

ORIGINAL

Madison County Electoral Board

Date: December 15, 2017

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MADISON COUNTY ELECTORAL BOARD HEARING

Proceedings held at the Madison County Courthouse
157 North Main Street, Courtroom 351
Edwardsville, Illinois

December 15, 2017

Reporter: Sarah Mecklenburg, CSR #084.004858

| 1 | INDEX | PAGE |
|----|-----------------------------------|------|
| 2 | Lee Wathan | 30 |
| 3 | Examination By Mr. Craney | 31 |
| | Further Examination By Mr. Craney | 34 |
| 4 | Further Examination By Mr. Craney | 38 |
| | Elizabeth Dalton | 39 |
| 5 | Examination By Mr. Craney | 40 |
| 6 | | |
| 7 | | |
| 8 | | |
| 9 | | |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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A P P E A R A N C E S

MADISON COUNTY ELECTORAL BOARD:

Ms. Debra Ming-Mendoza
Chairman, Madison County Electoral Board
Madison County Clerk
157 North Main Street, Suite 109
Edwardsville, Illinois 62025

Mr. Mark Von Nida
Member, Madison County Electoral Board
Madison County Circuit Clerk
157 North Main Street
Edwardsville, Illinois 62025

Mr. John McGuire
Member, Madison County Electoral Board
Madison County Assistant State's Attorney
157 North Main Street, Suite 402
Edwardsville, Illinois 62025

Also present: Jeffrey Ezra
Don Weber
James Craney
Michael Wesley

1 Gentlemen, do you have a copy of those?

2 Do I hear any changes or objections or --

3 MR. MCGUIRE: Have the parties to the
4 objections had a chance to review these? I believe
5 they're the same as they've been in the past.

6 MR. CRANEY: I don't think I'll have any
7 objections. Let me just --

8 MR. WESLEY: I haven't received any.

9 MS. MENDOZA: Okay. Okay. I'll be happy
10 to get you a copy.

11 Mr. Weber, do you need one?

12 MR. PHELPS: I'm Jesse Phelps.

13 MS. MENDOZA: Oh, just out of curiosity,
14 for our -- are all of the objectors and petitioners
15 here today?

16 Mr. Phelps, I know you just introduced
17 yourself. You're here. Are there any other
18 candidates in the room whose petitions have been
19 objected to and/or serving as objectors?

20 You are, sir?

21 MR. VOIGT: Jason Voigt.

22 MS. MENDOZA: Jason Voigt?

23 MR. VOIGT: Yes.

24 MS. MENDOZA: Your objection has been

1 pulled, so we won't be hearing anything on that matter
2 today. Okay?

3 Yes, sir? You are?

4 MR. HORN: Garland Horn.

5 MS. MENDOZA: Mr. Horn? Okay. Thank you.

6 Liz, I see you, Liz Dalton.

7 Yes, sir?

8 MR. MEYER: Robert Meyer.

9 MS. MENDOZA: Robert Meyer. Thank you.

10 MR. WILKINS: Ashly Wilkins.

11 MS. MENDOZA: Ashly Wilkins. Thank you.

12 MR. MCGUIRE: Sam Borders.

13 MS. MENDOZA: Oh, Sam. I am so sorry.

14 MR. MCGUIRE: Are there any objectors or
15 candidates who haven't been called already who are not
16 represented by one of the attorneys sitting up here at
17 the table?

18 MS. MENDOZA: Okay. So everyone is being
19 represented? And maybe a limited -- Liz, you're not
20 sure?

21 MS. DALTON: No, I'm -- myself.

22 MS. MENDOZA: So you'll be representing
23 yourself?

24 MS. DALTON: Yeah.

1 MS. MENDOZA: Okay.

2 MR. PHELPS: As am I. Just clarifying.

3 MS. MENDOZA: Yes, sir.

4 So the order -- well, do we need to take
5 action on the motion to --

6 MR. WESLEY: Madam Clerk, if I may. I have
7 one -- and I don't know if he's represented or
8 present -- David Baker.

9 MS. MENDOZA: David Baker. Well, he didn't
10 identify himself in the courtroom this morning. So
11 you're representing Mr. Baker?

12 MR. WESLEY: No, no, no. I'm representing
13 Ray Wesley.

14 MS. MENDOZA: The petitioner?

15 MR. WESLEY: Yes.

16 MS. MENDOZA: Okay. Okay.

17 MR. WESLEY: And I don't know if
18 Mr. Baker's here or represented. I don't think he's
19 represented, but --

20 MS. MENDOZA: Okay. So the next order of
21 business, gentlemen, would be to -- do we need, at
22 this point, to take action on the motion to dismiss
23 Mr. --

24 MR. MCGUIRE: No, we need to --

1 MR. VON NIDA: I'd like to make a motion
2 that we adopt the rules of procedure for the electoral
3 board, this particular electoral board.

4 MS. MENDOZA: A motion has been made to
5 adopt the rules for the sitting of this board.

6 MR. MCGUIRE: I'll second that motion.

7 MS. MENDOZA: Motion has been seconded.

8 All in favor?

9 MR. VON NIDA: Give the opportunity for
10 anybody that hasn't had a chance to look at them to
11 make any comments or -- if there's any objections from
12 the parties.

13 MR. CRANEY: Well, on behalf of anybody
14 that I'm representing, we have no objections.

15 MS. MENDOZA: Mr. Wesley, do you have any
16 objection to the rules as they're --

17 MR. WESLEY: No objections.

18 MS. MENDOZA: Having no objections, all in
19 favor?

20 MR. MCGUIRE: I vote aye.

21 MR. VON NIDA: Aye.

22 MS. MENDOZA: Aye. Motion carries.

23 Next order of business: Does the board's
24 pleasure in taking any action at this time on a motion

1 that has been filed by Mr. Craney for -- to --

2 MR. MCGUIRE: I think these are -- I think
3 at this point, these are all separate objections and
4 need to be considered individually. Now, the same
5 motion may be applicable to all of these candidates
6 whose petitions have been objected to, and whatever we
7 decide on the first one would certainly -- would seem
8 to logically follow that we rule the same way on all
9 the others. But I think we need to take out, first,
10 the order of -- or determine how we're going to
11 proceed with these one by one.

12 MS. MENDOZA: Mark, do you have any opinion
13 on how you would like to move forward?

14 MR. VON NIDA: Well, I would guess that we
15 can enter the first one and then make a ruling on it.

16 MR. CRANEY: Yeah. I mean, I will just
17 say, that seems to make sense to me, as long as -- I
18 styled this -- I did a group caption, but as long as
19 it can be deemed filed in every one of those
20 individual ones, it makes sense to me to take up
21 whichever one you call first on the docket.

22 MS. MENDOZA: Well, since this all is your
23 motion, all references with Mr. Plank, then we'll
24 do -- let's take care of the others, get them out of

1 the way. Is that all right?

2 Sir?

3 MR. BAKER: Excuse me, ma'am. I'm
4 David Baker. Did you already deal with the case
5 regarding me?

6 MS. MENDOZA: No, sir, we haven't.

7 MR. BAKER: I'm just checking, because I
8 heard --

9 MS. MENDOZA: Let the record show that
10 Mr. Baker is present.

11 Is that okay with everyone?

12 So would you guys like to start with Adams
13 versus Baker?

14 Mr. Wesley, I'm assuming that you're
15 representing --

16 MR. WESLEY: Ms. Adams, correct.

17 MS. MENDOZA: -- the petitioner?

18 MR. WESLEY: Correct.

19 MS. MENDOZA: Mr. Baker, do you have legal
20 counsel with you today?

21 MR. BAKER: No, ma'am.

22 MS. MENDOZA: Okay. Would you like to come
23 up so that --

24 MR. BAKER: Sure.

1 MR. MENDOZA: Mr. Wesley, would you like to
2 go ahead and begin to present your objection?

3 MR. WESLEY: Yes. Thank you.

4 In Mr. Baker's Statement of Candidacy, he
5 references his designation on several different
6 occasions RN. This is a document that is supposed to
7 be without designation, without position, so as not to
8 give the appearance that you're more highly qualified
9 than someone else. For that reason, his Statement of
10 Candidacy and his name should be stricken from the
11 ballot.

12 MS. MENDOZA: Now, just for the record, you
13 are aware that on the Statement of Candidacy and at
14 the time Mr. Baker filed his petition, he was told
15 that you could not profess a profession, and he
16 himself lined through the RN on the Statement of
17 Candidacy? Are you aware of that, Mr. Wesley?

18 MR. WESLEY: I am aware that he potentially
19 altered the document after it had been notarized,
20 which I don't think is proper, for one. Number two, I
21 see a line going through the top part of it, but the
22 RN is referenced many other times throughout this
23 document, clearly indicating that he wants to let
24 anyone who comes in and look at this petition know

1 what his degree or his status is.

2 I would say that his strikethrough is
3 improper as it was done after it was notarized and
4 that it was still his intent to leave his designation
5 on his Statement of Candidacy, if that is, in fact,
6 even stricken through.

7 MS. MENDOZA: Do the board members have any
8 questions they'd like to ask of Mr. Wesley at this
9 time?

10 MR. MCGUIRE: It's not really directed more
11 to Mr. Wesley as it is to both of them in general.

12 Is there -- do we have a stipulation of the
13 facts and we're just arguing about the law here? Or
14 do we need to hear some evidence?

15 MR. BAKER: Well, basically, I mean, I was
16 unaware that was a problem. I did take care of it
17 prior to filing. I wanted to redact that, take it off
18 there, whatever needs to be done. I want this to be a
19 fair competition, and I -- that's essentially my
20 perspective.

21 MR. WESLEY: At this point, our argument is
22 it's too late.

23 MS. MENDOZA: Would you happen to have with
24 you any prior heard case law, anything that would

1 support that the document had already been notarized
2 at the time Mr. Baker struck on his Statement of
3 Candidacy the RN?

4 MR. WESLEY: I don't have any case law to
5 that point. My understanding is that after it had
6 been notarized and he attempted to turn it in is when
7 he was made aware of this error, and rather than pull
8 out a new document and refill it out, he elected to
9 strike through it. I would say the intent, even if he
10 did intend to strike it out up top, is still lacking,
11 because it's on here several times; I think eight or
12 nine times at least throughout the document.

13 MR. BAKER: If that was advised at the time
14 of filing, I could've taken care of that problem.
15 They could have asked me to fill out a new document,
16 or I'm willing to fill out a new document at this
17 point in time.

18 MR. WESLEY: And I don't think -- it's not
19 the clerk's job to do his job. He's running for
20 office. He should know the laws and the rules, and he
21 should act in accordance with those laws and rules.

22 MR. VON NIDA: Mr. Wesley, what case file
23 do you have regarding throwing out Statement of
24 Candidacy?

1 MR. WESLEY: I don't have the specific case
2 law. It is clear in the statute, though, 105/7, 10-2
3 5/7/17B, 5/10-5.1, and 5/16-3E, that it's not to have
4 honorable titles, ranks, or other designations. I
5 mean, it's clear in the statute.

6 MR. VON NIDA: Does the statute direct the
7 election official to -- is that a statute that directs
8 the election official not to have those designations
9 on the ballot, or is that directed to the candidate?

10 MR. WESLEY: My understanding is it's
11 directed to the candidate.

12 MR. VON NIDA: Maybe I can see the actual
13 statute.

14 MR. MCGUIRE: What's the statute
15 recitation, Mr. Wesley?

16 MR. WESLEY: We've got 10/ILCS 5/7-10.2 --
17 there's a couple -- 5/7-17B. And I do have a case
18 here, Jones versus Municipal Officers Electoral Board,
19 which is 112 Il. App. 3926, First District '83.

20 MR. EZRA: What was that again, please?

21 MR. WESLEY: Yes. Jones versus
22 Municipal Officers Electoral Board. It said,
23 "Applications such as doctor, reverend, professor,
24 honorable military titles and ranks and whatnot will

1 result in the nomination papers being voided.

2 MR. EZRA: 112?

3 MR. WESLEY: I'm sorry?

4 Il. App. 3926, First District case from
5 1983. It sets out the purposes to prevent a candidate
6 from unduly influencing voters in nomination as well
7 as election. There's several cases where challenges
8 brought the use of titles have been found fatal. Some
9 are election board decisions.

10 MR. MCGUIRE: If I can say something here.
11 I was acquainted with the Jones versus Municipal
12 Officers Electoral work from my prior experience as
13 assistant state's attorney, but I'm curious as to why
14 it doesn't appear in the election code as the case
15 under Section 7-1022. That puzzles me. I would think
16 it would be there. I'm assuming it's still good law.
17 So I guess I'm implying, at this point, to -- think
18 that I would like to -- that this is a point of law,
19 and I would -- I want to satisfy myself as to what the
20 law -- precisely what the law is here before I make a
21 ruling or determine how I'm going to vote to rule, at
22 least.

23 MR. VON NIDA: Yeah, I mean, it's clear
24 that this is Mr. Baker. Mr. Baker lives at

1 404 Mercury Drive. He designates that on his
2 petitions. He went out and collected what appears to
3 be 18 signatures of members of the republican party to
4 be placed on the ballot, the form, the primary
5 petition designation. So what we come down to is
6 whether or not to initial on Statement of Candidacy as
7 a fatal flaw or not. It's not a matter of fact. It's
8 a matter of the law. So I prefer to hear from our
9 attorney if that's the case.

10 MR. MCGUIRE: Counsel, would you like some
11 time to review the matter?

12 MR. EZRA: I would like the opportunity to
13 look at the cases and any extension of those and
14 shepardize those cases to see whether it is a good
15 law. I agree with Mr. McGuire that it's not in the
16 code, which makes me think that maybe there have been
17 some subsequent decisions, so I'd like the opportunity
18 to be able to do that.

19 MR. VON NIDA: We can decide --

20 MR. MCGUIRE: Well, I would move that we
21 continue this particular setting until a date's
22 certain and come back after Mr. Ezra has had the
23 opportunity to conduct his legal research. I don't
24 know what -- I don't have a specific day or time in

1 mind, but --

2 MS. MENDOZA: So you're suggesting that we
3 come back on a different date?

4 MR. MCGUIRE: On a different date to
5 consider this one, because we need some -- we need to
6 know precisely what the law is.

7 MR. VON NIDA: Mr. Ezra, how long do we
8 have?

9 MR. EZRA: A week, ten days at the most.

10 MR. VON NIDA: No.

11 MR. EZRA: At the most. Less. Doesn't
12 matter. I mean, I can do it this weekend. I can
13 attempt to do it this weekend; Tuesday, if possible.

14 MS. MENDOZA: I mean, there is urgency.

15 MR. EZRA: So Tuesday if possible. Monday
16 would be difficult, but it can be done.

17 MR. BAKER: If we can do it on Monday, I'd
18 be available to come. I know it doesn't matter to you
19 guys, but --

20 MS. MENDOZA: It kind of does matter. So
21 if Monday is the earliest that Mr. Ezra would be able
22 to bring back his opinion to the board, then I'm all
23 in favor of Monday and not at a later date.

24 MR. EZRA: That's fine.

1 MS. MENDOZA: So as far as the disposition
2 right now of this objection, we will put it on hold
3 until Monday.

4 MR. VON NIDA: It's continued until Monday.

5 MS. MENDOZA: And then I will get out
6 notices sometime today to give you a time and a
7 courtroom. I can't guarantee we'll be back in this
8 courtroom.

9 MR. WESLEY: I'm in Jersey County at
10 9:00 a.m.

11 MS. MENDOZA: Well, I mean, Mr. Wesley, I
12 want to work around your schedule, too. So when do
13 you think --

14 MR. WESLEY: That's really all I've got.

15 MS. MENDOZA: Okay.

16 MR. WESLEY: I'll be done with that, I
17 would think, by 10:30 or 11:00. After that, it should
18 be all right.

19 MS. MENDOZA: Okay. Well, you know, I've
20 got to schedule a courtroom and I have to schedule the
21 court reporter. And so sometime either late
22 morning/early afternoon, we'll be back here to settle
23 this case.

24 MR. MCGUIRE: May I suggest for

1 Open Meetings Act purposes that it might be best to
2 set a time right now and then change it if necessary?

3 MS. MENDOZA: Okay. Monday, December 18th,
4 at 1:00. Is that agreeable with everyone?

5 MR. WESLEY: Yes.

6 MS. MENDOZA: Then I will see you back here
7 somewhere in this building on Monday at 1:00.

8 MR. BAKER: Thank you.

9 MS. MENDOZA: Okay. Moving on.

10 Mr. Weber, are you prepared at this time?

11 MR. WEBER: No.

12 MS. MENDOZA: Okay.

13 MR. WEBER: Here's the thing: There's an
14 allegation in this of fraud, and that involves the
15 signatures. And I -- in the process of talking to a
16 handwriting guy, which I may or may not use -- I don't
17 know -- but I would be ready, like -- I don't want to
18 delay this much either. He's going to object. He
19 wants to go today, but I do have a handwriting guy,
20 and that's going to take a little bit, but I can be
21 ready by Tuesday, I think, or if I'm really pressed,
22 Monday.

23 MS. MENDOZA: We're speaking of Weber
24 versus Phelps. I apologize for not being more clear.

1 Mr. Weber, could your expert be ready by
2 Monday, do you think?

3 MR. WEBER: Yeah, I think. And I'm going
4 to ask the board to issue three subpoenas, too, which
5 you have the power to do.

6 MS. MENDOZA: Yes.

7 MR. WEBER: I mean, Jeremy Plank didn't
8 bother to show up today, which I --

9 MS. MENDOZA: Will you be giving me the
10 subpoenas soon? Or --

11 MR. WEBER: Do you have forms? Yeah, I
12 can -- I know who the three people are right now:
13 Chris Lesser, Jeremy Plank, and Sarah Phelps.

14 MR. MCGUIRE: For scheduling purposes, do
15 you anticipate about how long?

16 MR. WEBER: Couple hours. And I don't
17 spend a long time on stuff. These are pretty narrow
18 issues.

19 Well, the fraud thing is not narrow, but I
20 think a couple hours, we'll be done. If anything, I
21 may -- he may have -- I don't know what he's going to
22 do.

23 MS. MENDOZA: Mr. Phelps, what is your
24 schedule?

1 MR. MCGUIRE: Mr. Phelps, why don't you
2 come up here so that you're on equal footing?

3 MR. PHELPS: I mean, I'd like to object to
4 the continuance as a whole. I mean, I have had 72
5 hours to prepare, and I have managed to do so to what
6 I think is a sufficient level. I would at least like
7 the opportunity to present that. I mean, it's
8 difficult for me to modify my life schedule and
9 everything. I'd like the opportunity to try to
10 expedite things today and at least see if I can
11 satisfy the board's perspective on the matter.

12 MS. MENDOZA: Well, I mean, if he has any
13 information and wants to present today, I don't know
14 that that's --

15 MR. WEBER: Well, I've got the burden of
16 proof. That means I go first, and there's a certain
17 strategy to this that is involved in when I'm going to
18 call him to the stand. So I would object to going out
19 of order. You can do what you want, but I object to
20 him going out of order.

21 MR. MCGUIRE: You're moving to continue,
22 and you're objecting the motion to continue?

23 MR. WEBER: Right.

24 MS. MENDOZA: Mr. Weber, when did you know

1 that you were going to call this expert? I mean,
2 prior to today, you've been in contact this expert who
3 has not been available? Or what's --

4 MR. WEBER: You don't just get a
5 handwriting expert to look things over. I can tell
6 you that I got the signature cards last night about
7 4:00. So I can get them to him today and he can look
8 at them. Remember the last hearing we had and Doherty
9 (phonetic) was calling people, like, two weeks into
10 the hearing and all that? So I think Monday is really
11 pretty quick for an expert from Chicago.

12 MR. VON NIDA: And there's 12 signatures
13 instead of 12,000.

14 MR. WEBER: I don't even know if I need him
15 to give an opinion, so -- but that's the deal. I
16 mean, it's -- we can -- it's really a pretty simple
17 situation.

18 MS. MENDOZA: Well, right now, it seems
19 that it's not very simple since we're asking for a
20 continuance and to get experts here. And you're
21 right; the burden of proof is upon you.

22 MR. VON NIDA: Why don't we --

23 MR. MCGUIRE: Well, if Mr. Weber is seeking
24 a continuance, I think it would be fair to ask whether

1 we can reschedule it at a time that is most -- or
2 least inconvenient for Mr. Phelps.

3 MR. PHELPS: I'd love to be able to tell
4 you that, but I'm not a member of the bar. I can't
5 bring my cell phone into the building, so I don't even
6 have ready access to my schedule for next week to see
7 when I can -- you know, what's easiest to accommodate.

8 MR. WEBER: I can do this any day but
9 Thursday morning when my wife is singing in the
10 nursing home, and I have to be there.

11 MS. MENDOZA: Could you get with me this
12 afternoon and possibly let me know what -- or someone
13 representing you, Mr. Phelps, legal counsel. If you
14 could do that, this board would appreciate that very
15 much. And we are sympathetic that you have no
16 access --

17 MR. PHELPS: Right. Well, I believe the
18 intention is to -- expect me to be here to testify as
19 well, so I wouldn't be able to just have somebody
20 represent me in my absence.

21 MR. MENDOZA: Do you -- are you expecting
22 to call Mr. Phelps as a witness? You didn't mention
23 him for the subpoena.

24 MR. WEBER: Well, I figured he was going to

1 be here. That's why I didn't move to -- for subpoena.

2 Yeah, he'll be a witness. Yes. Yeah,
3 he'll be a witness for sure.

4 MS. MENDOZA: Well, then, we need to --

5 MR. PHELPS: Can I ask a question? If I am
6 taken off of the ballot as-is, am I still permitted to
7 run a write-in campaign?

8 MR. MCGUIRE: Yes.

9 MS. MENDOZA: That is an option, yes.

10 MR. PHELPS: Okay. And is this officially
11 documented in this setting here right now to where,
12 like, I would be able to get a printed copy of this
13 discussion? I mean --

14 MS. MENDOZA: You won't be able to do it
15 today, but yes.

16 MR. MCGUIRE: This is all on the record.

17 MR. WEBER: I would not object in any
18 manner to him doing that. You have my word on that.

19 MS. MENDOZA: Doing what?

20 MR. WEBER: Running as a write-in. I have
21 no --

22 MR. PHELPS: I mean, you know, the
23 intention to subpoena for my wife to have to be here
24 is, you know, burdensome. I'm just going to withdraw.

1 MS. MENDOZA: Mr. Phelps, there are some
2 paperwork that you and I need to take care of, or you
3 can go over to the county clerk's office at your
4 convenience and -- where you filed your petition and
5 take care of that paperwork, if that's your decision.

6 MR. MCGUIRE: Can I -- Mr. Phelps, do you
7 want to think about it over the weekend and then -- I
8 mean, I think you kind of got surprised with this, and
9 I want to make sure it's what you want to do, because
10 you've gone through the trouble of filing your
11 petitions, and the burden of proof is on Mr. Weber.
12 Nothing's been proven at this point, so I just want to
13 make sure it's what you want to do. You can -- if you
14 think about it for 24 hours and --

15 MR. PHELPS: If I have that option to just
16 wait, you know, for a day or so --

17 MS. MENDOZA: The last date to withdraw, if
18 I'm not mistaken, is January 18th. That date might
19 be --

20 MR. MCGUIRE: Well, I know, but I think he
21 wants to -- I'm just talking about before we -- he can
22 decide over the weekend, then, if he wants to withdraw
23 his petition, and that obligates the need for the
24 hearing. I guess then we could -- then when we're

1 here considering the other objection, we could just
2 vote to -- or just vote that it's moved because the
3 candidate's withdrawn his objection -- or because the
4 candidate's withdrawn his nomination papers. We're
5 going to be here anyway.

6 MS. MENDOZA: That's true.

7 MR. PHELPS: Okay.

8 MR. MCGUIRE: Does that make sense?

9 MS. MENDOZA: Are you comfortable with
10 that, Mr. Weber?

11 MR. WEBER: Sure. Sure.

12 MS. MENDOZA: Okay. All right. So we're
13 putting this on hold until Monday at 1:00.

14 MR. MCGUIRE: Now, is that going to be
15 the -- no, I guess we'll just -- I'm trying to think.
16 Are we going to then proceed to a hearing if he
17 decides to continue? Or --

18 MR. WEBER: Yeah. Absolutely. And I'm
19 going to get you those subpoenas.

20 MR. PHELPS: And I thought I also had the
21 option to get with you this afternoon to work out the
22 schedule.

23 MS. MENDOZA: Absolutely.

24 MR. MCGUIRE: And if he -- if this

1 gentleman does decide to withdraw his petition, then
2 you can notify Mr. Weber.

3 MR. WEBER: One more thing: I've got a lot
4 of sympathy for him on this, but it's a proceeding. I
5 don't want to serve his wife if this is going to go
6 away, so I'm just going to wait on that. I don't
7 know. I don't want to cause any more discomfort than
8 I have to. I'm just going to wait on that subpoena.

9 MR. MCGUIRE: Okay. Okay. And then if he
10 does come in and file withdrawal papers, then --

11 MR. PHELPS: I mean, I would like him to
12 have to issue the subpoena before I withdraw. That's
13 part of my whole point of withdrawing, right?

14 MR. WEBER: The subpoena will be issued,
15 but I'm not going -- do you want me to serve it?

16 MR. PHELPS: Yeah, I do, because that
17 becomes an element, then, that I will use in the
18 write-in campaign when I'm going and talking to
19 people, and if the opportunity is granted to miss
20 having to do that thing that is an emotionally, you
21 know, problematic thing, then I no longer have that in
22 a write-in campaign.

23 MR. WEBER: Okay. I'll have the subpoena
24 served.

1 MR. MCGUIRE: I'm going to move that we
2 reset this for Monday at 1:15 and -- to follow the
3 previous matter.

4 MS. MENDOZA: I'm fine with that.
5 Mark?

6 MR. VON NIDA: I agree with that.

7 MS. MENDOZA: Then this will be set for --
8 we're putting this on hold until Monday,
9 December 18th, at 1:15. The courtroom to be
10 determined.

11 Thank you, Mr. Phelps.

12 Thank you, Mr. Weber.

13 The next objection would be Mr. Wathan
14 versus Dalton.

15 Mrs. Dalton, would you like to come up,
16 please?

17 Is Mr. Wathan here?

18 MR. CRANEY: That's Lee Wathan. I think
19 I'm going to be entering my appearance for Mr. Wathan.

20 MS. MENDOZA: Okay. Let the record show
21 that James Craney has entered his appearance to
22 represent Mr. Wathan.

23 MR. MCGUIRE: He said he thinks. You think
24 you're entering your appearance, or you are?

1 MR. CRANEY: I am entering my appearance.

2 MR. MCGUIRE: You are entering your

3 appearance. Okay.

4 MR. VON NIDA: Mr. Wathan, is Mr. Craney
5 representing you?

6 MR. WATHAN: Yes.

7 MS. MENDOZA: Liz, do you have any legal
8 counsel?

9 MS. DALTON: No.

10 MS. MENDOZA: Okay. You are representing
11 yourself?

12 MS. DALTON: Yes.

13 MS. MENDOZA: Okay.

14 MR. CRANEY: I just entered my appearance.
15 If you want to -- I mean, there are other things we
16 can continue to Monday. If you want to get an
17 attorney, feel free.

18 MS. DALTON: I do not want to continue on
19 Monday. I do not have time.

20 MS. MENDOZA: Let's hear. Okay? Are we
21 anticipating subpoenas or anything of that nature?
22 The objection really doesn't deal with fraud, does it?

23 MR. CRANEY: My understanding of the
24 objection -- I might allow Mr. Wathan to -- I think

1 it'll take 30 seconds to lay out the basis of his
2 objection. My understanding is that what this is
3 going to boil down to, depending upon the testimony,
4 is that we may, ultimately, need to subpoena a video
5 from the surveillance system.

6 MS. MENDOZA: Well, that subpoena would
7 probably need to be issued to the sheriff's office
8 since I have no control over that video.

9 MR. CRANEY: Okay.

10 MS. MENDOZA: So do you want to put on your
11 case?

12 MR. CRANEY: Sure. Absolutely. The last
13 time we did these -- you want me to put a chair up
14 here or --

15 MS. MENDOZA: Oh, you're calling a witness?

16 MR. CRANEY: Sure.

17 MS. MENDOZA: Oh, okay. Yeah, we need a
18 get a chair.

19 Are you prepared to swear in the witness?

20 THE REPORTER: Yes.

21 LEE WATHAN,

22 having been first duly sworn testified as follows:

23 MS. MENDOZA: Mr. Craney?

24 MR. CRANEY: For clerical purposes today;

1 do we have a case number that's been assigned to this
2 one? Or I can ask later. We can figure that out
3 later.

4 EXAMINATION BY MR. CRANEY:

5 Q. Okay. Sir, can you state your name?

6 A. Harold Lee Wathan, Jr.

7 Q. Okay. And you have filed a petition -- or
8 I'm sorry -- an objection to a petition in this
9 matter?

10 A. Yes.

11 Q. Okay. And who have you objected to, whose
12 nomination?

13 A. Ms. Dalton.

14 Q. Okay. And can you state the nature of your
15 objection?

16 A. My understanding is that the petition has
17 to be stapled, some way held together when it's
18 submitted.

19 Q. Is your understanding that it needs be
20 bound, the different pages of the petition?

21 A. That's correct.

22 Q. And that's when it's handed across the desk
23 to the clerk?

24 A. That's correct.

1 Q. Okay. You have no other grounds for
2 objecting to that, correct?

3 A. No.

4 Q. Okay. That's all I have.

5 MS. MENDOZA: Mr. Wathan, if I can just ask
6 a question.

7 MR. WATHAN: Sure.

8 MS. MENDOZA: Do you have any information
9 other than the possibility of a subpoenaed video that
10 the petition was not fastened, as you said?

11 MR. WATHAN: Yeah, I've seen the petition.
12 There's no marks that indicate that it would have been
13 fastened. There's no --

14 MS. MENDOZA: Well, you do realize the
15 petition that -- I'm assuming -- oh, you've seen the
16 original?

17 MR. WATHAN: Haven't seen the original.

18 MS. MENDOZA: Okay. So you've only seen a
19 copy?

20 MR. WATHAN: That's correct.

21 MS. MENDOZA: Okay. Which would have been
22 taken apart at that time to make the copy?

23 MR. WATHAN: Maybe, but as I mentioned,
24 there's no indication on anything I've seen, and it

1 was full copies.

2 MS. MENDOZA: Okay. And that's fair. It's
3 a copy. Would you like to see the original? I do
4 have all the originals here, which will have any kind
5 of perforation or anything of -- would you like to see
6 that?

7 MR. VON NIDA: Wait a second.

8 MS. MENDOZA: Oh, I'm sorry. Let me --

9 MR. VON NIDA: So I'm assuming that at one
10 point, to make copies, the clerk took this apart and
11 put it back together?

12 MS. MENDOZA: They would have had to have
13 taken it apart, but -- someone in the office would
14 have had to have taken it apart, but on the petition
15 itself, you can feel.

16 John, did you need to see it?

17 MR. VON NIDA: It was across the top?

18 MS. MENDOZA: Yes, it was --

19 MR. CRANEY: I won't approach until I --

20 MS. MENDOZA: Oh, my goodness.

21 MR. CRANEY: Well, I don't know whether to
22 proceed by asking questions. I can ask leading
23 questions, or I could just direct this to Pam. What
24 would be the most appropriate way for me to proceed?

1 MR. MCGUIRE: You can ask questions. She
2 can object.

3 FURTHER EXAMINATION BY MR. CRANEY:

4 Q. Okay. Have you seen this original before?

5 A. I have not.

6 Q. Okay. Do you feel any perforations at the
7 top?

8 A. I don't feel any perforations.

9 Q. Or indentations. I'm sorry.

10 A. I do.

11 Q. Are those staple indentations? Do you know
12 any --

13 A. Interesting.

14 Q. You have no idea what those --

15 A. I don't have any idea, but I noticed that
16 it's not on all the pages.

17 Q. Okay.

18 A. Whatever it is is on that page. It's not
19 on all of the pages.

20 MR. CRANEY: Okay. I have no further
21 questions for him. I think we just need to talk to
22 the candidate, unless you have more questions.

23 MS. MENDOZA: I don't have any questions.

24 MR. VON NIDA: Mr. Wathan, are you a

1 candidate for office?

2 MR. WATHAN: I am.

3 MR. VON NIDA: What office is that?

4 MR. WATHAN: Precinct committee.

5 MR. VON NIDA: Precinct committee,
6 republican party?

7 MR. WATHAN: Yes.

8 MR. VON NIDA: And do you reside at
9 203 West Main Street?

10 MR. WATHAN: I do.

11 MR. VON NIDA: Collinsville?

12 MR. WATHAN: I do.

13 MR. VON NIDA: Is there anyone else that
14 lives at that address?

15 MR. WATHAN: There is.

16 MR. VON NIDA: Is that other person a
17 candidate for office?

18 MR. WATHAN: She is.

19 MR. VON NIDA: And what is that office?

20 MR. WATHAN: It's -- she's running against
21 Liz -- excuse me -- Ms. Dalton.

22 MR. VON NIDA: She's running against
23 Ms. Dalton in the democratic primary?

24 MR. WATHAN: Yes.

1 MR. VON NIDA: So would it be fair to say
2 your interests are beyond just wanting to see the
3 election code?

4 MR. WATHAN: My interests are that it be
5 fair, that we all follow the rules, whatever it may
6 be.

7 MR. MCGUIRE: Mr. Wathan, do you have any
8 information -- or any knowledge of any facts that
9 would indicate that the petition was not stapled when
10 it was filed beyond what you've already told us here,
11 that you couldn't see the marks on the copies that you
12 had?

13 MR. WATHAN: I don't -- on the originals
14 you just gave me, I don't think there are any marks
15 beyond the first page. If you -- it doesn't appear
16 that there's any staple that's gone through those
17 pages. So if it was bound when it was handed in,
18 there would be marks through all of them.

19 MR. MCGUIRE: I guess what I'm asking you:
20 Do you have any witnesses that were there when she
21 filed them that would say that the --

22 MR. WATHAN: The videotape.

23 MR. MCGUIRE: Okay. So you were not
24 personally present? You don't know anybody that was?

1 MR. WATHAN: I was not.

2 MR. CRANEY: Well, aside from Ms. Dalton.

3 MR. MCGUIRE: Yeah. Okay.

4 MR. VON NIDA: So what makes you think the
5 videotape would indicate that it wasn't bound?

6 MR. WATHAN: I believe that it will
7 indicate that -- what I believe is correct, that it
8 was not bound when it was submitted.

9 MR. VON NIDA: Is it just faith? Or what
10 is the basis of your belief?

11 MR. WATHAN: Well, if you look at the same
12 originals I looked at and feel the same the thing I
13 just felt, I think a reasonable person would conclude
14 that there was not -- those pages were not bound
15 together.

16 MS. MENDOZA: Can I ask what -- I mean, I'm
17 noticing here that the notary is from a deputy in my
18 office and that the Statement of Candidacy is what's
19 been notarized along with -- the petition pages have
20 all been notarized. So would -- and I'm not an
21 attorney, so I may be asking the question
22 inappropriately, but wouldn't it be reasonable that
23 the petition pages may not have physically been bound
24 together at the time the notary -- that Ms. Dalton

1 signed the petitions in front of the notary in my
2 office and that they were bound? Is that not -- I
3 mean --

4 MR. CRANEY: Calls for speculation.

5 MS. MENDOZA: Okay. Well, I mean, we're on
6 faith here.

7 MR. MCGUIRE: I think the key issue is
8 whether or not the pages were stapled when they were
9 filed, because if they weren't, my understanding is
10 that it's fatal, but if they were stapled, then
11 there's no remaining objection. So I think we just
12 need to get testimony to make us -- make the factual
13 decision of what we believe the fact shows, whether or
14 not they were stapled.

15 Mr. Wathan, I believe, has no other --
16 other than possibly looking at the videotape, has
17 indicated he doesn't have any other evidence; is that
18 right?

19 MR. CRANEY: I guess I would just get on
20 the record --

21 FURTHER EXAMINATION BY MR. CRANEY:

22 Q. Did you make a FOIA request for the video?

23 A. I did.

24 Q. Was it denied?

1 A. It was denied.

2 Q. Do you have a copy of that with you here?

3 A. I do not.

4 Q. Okay. That's fine.

5 MR. CRANEY: Nothing further from us from
6 him.

7 MR. MCGUIRE: Okay. We will hear from
8 Ms. Dalton now.

9 MS. MENDOZA: Yes. Thank you, Mr. Wathan.
10 Am I pronouncing your name correctly?

11 MR. WATHAN: You are. And thank you. It's
12 unusual.

13 MS. MENDOZA: Liz, would you --

14 MR. MCGUIRE: If you're going to testify,
15 you need to be placed under oath.

16 ELIZABETH DALTON,

17 having been first duly sworn testified as follows:

18 MS. DALTON: Okay. When I turned in my
19 petitions, I had the signature pages, 1 and 2, marked
20 appropriately, and I had them stapled in the upper
21 left-hand corner, and my other papers were attached to
22 that. According to the rules in what we were sent,
23 the petition signature sheets must be neatly fastened
24 together in book form by fastening them together at

1 one edge in a secure and suitable manner, which I did.

2 So I don't know what else I was supposed to
3 do. I had everything there. I had her notarize them
4 as I signed them, because you have to sign in front of
5 the notary to make them legal, and that's exactly what
6 I did and she took them apart at that time.

7 MR. VON NIDA: Ms. Dalton, how many
8 signatures are required to get on the ballot?

9 MS. DALTON: According to my sheet that was
10 sent to me, 16, and I turned in 24.

11 EXAMINATION BY MR. CRANEY:

12 Q. Ma'am, you -- how many pages total were in
13 your nomination packet? There were two petition
14 pages?

15 A. Yes.

16 Q. And was there a separate page for the
17 nomination statement, the Statement of Candidacy?

18 A. Yeah, there's a Statement of Candidacy;
19 there's your economic statements, your loyalty
20 statements.

21 MR. CRANEY: Is this still the original?

22 MS. MENDOZA: Of course.

23 Q. (By Mr. Craney) So I'm showing seven pages
24 in this packet that I've been handed. The last one is

1 a yellow receipt -- the last two are receipt pages,
2 which I assume the clerk put on there. So that would
3 be five. Are those the pages that you handed in?

4 A. Yes, they are.

5 Q. Okay. And when you handed them in, they
6 were stapled -- you're alleging they were stapled
7 where?

8 A. In the upper left-hand corner.

9 Q. Is that staple, the one there now, the one
10 that you put in?

11 A. Doesn't feel like it.

12 Q. Well, they were taken apart, you indicated?

13 A. Yes.

14 Q. Who took them apart?

15 A. At the time when I turned them in, it would
16 have been the clerk, Vanessa.

17 Q. And that was so they could notarize them?

18 A. Yes.

19 Q. And then at some point later, they were
20 restapled, presumably, by the clerk's office?

21 A. Uh-huh.

22 Q. Is that a yes?

23 A. Yes.

24 Q. Sorry. That's just the way it works.

1 So on the counter for a while, they were
2 all disassembled, they were all notarized, and you
3 slid them across and they took it from there?

4 A. Uh-huh.

5 Q. Okay. Is that a yes?

6 A. Yes.

7 MR. CRANEY: Okay. I have nothing further.

8 MS. MENDOZA: Thank you, Ms. Dalton.

9 Oh, does --

10 MR. MCGUIRE: No, I don't have any
11 questions.

12 MR. CRANEY: To move this forward quickly,
13 I will let you know that I have no further witnesses.
14 We may need to, I suppose, subpoena that videotape.
15 I'm not sure why they didn't grant the FOIA request.
16 I haven't seen the response. There's case law that I
17 would -- based on this testimony, I could probably
18 submit it in about an hour or less. There's case law
19 here that I've seen that says the clerk cannot bind
20 them for you. When you hand them across the counter,
21 they have to be bound. So I think this is a -- I
22 think it's a fatal flaw.

23 MR. VON NIDA: All right. Well, what I'd
24 like to take notice of is that this is a file that

1 consists of three pages, not thousands of pages, that
2 can typically be done with a stapler. I found it -- I
3 do find it relevant that there seems to be some marks
4 that were -- they were bound at the time they were
5 accepted by the county clerk's office. Having some
6 knowledge of how the county clerk's office works with
7 these things, they do tend to take some of these apart
8 and put them back together again when they're done.

9 Now, if it were, for example, a petition
10 that consists of hundreds, dozens, and multiple pages,
11 obviously, it would be hard to tell whether or not
12 something was added or not, but it seems to be not a
13 point of contention at all whether or not there were
14 two pages of petitions and one page of the Statement
15 of Candidacy.

16 MR. MCGUIRE: The court reporter can't hear
17 you.

18 MR. VON NIDA: Okay. I'll stand up.

19 It does not seem to be a point of
20 contention at all that there were 24 valid democratic
21 signatures on these petitions, that there were, in
22 fact, two pages of petitions and one page of Statement
23 of Candidacy.

24 The case law that I believe Mr. Craney is

1 referring to would cast doubt on whether or not there
2 was sufficient number of signatures -- or a sufficient
3 number of signatures to place the candidate or the
4 public policy question on the ballot. That's not a
5 point here, and, in fact, I find it kind of
6 ridiculous, the idea, that because of a missing
7 staple, that a candidate would not be on the ballot.
8 So I'd be willing to make a motion that we deny the
9 objection.

10 MR. CRANEY: Well, can I -- since you seem
11 to be speaking for her, I think I have the opportunity
12 to respond.

13 MR. VON NIDA: I'm responding myself, and
14 I'm speaking as an opinion.

15 MR. CRANEY: The bottom line is there are a
16 lot of cases in this area that -- I don't think the
17 issue has anything to do with what the statute is
18 designed to do. It's not whether the binding aspect
19 of the statute is designed to make sure that you have
20 all your signatures and haven't lost pages.

21 I've -- I'm acquainted with a lot of
22 cases -- there are so many cases throughout the state
23 on this. I've talked to judges in this courthouse,
24 and everybody acknowledges that it seems as though the

1 statutes in this arena, nominated papers and
2 objections to them, are strictly construed, and often,
3 there are what seems like unfair results, but they are
4 the rules that we all live with, and the rules are the
5 rules.

6 I don't think the -- if you read the cases,
7 they don't say anything about why there's a binding
8 requirement. They simply say there is one in the
9 language of the statute, and if it's not met, it's
10 fatal. So the point that -- it may seem like an
11 unfair result or may seem like much to do about
12 nothing because it's just a staple, that seems to be
13 the tenure of this case law, generally. I've been on
14 both sides of it, and it is what it is, so --

15 MS. MENDOZA: Excuse me, Mr. Craney.

16 MR. CRANEY: I think the best evidence,
17 obviously, is the video. So I still would like to
18 subpoena that; although she has admitted it was taken
19 apart.

20 MS. MENDOZA: Yes, sir. Depending on
21 the -- what disposition you make on this right now,
22 you can do that on appeal or --

23 MR. MCGUIRE: No, if he wants to make it --
24 if he wants to put it -- if he wants something on the

1 record, it has to be done here. He can't bring new
2 evidence in on judicial review.

3 MS. MENDOZA: What was the reason for the
4 denial? Does Mr. Wathan have a reason why the sheriff
5 denied?

6 MR. CRANEY: Do you know what they said?

7 MR. WATHAN: Fairly vague. The indication
8 was that because it would infringe on their
9 responsibilities and protecting the properties under
10 which the cameras were and something about the folks
11 that were in the picture could be identified if the
12 video was given, that that could be a problem. So
13 there was nothing specific. It was pretty -- I didn't
14 get it is the bottom line.

15 MR. CRANEY: Seems to me if it has anything
16 to do with the privacy -- well, he didn't say privacy.
17 I don't know. It seems to be whatever their concerns
18 are can be allayed by the fact that -- the video
19 subpoena the three of you look at, maybe,
20 counsel can --

21 MS. MENDOZA: So to review it?

22 MR. CRANEY: To review it. It doesn't need
23 to be released publicly. I'm not asking for it to be
24 released publicly. I'm just asking for it to be

1 reviewed, basically.

2 MS. MENDOZA: So what again? One more
3 time: Why would we be reviewing it? For the purpose
4 of whether the pages were bound at the time they came
5 in?

6 MR. CRANEY: Whether the pages were bound
7 at the time they came in across the desk.

8 MS. MENDOZA: Is there indication that this
9 video shows that? I mean --

10 MR. CRANEY: I have no idea what it shows.
11 I just know that it's the best evidence of what
12 happened in this particular case.

13 MS. MENDOZA: Mr. Wathan, do you have any
14 reason to believe that the video would show that these
15 pages weren't bound?

16 MR. WATHAN: I believe the sheriff is going
17 to be wise enough to have a video camera pointing
18 right at that counter where all --

19 MS. MENDOZA: Oh, no, I have the camera
20 pointing at the counter.

21 MR. WATHAN: So I'm assuming that whatever
22 happened, it was shown.

23 MS. MENDOZA: So you have no -- you have a
24 gut feeling that the video will show that the pages

1 weren't bound?

2 MR. WATHAN: I don't have a gut feeling.
3 The video will show what it shows. It's my belief, as
4 I put forward in my motion, that they were not bound
5 properly when it came across that counter. If the
6 camera's right there, that camera is going to indicate
7 if it was or wasn't. I think that would -- that's
8 going to tell the story. I believe it's going to
9 indicate that they were not bound.

10 MS. MENDOZA: So what? Put this one on
11 hold, too?

12 MR. MCGUIRE: If that's the pleasure of the
13 board.

14 MR. VON NIDA: I don't think that's
15 necessary. She testified what happened when she came
16 in. She seemed to be satisfied with what she
17 testified to.

18 MR. CRANEY: She has testified that when
19 she turned in the pages, they were not bound. Unless
20 the board doesn't believe that's what she just
21 testified, then I want to make that part clear, at
22 least.

23 MR. VON NIDA: She testified that it was
24 bound when she brought it in the state's attorney's

1 office -- the county clerk's office. The county
2 clerk's office unbound them to perform the
3 administrative act, and they rebound them after they
4 were done.

5 MR. CRANEY: Well, I mean, if the board is
6 going to deny a request for a subpoena --

7 MR. VON NIDA: I mean, that's what I -- is
8 that a good characterization? Does it characterize
9 what you heard, too?

10 MR. CRANEY: I think the testimony speaks
11 for itself, and I understand that she just testified
12 when she submitted them to the clerk, they were
13 unbound. If the board -- I would just ask if the
14 board is going to deny my request for a subpoena and
15 rule today, at least whatever mechanism needs to be
16 activated so that video is not destroyed in case I do
17 need it -- or to seek it on judicial review.

18 MS. MENDOZA: Well, first of all, I have no
19 control over the video. So that request, I'm
20 assuming, must be made to the sheriff that nothing's
21 destroyed, but I don't know, so I can't answer to
22 that. I guess this court can notify the sheriff not
23 to destroy something. I mean, I don't even know that
24 they do that. Do they destroy videotapes?

1 MR. MCGUIRE: I think they re-record over
2 them after a certain time, yeah.

3 MS. DALTON: Can I say something? I mean,
4 he's sitting there saying that I said they were
5 unbound. They were. The petition papers were bound
6 in the left -- upper left-hand corner like they were
7 supposed to be, and I had them numbered 1 and 2.
8 That's all it requires in here.

9 MR. MCGUIRE: Ms. Dalton, were they stapled
10 when you brought them in the building, or did you
11 staple them at the counter?

12 MS. DALTON: Yes. No, they were stapled
13 when I brought them into the building, and then they
14 were taken apart because of having them notarized, so
15 I could sign them.

16 MR. CRANEY: Were they ever stapled -- who
17 stapled them after they were notarized? The clerk's
18 office?

19 MS. DALTON: I guess they did, because I
20 left. There was a whole bunch of people there, and
21 they were working on everybody. I had to get to a
22 meeting, so I left immediately.

23 MR. CRANEY: So when you brought the papers
24 into the office, it was not a complete application

1 because they weren't notarized yet, correct?

2 MS. DALTON: No, I had them notarized there
3 because you were to sign them in front of a notary,
4 and that's what I had to have done.

5 MR. CRANEY: And after you had them
6 notarized and signed them and they were complete and
7 you handed them to the clerk to file them, they were
8 not stapled at that point, correct?

9 MS. DALTON: No, they were not.

10 MR. CRANEY: Okay. Our case rests.

11 MR. MCGUIRE: Okay. Well, then it doesn't
12 sound like we need to review the videotape, correct?

13 MR. CRANEY: I haven't withdrawn my -- I
14 mean, if you're going to deny my request for a
15 subpoena, just put it on the record.

16 MR. MCGUIRE: I don't -- if he wants to
17 subpoena so we can look at the tape, I don't --

18 MR. VON NIDA: It's not necessary.

19 MR. MCGUIRE: I mean, it doesn't seem like
20 it's going to --

21 MR. VON NIDA: The question is whether or
22 not she submitted a complete package at the time when
23 she brought it in. It was bound. It was unbound when
24 she completed it, and then she handed it back to the

1 clerk. That's what the testimony is. Now the
2 question is whether or not we're going to sustain the
3 objection based on that, that the three pages that the
4 clerk received were defective enough to keep her off
5 the ballot. That's the question. I don't see any
6 reason why not to go with my original motion and not
7 sustain.

8 MR. MCGUIRE: Okay.

9 MS. MENDOZA: Do we have a second?

10 MR. MCGUIRE: I will second that.

11 MS. MENDOZA: Mark, do you want to vote?

12 MR. VON NIDA: I vote aye.

13 MR. CRANEY: What's -- did we phrase -- how
14 does the motion --

15 MR. MCGUIRE: The objection is -- I'm
16 sorry. Your motion is to overrule the objection,
17 right?

18 MR. VON NIDA: Yes.

19 MR. MCGUIRE: Okay. I'll second that.

20 MS. MENDOZA: And I vote aye.

21 MR. MCGUIRE: I vote aye.

22 MR. CRANEY: And just if it's necessary on
23 judicial review, the request for subpoena was then
24 denied; is that correct?

1 MS. MENDOZA: Yes.

2 MR. CRANEY: Okay.

3 MS. MENDOZA: Okay. Moving on. I have --
4 next would be Plank versus Wilkins, Precinct Committee
5 Petition Number 2.

6 MR. CRANEY: Do you represent Jeremy?

7 MR. WESLEY: Yes, I'm representing Jeremy.

8 MS. MENDOZA: Okay. And is this one that
9 you want to add, or is it part of this?

10 MR. CRANEY: Can I just add a point of
11 clarification? The remainders are all the
12 Jeremy Plank objections; is that --

13 MS. MENDOZA: That's correct. Yes.

14 MR. CRANEY: Okay. I'll be representing
15 all those.

16 MR. MCGUIRE: You're representing all of
17 the candidates?

18 MR. CRANEY: Correct.

19 MR. VON NIDA: Did you have an original
20 motion to --

21 MR. CRANEY: Dismiss that I filed? Yeah.

22 MR. VON NIDA: -- dismiss?

23 MR. WESLEY: And as a preliminary matter, I
24 got this today, also, and I was going to see if I

1 could have until Monday to formulate a response. I
2 don't know if it's going to be different for the
3 various -- obviously, there's two of them that are --
4 the objections were withdrawn by Mr. Plank and that's
5 Charles Schmidt and Jason Voigt. That still leaves
6 about eight.

7 MR. CRANEY: There should be eight left, as
8 far as I understand.

9 MR. WESLEY: And the objections are a
10 little different. So in theory, the arguments may be
11 a little different. I would like a chance to look at
12 the law that he cited and the cases that he cited and
13 see if there's any cases in opposition to this that I
14 might be able to cite.

15 MR. CRANEY: I guess if he needs time,
16 that's fine, but I'd like to still make my motion and
17 just argue it now. I'm only raising one issue to the
18 extent that -- the nature of each objection: Were
19 there enough signatures? Was this fraudulent? Was
20 this left off or whatever? The minutia, like the
21 staple, I'm not going to get to it today. I've got
22 one issue, and that's that Jeremy Plank doesn't have
23 standing to file these objections. So I have no
24 problem, if you will allow me to make a case for it

1 now, and if he needs more time to respond, that's fine
2 with me.

3 MS. MENDOZA: I'd like to move this forward
4 as much as possible.

5 MR. CRANEY: Let's do that. You can look
6 at my -- but Jeremy's not here, right?

7 MR. WESLEY: I don't believe so.

8 MR. CRANEY: I don't think Mr. Plank is
9 here. I would ordinarily make a motion to default,
10 but you're representing him, so I guess that doesn't
11 apply. I expect that his testimony would be, were he
12 here, and I suppose I could subpoena him if necessary.
13 In fact, he pleads in his objections where he lives.
14 He doesn't live in the precincts of any of the people
15 he's objecting to, and the statute is crystal clear:
16 When you're filing nominating papers, the individual
17 -- anybody can file an objection who is a legal voter
18 of the political subdivision or district in which the
19 candidate is to be voted on. It's just crystal clear.

20 If that wasn't in there, that every
21 political season -- and we all know this -- party
22 bosses from Springfield from the opposite party would
23 come down and object to every single petition filed.
24 So you're supposed to be within the division because

1 county level race, you have to be in the county and
2 smaller and smaller and smaller. You have to be from
3 the precinct. It's right there in the statute.

4 I mean, I've kind of set the argument out
5 in a little bit more detail, but it's two-and-a-half
6 pages long. There's not much to say. I've provided
7 the board with it. There's no case law in this
8 because I think it's so clear. I don't think
9 anybody's ever challenged this before. I did find
10 some Chicago Electoral Board decisions that have dealt
11 with this. I suspect it never went on judicial review
12 after that because nobody thought -- why would I
13 challenge it? It's so crystal clear. You can't --
14 you just have to live in the precinct where the
15 candidates are. So he doesn't have standing. The
16 case law, I'm sure we're all familiar with it. If
17 there's no objection, the petitions are deemed valid
18 and people go on the ballot. That's the sum and
19 substance of my argument.

20 I didn't know if Mr. Plank was going to
21 make some argument, were he here, that he has some
22 other standing or virtue of being the Madison County
23 republican chairman. There's no basis for that. It's
24 not statute, and that's another reason why I attached

1 this electoral board decision from Chicago. In that
2 case, the person tried to make that argument, and the
3 electoral board said there's no case law or statute
4 that supports that argument. The statute is clear.
5 You have to reside in the district. If you don't, you
6 can't object. It's that clear.

7 So all of these -- and I'll just ask the
8 board take that argument and incorporate it in all
9 eight of these objections. I'm raising the same one.

10 MR. MCGUIRE: These electoral board
11 decisions referred to are the ones that are attached
12 here?

13 MR. CRANEY: There's only one that I
14 referred to, and yeah, it is attached.

15 MR. MCGUIRE: There's two here.

16 Well, maybe it's all the --

17 MR. CRANEY: I think it's the original --
18 the pleading in the case in the electoral board's
19 decision.

20 MR. VON NIDA: Could you give me the
21 citation again for that requirement?

22 MR. CRANEY: Oh, citation for the
23 requirement? It's in this written motion. It's
24 10 ILCS 5/10-108.

1 MR. MCGUIRE: Mr. Wesley's asked for some
2 time to respond.

3 MR. WESLEY: I think Monday at 1:00 when
4 we're back, I'll be ready to respond to that.

5 MR. MCGUIRE: Okay.

6 MR. CRANEY: If there are any factual
7 issues, I'm going to ask that Mr. Plank be here to put
8 on some testimony. I think this is a legal issue, but
9 if I need to subpoena him, let me know.

10 MR. WESLEY: I don't know what his calendar
11 is Monday. I know what my calendar is Monday. I can
12 do it on Monday. If you want to subpoena him, I will
13 definitely reach out and let him know that there's a
14 subpoena. I don't know what he's got planned.

15 MR. WEBER: I'm going to subpoena him
16 anyway Monday, so he might as well be here.

17 MR. WESLEY: That's right. So that might
18 be a moot point anyway.

19 MR. CRANEY: For your case?

20 MR. WEBER: Yeah, for my case.

21 MR. MCGUIRE: Well, can we consider the
22 motion to strike and dismiss, take full arguments on
23 it Monday afternoon, and if the motion to strike is
24 granted, then that is going to move in further

1 hearings on the matter, and if --

2 MR. VON NIDA: I think our rule is
3 actually -- say that we pick that up first anyway.

4 MR. MCGUIRE: And then if not, then in
5 light of Mr. Weber's earlier representation, we
6 probably wouldn't have time to have evidentiary
7 hearings on each individual objections, then, it
8 sounds like.

9 MR. CRANEY: We'll see what happens. I
10 don't think it's going to be necessary. I think the
11 rule is in the statute.

12 MR. MCGUIRE: Okay. Well -- may I suggest
13 we move or suggest whatever is necessary that we
14 recess until Monday at 1:00?

15 MS. MENDOZA: All in favor?

16 MR. MCGUIRE: Aye.

17 MR. VON NIDA: Aye.

18 MS. MENDOZA: Aye.

19 So we are recessed until Monday 1:00.

20 (Wherein, the hearing was concluded at 11:09 a.m.)

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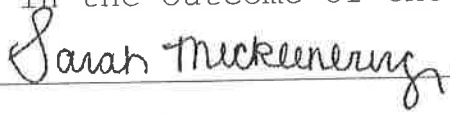
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CERTIFICATE OF REPORTER

I, SARAH MECKLENBURG, a Certified Shorthand Reporter (IL), do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Sarah Mecklenburg

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