPS
3 was sent to Shore Drive, he probably hasn't seen
4 it because he doesn't live there.

5 VICE CHAIRMAN LONG: Do you rest? Do you
6 rest your case?

7 MR. PATTON: Yes, sir.

8 CHAIRMAN BENNETT: Do we have a motion?

9 VICE CHAIRMAN LONG: I'm going to try
10 again. I move we sustain this challenge.

11 CHAIRMAN BENNETT: Is there a second?

12 COMMISSION MEMBER OVERHOLT: Second.

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: Challenge sustained.

18

19 IN THE MATTER OF

20 THE CHALLENGE TO TOBY LAMP

21 CHAIRMAN BENNETT: We now have the Toby
22 Lamp Challenge, Cause No. 2016-10, filed In The
23 Matter of the Challenge to Toby Lamp, RN,
24 Candidate for the Democratic Party Nomination
25 for United States Representative, District 3.

1 Recognize the staff for a quick description
2 of what we have in our binders.

3 MR. SIMMONS: Mr. Chairman, Members of the
4 Commission, under the Toby Lamp tab we have
5 placed a challenge filed by Carmen Darland, a
6 copy of the declaration of Mr. Lamp, an
7 appearance by Cody Kendall on behalf of Carmen
8 Darland, and proof of service.

9 CHAIRMAN BENNETT: At this time, I would
10 recognize attorney Cody Kendall, who has filed
11 an appearance in this action, and ask you to
12 present your case.

13 MR. KENDALL: Thank you --

14 VICE CHAIRMAN LONG: Is Mr. Lamp here?
15 Okay.

16 MR. KENDALL: Thank you, Mr. Chairman, and
17 Members of the Commission. My name is Cody
18 Kendall, C-O-D-Y, K-E-N-D-A-L-L. And I am
19 representing Carmen Darland in her capacity as
20 the third district congressional chair. Her
21 name is spelled C-A-R-M-E-N, D-A-R-L-A-N-D.

22 And this is a fairly straightforward
23 challenge. Mr. Lamp's last primary that he
24 voted in was the Republican primary. And I
25 think that is in your packet.

1 But we also have a certified copy from the
2 clerk's office showing the same information.
3 You guys have a copy of that.

4 And we also went ahead and got a letter. I
5 don't believe you have it, but if I may
6 approach? I don't have a copy, but it's a
7 letter from the Kosciusko Democratic Party
8 chairman who authorized -- or certified that
9 he's somebody with the party.

10 Can we mark as Exhibit 1 the voter
11 registration?

12 VICE CHAIRMAN LONG: Yeah. That's the
13 voter's profile.

14 MS. DARLAND: Cody has the certified copy.

15 (Exhibit 1-Darland was marked for
16 identification.)

17 MR. KENDALL: So Exhibit 1 is the voter
18 registration record showing the last primary
19 that Mr. Lamp voted in was a Republican primary.
20 And as we know, under IC 3-8-2-7, one of the
21 qualifications is party affiliation. And two
22 ways to determine party affiliation is the last
23 primary he voted in, or certification from the
24 county chair in the county that you live in.

25 And based upon that, we don't think

1 Mr. Lamp has met the qualifications under that
2 statute, and we'd ask that this challenge be
3 sustained.

4 CHAIRMAN BENNETT: Has Mr. Lamp been
5 properly notified of the proceeding?

6 MS. NUSSMEYER: Yes, Mr. Chairman, he has.
7 I have a receipt of delivery, again, from UPS to
8 an address that is 307 Roland Avenue.

9 (Exhibit 2-Darland was marked for
10 identification.)

11 MR. KENDALL: And Mr. Chairman, like in the
12 last case --

13 VICE CHAIRMAN LONG: She's offering into
14 evidence the exhibit.

15 CHAIRMAN BENNETT: Exhibit 2?

16 VICE CHAIRMAN LONG: Yeah.

17 MR. KENDALL: Yeah, I also served him
18 certified mail and didn't receive anything back.
19 So I also notified him of this case.

20 CHAIRMAN BENNETT: Very well. Anything
21 else?

22 VICE CHAIRMAN LONG: Did you also raise the
23 RN designation?

24 MR. KENDALL: I have not, but I don't think
25 it's --

1 VICE CHAIRMAN LONG: It's in the petition.

2 MR. KENDALL: We would forego that at this
3 time.

4 VICE CHAIRMAN LONG: Okay.

5 CHAIRMAN BENNETT: Do we have a motion?

6 VICE CHAIRMAN LONG: I'll move to sustain
7 the challenge.

8 COMMISSION MEMBER OVERHOLT: Second.

9 CHAIRMAN BENNETT: Motion and a second.
10 Any discussion?

11 (No response.)

12 CHAIRMAN BENNETT: All in favor of the
13 motion to sustain the challenge say aye.

14 THE COMMISSION: Aye.

15 CHAIRMAN BENNETT: All opposed say nay.

16 (No response. Motion carried.)

17 CHAIRMAN BENNETT: The challenge is
18 sustained.

19 MR. KENDALL: Thank you. I don't want to
20 take up any more of your time. Thank you,
21 Members of the Commission.

22 MS. DARLAND: Thank you.

23 IN THE MATTER OF
24 THE CHALLENGE TO KEVIN "SGT" HOWELL

25 CHAIRMAN BENNETT: Kevin Howell's challenge

1 is next, Cause No. 2016-11.

2 MR. SIMMONS: Mr. Chairman, Members of the
3 Commission, under the Kevin Howell tab, we have
4 placed the challenge filed by Jennifer Moyer, a
5 copy of the declaration filed by Mr. Howell, and
6 proof of notice.

7 CHAIRMAN BENNETT: Thank you. Is
8 Mr. Howell here, or anyone representing
9 Mr. Howell?

10 MR. HOWELL: I'm Mr. Howell, and I'm
11 representing myself.

12 CHAIRMAN BENNETT: Okay. Is the challenger
13 here? If there's anyone here to challenge Kevin
14 Howell, come forward, please.

15 (No response.)

16 CHAIRMAN BENNETT: If not, let's hear from
17 Mr. Howell.

18 MR. HOWELL: It's been an interesting
19 session here. My name is Kevin Howell, and I am
20 a United States Marine. I served 10 years, from
21 1983 to 1993.

22 And based upon the information I got from
23 your office here, it challenges me because it
24 says I am trying to use my title or degree as a
25 designation, or a designation that implies a

1 title or degree.

2 CHAIRMAN BENNETT: Hang on one second.

3 (Discussion off the record.)

4 CHAIRMAN BENNETT: There are no challengers
5 present here. And at this point, I think it
6 might be best to call for a motion at this
7 point.

8 VICE CHAIRMAN LONG: I would move we deny
9 this challenge because there's been no evidence
10 presented.

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

13 VICE CHAIRMAN LONG: Unless you object.

14 MR. HOWELL: No. Very much obliged.

15 CHAIRMAN BENNETT: Is there a second to the
16 motion?

17 COMMISSION MEMBER OVERHOLT: I'll second.

18 CHAIRMAN BENNETT: We have a motion and a
19 second. Any discussion?

20 (No response.)

21 CHAIRMAN BENNETT: No discussion. All in
22 favor of denying the challenge say aye.

23 THE COMMISSION: Aye.

24 CHAIRMAN BENNETT: All opposed say nay.

25 (No response. Motion carried.)

1 VICE CHAIRMAN LONG: I have a second
2 motion. I move that we allow Mr. Howell to
3 delete the term "SGT" in quotation marks from
4 his declaration of candidacy. And I think
5 that's in your best interest for statutory
6 purposes. And if you just delete that, I think
7 the issue goes away. And I make that motion.

8 Do you want to amend it that way?

9 CHAIRMAN BENNETT: Or you can seek legal
10 advice, or advice on that, if you like.

11 VICE CHAIRMAN LONG: The statute says that
12 using designations that imply rank or title are
13 not proper. Nicknames are fine.

14 And the question is, when I saw it -- I bet
15 they call you Sarge.

16 MR. HOWELL: Yes, they do.

17 VICE CHAIRMAN LONG: And the fact is that
18 that could be in violation of the statute, and
19 that you would have -- your declaration might be
20 rejected.

21 And if you take that out of the petition, I
22 think that issue goes away.

23 Or if you want to consult legal counsel and
24 make a decision, it would be my motion that if
25 he -- which I don't think we can amend his

1 filing. But if he files a request to file an
2 amendment to his declaration on that particular
3 issue, that we allow that to occur.

4 MR. HOWELL: I was ready for a fight.
5 Well, there's a lawyer who's also a friend of
6 mine. And most of the folks knows me as
7 Sergeant Howell because I'm so active in the
8 military affairs. American Legion, Marine Corps
9 League, and associate member of Vietnam Veterans
10 of America.

11 So that's the reason why I did it in the
12 first place.

13 CHAIRMAN BENNETT: What you might find is
14 if you don't amend your petition, you may find
15 yourself back here with another challenge.

16 But that's up to you. You can get some
17 advice, if you want.

18 VICE CHAIRMAN LONG: I'm sure our counsel
19 here, if you suggest something, how you want to
20 change it, they will give you some friendly
21 guidance. But not advice.

22 MR. HOWELL: I'll just leave it as Kevin
23 Howell, then.

24 VICE CHAIRMAN LONG: Pardon?

25 MR. HOWELL: I'll just leave it as Kevin

1 Howell.

2 VICE CHAIRMAN LONG: That's your request?

3 MR. HOWELL: Yeah, take the "SGT" out.

4 VICE CHAIRMAN LONG: Then my motion is to
5 approve his request to amend to take that out.

6 CHAIRMAN BENNETT: Is there a second?

7 COMMISSION MEMBER KLUTZ: I'll second that.

8 CHAIRMAN BENNETT: We have a motion and a
9 second. Assuming no discussion, all in favor
10 say aye.

11 THE COMMISSION: Aye.

12 CHAIRMAN BENNETT: All opposed say nay.

13 (No response. Motion carried.)

14 CHAIRMAN BENNETT: Motion carried.

15 VICE CHAIRMAN LONG: Congratulations. See,
16 you came down here and won.

17 MS. NUSSMEYER: Mr. Chairman, if I may, do
18 you want the UPS record for the delivery for
19 Jennifer Moyer?

20 CHAIRMAN BENNETT: Yes.

21 VICE CHAIRMAN LONG: Yes.

22 MS. NUSSMEYER: And I can confirm the
23 address listed as 1535 Henry Street, which is on
24 the CAN-1 form.

25

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

3 VICE CHAIRMAN LONG: Good luck to you, sir.
4 Sorry you had to wait so long today.

5 MR. HOWELL: It's been interesting.

6 CHAIRMAN BENNETT: The next one up is the
7 Ryan E. Farrar challenge.

8 MR. SIMMONS: Mr. Chairman, is it the
9 Commission's direction that we remove the "SGT"
10 designation from --

11 CHAIRMAN BENNETT: Yes, that would be the
12 direction.

13

14 IN THE MATTER OF

15 THE CHALLENGE TO RYAN E. FARRAR

16 CHAIRMAN BENNETT: We are continuing with
17 the consideration of Ryan E. Farrar, Cause
18 No. 2016-9.

19 And I would recognize the staff for a
20 description of what is in our binders.

21 MR. SIMMONS: Mr. Chairman, Members of the
22 Commission, under the Ryan Farrar tab, we have
23 placed a challenge filed by Roxanna Hanford, a
24 copy of a declaration filed by Mr. Farrar, and
25 an appearance filed by Stephanie McGowan on

1 behalf of Roxanna Hanford, and proof of notice.

2 CHAIRMAN BENNETT: Thank you. I would
3 recognize Stephanie McGowan, who has filed a
4 written appearance for the challenger, Roxanna
5 Hanford.

6 MS. MCGOWAN: Thank you, Mr. Chairperson.
7 Stephanie McGowan, M-C-G-O-W-A-N. I'm an
8 attorney who's representing Roxanna Hanford, who
9 is the chairperson of the Newton County
10 Democratic Party.

11 Roxanna Hanford, chairperson for the Newton
12 County Democratic party, alleges that Ryan
13 Farrar, who, on or about January 19 of 2016,
14 filed his declaration of candidacy for primary
15 nomination in the 2016 primary election, is
16 ineligible to appear on the Democratic primary
17 ballot, as Mr. Farrar voted in the 2012
18 Republican primary.

19 And Mr. Farrar did not request Ms. Hanford,
20 who is the chairperson of the county in which
21 Mr. Farrar resides, and Ms. Hanford did not
22 certify that Mr. Farrar is a member of the
23 Democratic Party.

24 As you're aware, Indiana Code 3-8-2-7
25 states that a declaration of an individual's

1 candidacy for office must obtain a statement of
2 the candidate's party affiliation.

3 A candidate is considered to be affiliated
4 with a political party only if the following
5 applies: The most recent primary election in
6 Indiana in which the candidate voted was a
7 primary election held by the party with which
8 the candidate claims affiliation, or the county
9 chairman of the political party which the
10 candidate claims affiliation, and the county of
11 which the candidate resides, certifies that the
12 candidate is a member of a political party.

13 As shown by Mr. Farrar's declaration of
14 candidacy for the primary nomination -- which
15 I'll admit as Hanford Exhibit 1. May I
16 approach?

17 CHAIRMAN BENNETT: Yes, please.

18 (Exhibit 1-Hanford was marked for
19 identification.)

20 MS. MCGOWAN: As shown in Section 3 of the
21 CAN-2, Mr. Farrar, by having affiliation with
22 the Democratic Party, he understood that his
23 party affiliation determined the party he voted
24 for in the last primary election, and that if he
25 did not meet this requirement, Mr. Farrar

1 understood that he must file with the CAN-2 a
2 certificate of the appropriate county
3 chairperson, indicating that he is a member of a
4 particular political party.

5 As a resident of Newton County, Mr. Farrar
6 would have had to seek the approval from
7 Ms. Hanford, as chairperson of the Newton County
8 Democratic Party.

9 (Exhibits 2-Hanford and 3-Hanford were
10 marked for identification.)

11 MS. MCGOWAN: I submit into evidence as
12 Exhibit 2 Mr. Farrar's challenge to the CAN-1
13 form. And also, at the same time, submit as
14 Exhibit 3 Mr. Farrar's voting record.

15 VICE-CHAIRMAN LONG: This is 2?

16 MS. MCGOWAN: Yes, 2.

17 VICE-CHAIRMAN LONG: Oh, you've already
18 marked them. You're prepared.

19 MS. MCGOWAN: And then this is Exhibit 3.

20 As you can see in the CAN-1, with the
21 challenge, Ms. Hanford stated that in
22 Mr. Farrar's last voting record, he was opposite
23 of his filing. As county chair, he had never
24 come before her or the party.

25 If you wish to take testimony from

1 Ms. Hanford as to the facts, she is here, she
2 was sworn in, and she's willing to testify that
3 Mr. Farrar never appeared before her.

4 If you look at Exhibit 3, the last primary
5 election Mr. Farrar voted in was the 2012
6 primary election, which was certified by the
7 Newton County Superior Court clerk. And you can
8 see that he voted as a Republican in the 2012
9 primary.

10 This is in violation of Indiana Code
11 3-8-2-7. Since, in that last primary,
12 Mr. Farrar, therefore, was Republican,
13 Mr. Farrar did not receive -- and Mr. Farrar
14 did not receive authorization from the Newton
15 County chairperson, Ms. Hanford, to appear on
16 the ballot as a Democrat, Mr. Farrar is
17 ineligible to appear on the 2016 Democratic
18 primary ballot as a candidate for the U.S. House
19 of Representatives. May I ask one quick
20 question of Ms. Hanford?

21 VICE CHAIRMAN LONG: That's what I was
22 getting ready to suggest.

23 CHAIRMAN BENNETT: We're all waiting to
24 hear that.

25 MS. MCGOWAN: Ms. Hanford, did Mr. Farrar

1 ever appear in front of you to request you -- to
2 certify that he would -- did Mr. Farrar ever
3 appear in front of you to appear eligible as a
4 Democrat on the 2016 primary ballot?

5 MS. HANFORD: No.

6 MS. MCGOWAN: And did you look at his
7 voting record and realize that the last primary
8 Mr. Farrar voted for was the Republican primary
9 election?

10 MS. HANFORD: Yes, I did. Yes, it -- I had
11 that certified. We also submitted the voting
12 disk from the county.

13 CHAIRMAN BENNETT: Anything else?

14 MS. MCGOWAN: We ask that you sustain
15 Ms. Hanford's challenge and not allow
16 Mr. Farrar's name to appear on the 2012
17 Democratic primary.

18 CHAIRMAN BENNETT: 2016?

19 MS. MCGOWAN: Sorry. 2016. It's been a
20 long day.

21 CHAIRMAN BENNETT: Is Mr. Farrar here?

22 MR. FARRAR: Yes.

23 CHAIRMAN BENNETT: You're represented by?

24 MR. FARRAR: Myself.

25 CHAIRMAN BENNETT: Would you like to

1 cross-examine?

2 MR. FARRAR: I don't think that's
3 necessary.

4 CHAIRMAN BENNETT: Then proceed with your
5 case.

6 MR. FARRAR: Okay. This case is actually
7 really simple. It comes down to my voting
8 record, which I have never seen before until I
9 received notification of the challenge this past
10 Monday. And to my utter shock, it is chock-full
11 of inaccuracies.

12 To illustrate, I want to go back to the
13 beginning when I started voting. The first time
14 I ever voted was the year I turned 18. It was
15 1998. I took government that year, and our
16 teacher instructed us to register to vote, and
17 vote in that year's primary. I did that morning
18 on my way to school.

19 Beyond that, I voted that fall in the
20 general election. I also voted in the year 2000
21 in the primary.

22 But if you look at my record, you see no
23 accounts of those three votes. Where they are,
24 I don't know. But I think it's indicative that
25 we have some poor recordkeeping, potentially, in

1 Newton County.

2 Furthermore, you will also see no record of
3 voting in the 2002 primary, which I also did as
4 a Democrat, every year as a Democrat.

5 Voting is something I take very seriously.
6 I know a lot of people have fought and died for
7 the right to vote, and it's something that I
8 always endeavor to do every primary, every poll.

9 You do see a slight stream of accuracy
10 starting in the 2002 general election. They had
11 me accurately voting as a Democrat in the 2004
12 primary, voting again in the 2004 general,
13 accurately recording as a Democrat in the '06
14 primary, and again, in '06 in the fall.

15 An interesting and unique error in my
16 record, you have here for the 2008 primary,
17 you'll note they had me listed as voting on an
18 unknown ballot. I can assure you that I voted
19 for Barack Obama in what was a very exciting
20 primary here in Indiana, where it actually
21 mattered towards the nomination. And for
22 whatever reason, there's a data entry error
23 there.

24 Let's see. What's that? So that brings us
25 to a total of five errors in 10 years on this

1 record.

2 And we see the same error again in 2010. I
3 definitely did vote in that primary as a
4 Democrat. I remember it vividly, actually,
5 because I ran into an old friend of mine who was
6 working the polls. Her husband was actually
7 running on the Republican side. I hadn't seen
8 her in about 10 years, and I haven't seen her
9 since, so it's a -- I have a very vivid
10 recollection of that.

11 Now, moving forward, yes, I did vote
12 Republican in 2012. My reason? I was a
13 lifelong Hoosier. I had a lot of respect for a
14 great statesman, Senator Richard Lugar. And I
15 personally didn't really care for the way he was
16 being challenged by a Tea Partier from the
17 right, and so I crossed the party lines one time
18 in my life to vote for Senator Lugar.

19 I think many would contend that was
20 actually a fairly progressive vote, even though
21 it was on a Republican primary.

22 But then we come to a critical omission on
23 my record. You will also not see a
24 participation in the 2014 Democratic primary.
25 If you had, this challenge would not be

1 happening right now.

2 So with that -- you know, I would also like
3 to take a little bit of time to assert my
4 credentials as a Democrat. Like I said, I've
5 been voting my whole life. In 2000 I voted for
6 Gore. In 2004 I voted for Kerry. I voted for
7 Barack Obama three times. You know, I'm a
8 supporter of Donnelly. I was a supporter of
9 Gregg.

10 My credentials as a Democrat, I believe,
11 should be unimpeachable.

12 So really, the whole reason for the
13 question on a CAN-2 is certifying party
14 affiliation. And I think there should be little
15 doubt that I'm a staunch Democrat, and I deserve
16 to be on the ballot.

17 And one last point. This actually kind of
18 goes back to the Todd Young case. We mentioned
19 giving people the right to vote. If I'm not
20 allowed to be on the ballot, the fourth district
21 congressional seat in the U.S. House of
22 Representatives will be uncontested.

23 So in my opinion, what's good for the goose
24 is good for the gander. I think we've
25 certified -- there's a lot of doubt in the

1 credibility of the document that is my voting
2 record, and I really think we should enfranchise
3 the electorate and allow them to vote for Ryan
4 Farrar. You know, it's what's good for
5 democracy.

6 And with that, I would just like to say
7 thank you for your bold services. This has been
8 a mentally exhausting day, even for me. And
9 I've just been watching up until now.

10 So thanks for listening. Thank you for
11 allowing me to present my case.

12 CHAIRMAN BENNETT: Thank you.

13 MR. FARRAR: That's all.

14 CHAIRMAN BENNETT: Any cross-examination?

15 MS. MCGOWAN: Yes, Mr. Chairperson.

16 Mr. Farrar, is that your signature on the
17 back?

18 MR. FARRAR: Yes.

19 MS. MCGOWAN: Let the record reflect that
20 the candidate indicated his signature on Page 2.

21 VICE CHAIRMAN LONG: Of?

22 MS. MCGOWAN: Of the -- "Has certified that
23 the information in this declaration of candidacy
24 is true and complete, and that I meet the
25 specific requirements of this office."

1 VICE CHAIRMAN LONG: Exhibit 1?

2 MS. MCGOWAN: Exhibit 1, yes. Sorry,
3 Mr. Vice Chairman.

4 And then can you please read the box that's
5 been checked on Section 3 of Exhibit 1?

6 MR. FARRAR: Certainly. "The most recent
7 primary election in Indiana in which I voted was
8 the primary held by the party with which I claim
9 affiliation."

10 MS. MCGOWAN: And as you can see on
11 Exhibit 3, that was certified by the Newton
12 County clerk. It indicates that in the 2012
13 primary, he voted for the -- in the Republican
14 primary.

15 And as stated in your testimony earlier,
16 you admit that you had voted in the 2012
17 Republican primary?

18 MR. FARRAR: Yes.

19 MS. MCGOWAN: And have you ever come before
20 Ms. Hanford and requested that she certify that
21 you are a member of the Democratic party?

22 MR. FARRAR: I have not.

23 MS. MCGOWAN: No further questions.

24 CHAIRMAN BENNETT: Any questions by the
25 Commissioners?

1 VICE CHAIRMAN LONG: I just want to be
2 clear, if I might, Mr. Farrar.

3 MR. FARRAR: Certainly.

4 VICE CHAIRMAN LONG: In '14, did you vote
5 in the primary?

6 MR. FARRAR: Yes.

7 VICE CHAIRMAN LONG: And it's not been
8 certified here?

9 MR. FARRAR: No, along with six other
10 errors in my record.

11 VICE CHAIRMAN LONG: Did you contact the
12 clerk's office to try to find this out?

13 MR. FARRAR: I didn't receive this document
14 until this past Monday, honestly.

15 VICE CHAIRMAN LONG: Four days ago?

16 MR. FARRAR: Yeah. I was -- I didn't
17 really know what to do. I mean I wish there was
18 a database where I could just go and look at my
19 own record. I would have looked it up before I
20 even filed my CAN-2 just to make sure there
21 wasn't an error like that. But I didn't have
22 privy to that information. I didn't know that I
23 did, anyway.

24 CHAIRMAN BENNETT: Anything else? Is there
25 a motion?

1 VICE CHAIRMAN LONG: I'm going to move to
2 sustain the challenge. But I say it with the
3 caveat that we have certified records from the
4 county here that says the last time you voted in
5 the primary, you voted on the Republican ballot,
6 which you admit that you voted in that primary.

7 And the statute -- actually, I've learned
8 something here. I thought if you had no voting
9 history, you didn't need a certification. I
10 learned that I was wrong. That's been changed a
11 few years ago.

12 But my motion is to sustain the challenge
13 because the statute is pretty clear. If the
14 last primary that we have evidence of your
15 voting is in the opposite primary, and the
16 county chairman will not certify you, then
17 you're just not an eligible candidate.

18 If you vote in the Democratic primary this
19 spring, you'll be back home.

20 CHAIRMAN BENNETT: Is there a second to the
21 motion?

22 COMMISSION MEMBER KLUTZ: I would second
23 it. And this, to me -- I appreciate your
24 testimony, but it's hard for me to deviate from
25 this voting record. You did have an option to

1 seek the consent of the party chair, and you did
2 not.

3 MR. FARRAR: May I speak? Technically, I
4 did not have that opportunity, because I didn't
5 see the record until this last Monday.

6 Mrs. Hanford called me on February 7, which
7 was after the deadline. And at that point I had
8 no alternative but to show up here with my
9 testimony.

10 My testimony is all I have. I affirm that
11 I am telling the truth. You know, I swore in.
12 If I'm not telling the truth about my record,
13 then that means I've lied six times here today.

14 I promise you I'm a college-educated man.
15 I would not do that to you. I have far too much
16 respect.

17 CHAIRMAN BENNETT: Let me ask this.
18 Ms. Hanford, have you heard anything here today
19 that would change your mind about certifying
20 this candidate?

21 MS. HANFORD: No, I haven't. Mr. Farrar
22 stated that I spoke to him on the 7th. At that
23 time I had said to him that, you know, it was
24 too late.

25 And I wish that he had come to me, because

1 there were things that we possibly could have
2 done. But I -- I'm five miles from his house.
3 I'm party chair. I'm very active. I'm very
4 vivid, you know, in the community. I wish he
5 had come to me.

6 MR. FARRAR: So don't you think I would
7 have if I thought I had to?

8 I mean I -- my memory, when I filled out my
9 CAN-2, the last primary I voted in was
10 Democratic. Because I had a half dozen times in
11 life, I didn't think it was a concern. I
12 honestly didn't want to bother you or take away
13 from your time.

14 MS. MCGOWAN: Mr. Chairperson, that
15 information is not before this Commission right
16 now. We have a certified copy of his voting
17 record. It indicates that he voted in the 2012
18 primary election as a Republican. Mr. Farrar
19 admits this fact.

20 He has not offered any evidence here today
21 that he actually did vote in the 2014 Democratic
22 primary election, other than his word. And he
23 had the opportunity to go and get his certified
24 voting record prior to this hearing today, which
25 he did not do.

1 CHAIRMAN BENNETT: We have a motion and a
2 second. I think it's time that we call the
3 question.

4 All those in favor of sustaining the
5 challenge pursuant to the motion say aye.

6 THE COMMISSION: Aye.

7 CHAIRMAN BENNETT: All those opposed say
8 nay.

9 (No response. Motion carried.)

10 CHAIRMAN BENNETT: The challenge is
11 sustained. Thank you.

12 MS. MCGOWAN: Thank you. Thank you for
13 your time.

14 VICE CHAIRMAN LONG: Thank you. Nice
15 presentation.

16 IN THE MATTER OF

17 THE PRESENTATION TO JEFF EMBRY

18 CHAIRMAN BENNETT: The Jeff Embry challenge
19 is our next proceeding, Cause No. 2016-7.

20 MR. SIMMONS: Mr. Chairman, Members of the
21 Commission, under the Jeff Embry tab you will
22 find the challenge filed by Michael Gerrish, a
23 copy of the declaration filed by Jeff Embry, and
24 a proof of notice.

25 In addition, I received just a few moments

1 ago an appearance for Mr. Gerrish filed by
2 Martin Shields.

3 CHAIRMAN BENNETT: Let me interject. My
4 apologies to Rachel Covington. I skipped over
5 her challenge. We'll do that next. Thank you
6 for your indulgence.

7 Okay. Back to the Embry challenge. We
8 would recognize challenger Michael Gerrish for
9 the presentation.

10 MR. SHIELDS: Mr. Chairperson, my name is
11 Martin Shields, M-A-R-T-I-N, S-H-I-E-L-D-S. And
12 I enter my appearance on behalf of Michael E.
13 Gerrish, M-I-C-H-A-E-L, E., G-E-R-R-I-S-H.

14 And our challenge is based upon the facts
15 and on the evidence set forth -- the statements
16 set forth in the CAN-1, which, in essence, is
17 that Mr. Gerrish is the county chairman of the
18 Henry County Republican Party; that Mr. Embry
19 did file a CAN-2 declaration of candidacy with
20 the Indiana Secretary of State's office; and
21 that on Question 3, he did state that he had
22 voted as a Republican in the last primary.

23 And those facts are contested by us. And
24 if I may approach, Mr. Chairperson, I have an
25 exhibit.

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

3 CHAIRMAN BENNETT: Thank you.

4 MR. SHIELDS: This consists of a voter poll
5 list of Henry County, Indiana, for 2008, our
6 primary election, together with the certified
7 two pages from the Statewide Voter Registration
8 System, which shows Mr. Embry's voting history
9 from 2008 general -- excuse me -- primary
10 election, through the 2014 general election.

11 And it, like the county poll record for the
12 2000 primary, shows that he did vote only in one
13 primary, and that was in person as a -- on the
14 Democratic ballot.

15 And I have the challenge as Exhibit 1 for
16 members of the Commission.

17 VICE CHAIRMAN LONG: Thank you.

18 MR. SHIELDS: Thank you. Mr. Gerrish, if
19 called, would testify that he was contacted by
20 Mr. Embry, he believes, before the filing, and
21 that Mr. Embry did not request a waiver or
22 letter from the county chairman, Mr. Gerrish.
23 And Mr. Gerrish would not have provided one
24 based upon his voting record.

25 So based upon the legal authority, which

1 was just cited before, and based upon the
2 contents of the petition and the evidence before
3 the Commission, we would ask that you approve
4 the challenge and find that he is not eligible
5 to run based upon his voting record.

6 And I would indicate that the signature on
7 the voter poll list, Exhibit 1, page 1, shows
8 that he did vote at a previous address as -- and
9 checked the Democrat ballot there, and did sign.

10 And there was also, to the extent it may be
11 relevant, another member of that household who
12 did vote in that primary and did also choose the
13 Democratic ballot.

14 VICE CHAIRMAN LONG: Are you going to ask
15 the chairman a question or two?

16 MR. SHIELDS: Yes, if I may.

17 Mr. Gerrish, you have been previously
18 sworn; is that correct?

19 MR. GERRISH: Yes.

20 MR. SHIELDS: Did you talk with Mr. Embry
21 sometime prior to his filing, do you believe?

22 MR. GERRISH: I believe I did.

23 MR. SHIELDS: You talked over the
24 telephone; is that correct?

25 MR. GERRISH: Yes.

1 MR. SHIELDS: You've never met him in
2 person until here today?

3 MR. GERRISH: No.

4 MR. SHIELDS: And did he ask you for a
5 waiver or a letter for permission to run in the
6 Republican primary?

7 MR. GERRISH: No.

8 MR. SHIELDS: Would you have given one if
9 he asked?

10 MR. GERRISH: I wouldn't have known without
11 checking his record.

12 MR. SHIELDS: Had you checked his record,
13 would you have given him one, based upon the
14 facts and circumstances here today?

15 MR. GERRISH: Probably not.

16 MR. SHIELDS: Is the answer no?

17 MR. GERRISH: Yes.

18 CHAIRMAN BENNETT: Anything else?

19 MR. SHIELDS: No.

20 CHAIRMAN BENNETT: Thank you. Mr. Embry,
21 do you want to ask any questions?

22 MR. EMBRY: Not ask any questions. My name
23 is Jeff Embry, E-M-B-R-Y.

24 I do remember having our conversation over
25 the phone, that's correct. I was trying to do a

1 little introduction of myself to him. And I was
2 explaining to him in great detail that I am a
3 Republican.

4 I've always been a Republican. I voted in
5 the Republican Party for Ronald Reagan when I
6 was on deployment in 1984, my first deployment
7 when I was in the United States Navy. I voted
8 for Ronald Reagan, George H. Bush. I voted even
9 for Bob Dole, George W. Bush, and I voted for
10 Mitt Romney.

11 And if my memory is correct, in 2012 I
12 voted in the primary and the general election
13 for Mitt Romney, Republican Party. And I even
14 explained to him I would be voting in the May 3
15 primary for Donald Trump, because I'm a Donald
16 Trump supporter.

17 And the other signature, that's my wife.
18 That's my wife's signature. This is when we
19 lived over in Riley School Precinct. We've
20 moved since then, and we live in the Prairie
21 No. 3 Precinct.

22 And I talked to my wife. I said, "I do not
23 remember voting Democrat in the primary." I
24 asked her, I said, "Did you vote Democrat?" She
25 said, no, she had never voted Democrat. And I

1 have never voted Democrat. I don't know why
2 they are checked that, as a Democrat. So I'm a
3 little confused with that.

4 And also, in 2008 is the first year that I
5 voted here in the state of Indiana, because
6 before then, I was living in the state of
7 Kentucky. So this is my first time in 2008
8 voting, and it was a little different, compared
9 to what I was used to.

10 And like I said, on our conversation over
11 the phone with Mr. Gerrish, I explained to him
12 in great detail how I've been a lifelong
13 Republican. Started back when I was in the Navy
14 voting for Ronald Reagan. And I've never voted
15 other than Republican.

16 CHAIRMAN BENNETT: Did you ask him to allow
17 you to run as a Republican in the county?

18 MR. EMBRY: Well, when I was talking to him
19 about -- and also, I cannot remember the other
20 person's name. He's the chairman. I'm trying
21 to remember the other lady's name I talked to.

22 What I was trying to find out is who was
23 going to run for office. I did not want to step
24 on any political toes. I was new to the
25 process. I was just trying to get my name out

1 there and trying to get information from him who
2 was going to run for election or re-election.

3 And if my memory serves me correct, he
4 never did get with me, but the other lady that
5 works at the audit office -- I cannot remember
6 her name -- at the Henry County audit office,
7 that's where she works. She was the one who
8 finally returned my phone calls. And we were
9 texting back and forth, who was going to run for
10 election or re-election, so ...

11 CHAIRMAN BENNETT: Did you do anything to
12 verify or challenge your voting record?

13 MR. EMBRY: Yesterday I was in Walt Disney
14 World with my little boy. We're foster parents,
15 me and my wife, and we're in the process of
16 adopting our son. We've had him for three
17 years. And so we've been spoiling him, because
18 like I said, it's been a three-year process.
19 We're in the process of adopting him.

20 And I got back last night at 11:30 p.m.
21 And I went and got my mail, and this was in the
22 mail. So I really haven't had time to do
23 anything.

24 CHAIRMAN BENNETT: Any other questions?
25 Anything else from either of the parties?

1 MR. EMBRY: The only thing else I'd like to
2 interject is that I voted in 2012 in the
3 primary, in the precinct -- in Prairie No. 3
4 Precinct. I'm pretty sure -- I'm pretty sure I
5 voted in the primary and the general election.

6 And I will be voting this May for Donald
7 Trump, and, of course, myself.

8 CHAIRMAN BENNETT: Okay. Is there a
9 motion?

10 VICE CHAIRMAN LONG: I would move to
11 sustain the challenge because the statute has no
12 wiggle room. We've got certified records here,
13 and it's not contested, and I think they met
14 their burden.

15 COMMISSION MEMBER KLUTZ: I will second.

16 CHAIRMAN BENNETT: We have a motion and a
17 second. All in favor of the motion to sustain
18 the challenge, say aye.

19 THE COMMISSION: Aye.

20 CHAIRMAN BENNETT: All opposed say nay.

21 (No response. Motion carried.)

22 CHAIRMAN BENNETT: Challenge sustained.

23 Thank you, folks.

24

25

1 IN THE MATTER OF
2 THE CHALLENGE TO RACHEL COVINGTON

3 CHAIRMAN BENNETT: All right. Now, let's
4 proceed with the Rachel Covington challenge,
5 Cause No. 2016-1.

6 I'll recognize the staff for a description
7 of what's in the binders.

8 MR. SIMMONS: Mr. Chairman, Members of the
9 Commission, under the Rachel Covington tab,
10 you'll find the challenge filed by Joshua A.
11 Claybourn, an email from Gerard Magliocca which
12 indicates he will be appearing for Rachel
13 Covington, and a copy of the declaration of
14 Rachel Covington, and proof of notice.

15 CHAIRMAN BENNETT: All right. Thank you.
16 At this time I would recognize the challenger,
17 Joshua Claybourn, or his representative for
18 presentation.

19 MR. BROOKS: I know you're all delighted to
20 see me again. It would probably be better
21 penance for me if you put me last, which I
22 understand.

23 But I'm here on behalf of the challenger.
24 With me is Chris Creighton (phonetically), who's
25 a third year law student who has been helping me

1 do some research on these things. And I may let
2 him talk if we need to get into very much case
3 law, just on the theory that you won't hold it
4 against him, since I talked so long the first
5 time.

6 So the root of the challenge is very
7 simple. I will give you the voter registration
8 of Ms. Covington, which indicates she was born
9 on March 3 -- no -- March 28, 1992, which is
10 Exhibit 1.

11 (Exhibit 1-Claybourn was marked for
12 identification.)

13 MR. BROOKS: You'll be glad to know that's
14 our only exhibit, and the purpose is just to
15 show her birthdate.

16 Pursuant to 3-8-1-8, a candidate for the
17 office of United States Representative must have
18 the qualifications provided in Article I,
19 Section 2, clause 2, of the Constitution of the
20 United States, which, in turn, reads: "No
21 person shall be a representative who shall not
22 have attained the age of 25." And there's some
23 other stuff, but that's the key.

24 And if you do the math, she will not be 25,
25 if she was to be seated, so she couldn't be

1 sworn into office in January.

2 And we believe that because a candidate has
3 to have those qualifications pursuant to Indiana
4 law, she should not be placed on the ballot.

5 VICE CHAIRMAN LONG: This is an interesting
6 question. Is there any case law that has said
7 that you have to be 25 in order to file, or the
8 Constitution says there's some --

9 MR. BROOKS: Let me first --

10 VICE CHAIRMAN LONG: The question is, if
11 she were elected, could it be kicked out and she
12 wouldn't get sworn in for two months?

13 MR. BROOKS: One reading of the statute I
14 read says that the candidate must have the
15 qualifications.

16 I'm not arguing that she has to be 25 now,
17 which she's not. I'm simply saying that she
18 would not be 25 when she would be sworn in in
19 January 2017.

20 VICE CHAIRMAN LONG: So you're saying --
21 and it's an interesting academic question. If
22 she were going to be -- whenever they get sworn
23 in, the day before, if she would turn 25 --
24 she'd be 24, vote the election, then she would
25 be a qualified candidate, and as long as she

1 turned 25 before she was sworn in, that would be
2 permissible under our code?

3 MR. BROOKS: I think you could have a
4 harsher interpretation. I'm just not making
5 that interpretation.

6 VICE CHAIRMAN LONG: Yeah.

7 MR. BROOKS: I think it's clear -- the
8 question you pose, I think, is clearly true.
9 She would have to be 25 on the day she was sworn
10 in, and she won't be.

11 VICE CHAIRMAN LONG: And I read the
12 statute, too, and it was an interesting
13 question.

14 MR. BROOKS: I did not review any English
15 common law on that question.

16 VICE CHAIRMAN LONG: Nor did I.

17 MR. BROOKS: I was very impressed while I
18 was waiting that you had actually read some.
19 And I was sitting there wondering when the last
20 time I read it. And I was like, "Hmm, I'm not
21 sure I remember."

22 CHAIRMAN BENNETT: Anything else?

23 MR. BROOKS: No, that's it.

24 CHAIRMAN BENNETT: Mr. Magliocca?

25 MR. MAGLIOCCA: It's Gerard Magliocca,

1 G-E-R-A-R-D, M-A-G-L-I-O-C-C-A. I'm a professor
2 at the Robert H. McKinney School of Law. I
3 teach constitutional law, and I'm here for
4 Ms. Covington.

5 I have three points to make. I'll keep it
6 brief. The first is that the House of
7 Representatives is the exclusive judge of
8 whether someone has met the age requirement laid
9 out in Article I. It's not a justiciable
10 question. It's never been found to be a
11 justiciable question. So that's the first one.

12 The second point is that the practice of
13 the House and the Senate has been that people
14 who were elected under the eligible age could be
15 sworn into office on the day that they reach the
16 eligible age.

17 Now, I'll give you three examples. First,
18 Vice President Biden was first elected to the
19 Senate at the age of 29 in 1972. He turned 30 a
20 couple of weeks after the election and was --
21 took his seat without any issue.

22 Rush Holt was elected to the Senate from
23 West Virginia in 1934 at the age of 29. He
24 turned 30 in June of 1935, and the Senate
25 considered a challenge to his eligibility, and

1 concluded that he was eligible, just not until
2 the day he turned 30, when he was sworn in and
3 served his term.

4 And finally, John Young Brown of Kentucky
5 was elected to the House of Representatives --
6 not the infamous John Brown, but a different
7 John Brown -- was elected --

8 VICE CHAIRMAN LONG: His daddy?

9 MR. MAGLIOCCA: I don't think he's any
10 relation, but --

11 VICE CHAIRMAN LONG: I'll bet he is.

12 MR. MAGLIOCCA: -- he was elected to the
13 House in 1858 at the age of 23 --

14 VICE CHAIRMAN LONG: Granddaddy.

15 MR. MAGLIOCCA: -- and he turned 25 in June
16 1860, which meant the seat was vacant for a year
17 and a half. But when he turned 25, he was
18 sworn, and he took his seat.

19 So there is no example of the House or
20 Senate denying a seat to someone who had been
21 elected under the eligibility age, and then
22 turned -- reached the eligibility during that
23 Congress.

24 The final thing I'll note is that if you
25 read the textual provision -- and I'm going to

1 read the whole thing because I think it's
2 important -- "No Person shall be a
3 Representative who shall not have attained to
4 the age of 25 years, and been 7 years a citizen
5 of the United States, and who shall not, when
6 elected, be an inhabitant of that state in which
7 he shall be chosen."

8 So in other words, the requirements of
9 Article I make one point about what needs to be
10 true when you're elected. You have to be an
11 inhabitant of the state that you're going to
12 represent.

13 The other requirements, age and
14 citizenship, are not tied to when you're
15 elected. They're tied to when you can serve.

16 So for all of those reasons, I would submit
17 that the challenge should be rejected.

18 I have just one other point. Of course,
19 voters may well not want to vote for someone so
20 young. Very few people have been elected who
21 are so young, and they may not want to vote for
22 someone who can't serve part of their term,
23 because clearly, Ms. Covington could not begin
24 serving, if elected, until March of 2017. But
25 that's for the voters to decide.

1 VICE CHAIRMAN LONG: We don't want to
2 disenfranchise all those people in the eighth
3 district? Is that what you're saying?

4 MR. MAGLIOCCA: That is correct.

5 MR. BROOKS: My only comment on that is
6 while clearly there is some constitutional
7 authority for the House of Representatives to
8 seat its own members, et cetera, et cetera, that
9 is up to Congress.

10 I don't think this body should determine
11 whether the Constitution should be violated,
12 because if the Constitution gives Congress that
13 decision, then I suppose they can make it.

14 And with respect to other people being
15 elected, this is an on-the-ballot question.
16 It's whether you qualify to be on the ballot.
17 Indiana law has typically been, you know, you've
18 got to follow constitutional procedure.

19 But by and large, the State is allowed to
20 set the mechanics of elections and
21 qualifications. And so this is a ballot
22 placement question. And who knows what the
23 ballot placement rules were in those other
24 states?

25 But in Indiana, it's pretty clear. You

1 must have those qualifications. And those
2 qualifications are that you have to be 25 to
3 take office.

4 So I don't see how you can argue she meets
5 the standard in the Indiana ballot placement
6 section, or the qualification, 3-8-1-8.

7 COMMISSION MEMBER KLUTZ: So the only thing
8 we're looking at is 3-8-1-8?

9 MR. BROOKS: Yes, and the Constitution.

10 VICE CHAIRMAN LONG: As referenced.

11 COMMISSION MEMBER KLUTZ: As referenced,
12 but ...

13 MR. BROOKS: Yes, that is the source of our
14 challenge. She's not qualified to take office,
15 so she can't be a candidate.

16 CHAIRMAN BENNETT: Professor, do you know
17 if any of the other cases you cited had state
18 law similar to Indiana?

19 MR. MAGLIOCCA: I do not know that.

20 However, I do know that the Supreme Court
21 held in 1995 that states may not add to the
22 qualifications in Article I.

23 And I would submit that by saying that
24 someone who cannot take office on the first day
25 of the Congress is ineligible to serve, that's

1 what you would be doing.

2 So I would submit that that's inconsistent
3 with U.S. --

4 VICE CHAIRMAN LONG: Well, let me ask you
5 an academic question. I haven't heard so much
6 constitutional law since law school.

7 What if Ms. Covington -- is that her
8 name -- were 18?

9 MR. MAGLIOCCA: Well, then she would be
10 ineligible, because she wouldn't turn 25 within
11 the term that --

12 VICE CHAIRMAN LONG: So that would be the
13 determinant in your mind? If she were 23, or as
14 long as she turns 25 during the two-year term of
15 office that she's running for, at some point
16 that would be permissible?

17 MR. MAGLIOCCA: That's correct.

18 VICE CHAIRMAN LONG: That would be your
19 interpretation?

20 MR. MAGLIOCCA: Correct.

21 MR. BROOKS: Real quick, the case -- I'm
22 going to let Chris talk about it briefly and
23 give you the synopsis -- that this statute,
24 3-8-1-8, doesn't add anything to the
25 Constitution.

1 VICE CHAIRMAN LONG: I agree with that.

2 MR. BROOKS: Those other cases that he
3 described, those were actually adding something.
4 We're not adding.

5 CHAIRMAN BENNETT: Okay. Let's --

6 COMMISSION MEMBER KLUTZ: I agree. I would
7 make a motion that the challenge be sustained.

8 VICE CHAIRMAN LONG: I'll second.

9 CHAIRMAN BENNETT: We've got a motion and a
10 second. All in favor of the motion to sustain
11 say aye.

12 THE COMMISSION: Aye.

13 CHAIRMAN BENNETT: All opposed say nay.

14 (No response. Motion carried.)

15 CHAIRMAN BENNETT: Motion carries.
16 Challenge sustained.

17 VICE CHAIRMAN LONG: Thank you for coming
18 in, Professor.

19 MR. MAGLIOCCA: Thank you.

20 VICE CHAIRMAN LONG: That was interesting.
21 (Discussion off the record.)

22 IN THE MATTER OF
23 THE CHALLENGE TO DANNY (DAN) BALL

24 CHAIRMAN BENNETT: We are at our last
25 challenge. This is the proceeding involving

1 Danny Ball, Cause No. 2016-8.

2 And I would recognize the staff for a
3 description of what is in our binders.

4 MR. SIMMONS: Mr. Chairman, Members of the
5 Commission, you will find the challenge filed by
6 Ginger Bradford, a copy of the candidate
7 declaration filed by Danny Ball, and proof of
8 service.

9 CHAIRMAN BENNETT: At this time I would
10 recognize the challenger, Ginger Bradford, or
11 her representative for presentation.

12 MS. BRADFORD: Yes. My name's Ginger
13 Bradford, and I'm challenging this because in
14 2008 was the last time he voted in Ripley
15 County. And I'm the county chairman. And he
16 did not vote Republican. He voted Democrat.
17 And he does not have a voting history after
18 2008.

19 CHAIRMAN BENNETT: Anything else?

20 VICE CHAIRMAN LONG: You submitted, did you
21 not, your voter party list with your challenge?

22 MS. BRADFORD: Yes.

23 VICE CHAIRMAN LONG: Which we have a copy
24 of. Are you asking that to be considered as
25 evidence?

1 MS. BRADFORD: Yes, please.

2 CHAIRMAN BENNETT: We'll call that
3 Exhibit 1.

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

6 CHAIRMAN BENNETT: Are you Mr. Ball?

7 MR. BALL: Yes, I am.

8 CHAIRMAN BENNETT: And would you like to
9 ask any questions, or do you want to tell us
10 your position?

11 MR. BALL: Sure. My name is Dan Ball.
12 It's D-A-N, B-A-L-L.

13 And what Ginger has laid out there is
14 accurate. And furthermore, I think she's done
15 her job as a chair that she should do, because
16 if I were in her shoes and I'd see what I would
17 see, I would challenge as well the chair. So I
18 think she's done what she was supposed to do
19 there.

20 So what I come with is, we've lived in
21 Indiana for our entire lives. In 2008, just as
22 the outgoing lieutenant governor did, she voted
23 Democrat in 2008. And then in 2010, when she
24 ran for District 74, her candidacy was
25 challenged for the same reason, that she voted

1 Democrat.

2 Her record was looked at by this Commission
3 in 2010, and she was allowed to remain on the
4 ballot, and went on to initially -- to
5 lieutenant governor.

6 And the same thing with me. I was a solid
7 Republican trooper. I went to vote in the
8 Democratic primary because the Republican
9 primary had wrapped up. John McCain had it, and
10 I wanted to have a voice in the presidential
11 election. So that's when I went and voted.

12 Now, the -- I spent a couple of days trying
13 to figure out how my record was wrong, because
14 when I first learned of it, I didn't hear it
15 through the challenge. I just heard it through
16 the grapevine. So I spent two or three days
17 trying to figure out how I was wrong.

18 And I called people and was talking to
19 them, and I said, "How do we get this
20 challenged?" And I checked with the clerk's
21 office, and they said you can't get it
22 challenged -- or you can't get it changed.

23 And I checked with other clerks' offices,
24 and they said, "You can't get it changed." I
25 went back and forth for several days on those