

**ELECTION BOARD MEETING
(CANDIDATE FILING CHALLENGES)
MARCH 10, 2004 3:00 P.M.**

MEMBERS PRESENT:

DA: Doris Anne Sadler—Chairman (proxy for Candace Marendt)

SE: Steve Eichholtz—Vice-Chairman

RV: Robert Vane—Secretary (proxy for Doris Anne Sadler)

WITNESSES:

CC: Clarke Campbell

BF: Barbara Fowler

JM: Joel Miller

KS: Kevin Schafer

AW: Adam Wachter

JY: Jeff Yolles

DA: Good morning, or afternoon; it's been a fast day. I'm Doris Anne Sadler. I'm going to be the acting chairman of the Election Board today. Our regular chairman, Candace Marendt, is unable to be with us. I'm serving as her proxy. Robert Vane, the Election Division Supervisor, is going to be acting as my proxy, and then to my left is Steve Eichholtz, our Vice-Chairman of the committee. I'm going to call the meeting to order now. I'll take just a moment to describe the process that we're going through today. We're only handling candidate challenges that have been posted. I've asked Vice-Chairman Eichholtz to actually conduct this in a hearing format. So he will conduct the hearings for us in the order that we've posted, I think, in a memo. I'll just read those quickly, the candidates in this order: Tyrone Chandler, then Frank Davis, Stephen Nicewanger and Adam Wachter. Once we have finished the hearing process, we will go into a brief recess to deliberate on those. We'll ask everyone to leave the room for that deliberation; then we'll call you back in to deliver our finding. Any questions before we get started?

AW: Would you like us to move from the table?

DA: That's fine; you can just sit there if you like. Then at this time, I'd like to turn it over to Vice-Chairman Eichholtz.

SE: Thank you, Madam Chairman. The first matter before us is in regards to the candidate, Tyrone Chandler, seeking the office of IPS school board. The challenger here is Peter Bisbecos. Are there any parties present to proceed on that petition at this time?

CC: Yes, Mr. Bisbecos sent...I'm Clarke Campbell, and Mr. Bisbecos sent a letter asking me to follow in his behalf. He's out of town on business. I am Clarke Campbell, and I do not necessarily need to speak to the board if the board wants to, or address further than what the actual challenge is. I think it's pretty clearly set out in my, my motion. I think that, in essence, the challenge is based upon the fact that Mr. Chandler does not meet the residency requirements that are clearly stated in the following statutes: IC 23-11-2 and IC 23-11-3.1. In that, Mr. Chandler...

SE: Just a minute, Mr. Campbell. Is there anyone here on behalf of Tyrone Chandler? Was Mr. Chandler notified of the hearing?

RV: Every challenger and challenged received certified and regular mail about the hearing.

SE: Let the record reflect that Mr. Chandler has not appeared. Mr. Campbell, in light of the fact that these are administrative hearings, I am going to ask you to present your presentation under oath, and we will consider any matters that you tender to us as evidence at this time in regards to that petition. Please raise your right hand and be sworn. Do you swear of affirm under the penalties for perjury that the testimony you are about you give in this proceeding is the truth, the whole truth and nothing but the truth?

CC: I do.

SE: Thank you, you may proceed.

CC: Thank you. Again, as I had said, with the, I do not think, I do not have anything to present outside of the written challenge but to summarize what I had written in my challenge, that there are really two basis for the challenge. One, in that, the Tyrone Chandler does not meet the clear requirements of Indiana law for being a candidate for the IPS at- large position. Clearly, the petition for his, for running for this position requires him to certify that he meets all the qualifications, including residency requirements. Indiana statute set out the qualifications. I have provided the board with the relevant statutes. In summary, the relevant portion of the statute requires that not more than two of the members who serve on the board may reside in the same school board district. Currently, on the IPS board, Commissioner Michael Brown, who is a residence of Ward 32 Precinct 3, which is in IPS board district 5. Commissioner Delores Brents, who represents the fifth district, obviously lives in IPS district 5. And Mr. Chandler lists an address of 1708 Rivershore Parkway, which is in Ward 6 Precinct 10, which is also in IPS board district 5. Consequently, he fails to meet all the qualifications

of this office. And since there are already two IPS board members, and neither of whom are standing for election at this time. Moreover, in order for him to assume office, he's required to take an oath in which he states that he possesses all the qualifications required by the chapter, full membership of the board. And he clearly does not. The, he cannot take the oath because he cannot meet the residency requirements. Moreover, Mr. Chandler's nominating petition appears to be defective on its face. If the board will refer to his nominating petition, it appears that a nominating petition is a petition of registered voters who are expressing their intent to nominate a candidate for a particular office. The, clearly one of his nominating petitions says that he is running for IPS district 5, but the other one has also IPS district 5; however, that's struck out. If you look at the original of those, it's pretty clear that that was, that the, the IPS district 5 was written in one hand, and the striking out of that on the other petition, including the at-large, appears to be an afterthought. And that is not, not permitted. If the candidate decides to change the office for which he is running, then he needs to get new nominating, new petitions, new signatures on a petition. Simply put, Mr. Chandler did not legally proper or sufficient petition of nomination, and, therefore, he cannot be a candidate for office.

SE: Are these all the materials that were tendered by Mr. Bisbecos?

CC: I believe so, yes. I can also...

SE: Anything else to consider? If the, it's a, looks like some type of...

CC: Statement.

SE:statement.

CC: And then the relevant statutes.

SE: Relevant statute and the petitions.

CC: I'm also prepared to give a copy of the IPS web site showing the residences of the current board members. As well as, to save time, for the board members...

SE: For the purposes of the administrative hearing, we will admit this document into evidence. Do you have anything else, Mr. Campbell, that you wish to tender?

CC: If I may have a moment. Again, for purposes of the hearing, would submit document from the Clerk's office actually, the, showing the ward and precincts per IPS district and...

SE: Show that admitted.

CC: If the, also from the Clerk's office, to save you time, the, showing the ward and precincts for the two sitting board members with their addresses and the ward and precincts in which they live. As well as....

SE: Do you have something showing Mr....

CC: Yes.

SE: Mr. Chandler's address and board district?

RV: It's from the, V.R.

SE: All right, is there anything else that you would like to present on this.

CC: No, not from me.

SE: Any questions by members of the board?

DA: No.

SE: I do have one question. I've read the statute, and I'm curious as to whether or not that precludes someone from filing. Or, if indeed, if a third party ran and got elected from the district, would there then have to be a determination made that there was a vacancy and which candidate would be vacant, of the three members?

CC: I believe that the, it precludes them from filing because the nominating petition on its face states that the candidate is certifying that they are eligible to serve. The focus in the election, on the election board is a focus on the eligibility as of the time of filing. The, "what might be's" is not an appropriate determination for residency requirements or for fulfilling the statute. The, the, Mr. Chandler is clearly not eligible to serve on the face of the information given to the, to the election board.

SE: What we do in a situation if we had, could a situation arise where we could, through an election process, end up with three nominees from the same district? And then what would we do? If all the candidates, if all the at-larges were up, and two people from district five ran for at-large...

CC: We can't have both at-larges up, I don't think. I suppose you potentially could, if one of them resigned. Even then, you could not. The way the IPS statute is set up is that the at-larges run opposite to each other. The, the, so that it's specifically designed to avoid this, this very situation that is arisen now.

SE: Thank you. Any questions?

RV: The only thing that could preclude them from filing, does that mean preclude them from actually filling out the paperwork or preclude us at the election board from taking it?

SE: Or, I suppose, or someone has to challenge it.

RV: According to the State Election Commission, I asked that very question. His point was simply that it was not up to us at the election board operations administration to refuse a filing and that it's up to someone to challenge.

SE: So, if no one had challenged and he ran and won, then it would be a matter for deciding....

RV: It would be, yes.

SE: Interesting.

RV: Following exactly what you're saying, yes, that's correct.

SE: Okay, anything else in connection with this matter. All right, it was indicated by Madam Chairman at the beginning of the matter that we will take these matters under advisement and will deliberate in private and then vote or announce the results of our deliberations. So, thank you. The next matter is in the matter of Frank Davis, office sought, Warren school board. The challenging party is Barb Fowler. Is there anybody present on that petition today?

BF: Yes, I'm here. I'm challenging it because we ran vote checks on them, and he only has seven signatures; whereas, ten signatures are required to be on the ballot.

SE: Okay, just with keeping with our procedures, would you please raise your right hand to be sworn in? Do you swear or affirm the testimony you are about to give in this cause is the truth, the whole truth and nothing but the truth?

BF: Yes.

SE: All right, and just for the record, identify yourself for the record.

BF: I'm Barbara Fowler. I'm the Chief Deputy in the Board of Voter's Registration.

SE: And you have, let's see, we have this, which one is it, Frank Davis. And you have gone through and verified the signatures?

BF: Yes, I have.

SE: And tendered to us the testimony as what is validity of the signatures of this petition, Ms. Fowler?

BF: He had, I think he had ten and he had seven signatures and then four of them were not registered.

SE: And how did you determine they weren't registered?

BF: We ran vote checks in the computer by name and by address.

SE: Is there anybody, anything else you wish to present on this petition?

BF: No.

SE: Any questions by members of the board? Are there any members of the public that wish to address this petition? Okay, thank you, we will take the matter under advisement and deliberation. Next matter in the matter of Stephen Nicewanger, office sought, IPS school board, and the challenger is James Purvis. Is there anyone here to present any information on that petition? Mr. Campbell?

CC: Yes, I...

SE: Mr. Miller, are you present?

JM: Yes.

SE: All those that may be presenting any testimony in this matter, please stand and raise your right hand to be sworn. Do you swear or affirm the testimony you are going to give in this matter is the truth, the whole truth and nothing but the truth?

JM: Yes.

CC: Yes.

SE: Thank you.

CC: Just again, very briefly, I was asked to be here by Mr. Purvis and Ms. Zaphiriou. Ms. Zaphiriou recently had open-heart surgery within the last ten days, and she's unable to be here. But she obviously takes it very seriously. She provided a letter too, directed to Mr. Vane. In that, again I will, this pet...., her petition, I think, is very straightforward in that the statute and the nominating petition clearly requires ten registered, signatures of ten registered voters and Mr. Nicewanger only provided nine. And consequently, he is not a proper candidate for this office.

SE: Okay, the petition I see has ten; so maybe you could give me some...

CC: One of them was challenged, or one of them is listed as a non-registered voter by the, by the Board of Voter Registration.

SE: All right so that's where the staff went through and verified those?

CC: Yes.

SE: Okay, thank you. Anything else?

CC: No.

SE: Mr. Miller?

JM: Before the hearing today, Mr. Nicewanger asked that I speak on his behalf just to let the board know that before signing, having anybody sign this petition, that he did ask them if they were a registered voter and was under the impression that all the people who signed his petition were registered voters. And he just wanted to let the board know that when he turned it in, he was, he believed that everybody that filled out his petition was actually a registered voter in the county.

SE: In the county? Maybe he just asked if they were a registered voter? Maybe Mr. Johnson's registered in Muncie.

DA: It did have Muncie on the petition.

SE: Anything else, any other evidence, questions from the members of the board? Okay, thank you, and we will take that matter under advisement. Last matter before the board today is Adam Wachter as a candidate for Washington Township Board, and the challenger is Kevin Schafer. Are there any parties present on this matter?

KS: Yes.

AW: Yes.

SE: All those that may be witnesses, please raise your right hand to be sworn. Do you and each of you swear or affirm the testimony you are about to give in this proceeding is the truth, the whole truth and nothing but the truth.

KS: I do.

AW: Yes.

SE: Thank you. Mr. Schafer, as the challenging party, you may proceed.

KS: Okay, my challenge is based on my belief that Mr. Wachter is not a Democrat as provided for by the statute, Indiana Code 3-8-2-7. Under subsection, under number four subsection A, it says: "The most recent primary election in which the candidate voted was a primary election held by the party in which the candidate claims affiliation. The candidate has never voted in a primary election. Or that the county chairman of the political party to which the candidate claims affiliation in the county in which the candidate resides certifies that the candidate is a member of that political party." And I don't believe that Mr. Wachter has met those burdens. I have for the board, and, I think

we have supplied copies, faxed copies of Mr. Wachter's Hamilton County registrations, which clearly shows that he voted as a Republican in 1994, 1995 and 1996, did not vote in 1998 in the primary. His declaration of candidacy for primary nomination clearly states that the most recent primary in which I voted was the primary held by the party which I claim affiliation. According to his registration in Marion County, he registered, re-registered in Marion County in July of last year and voted in the general election. I fail to see any proof that he is, in fact, a party member. It also seems to me that if he intended to run as a Democrat without party approval, he would at least go to the county chairman and get a letter from Mr. Treacy, which he has not done as well. And, I believe, that the statute is fairly clear in terms of what the requirements are.

SE: Thank you. Any objections to taking into evidence the affidavit of candidate challenge and these documents from Hamilton County Voter Registration?

AW: We have not received a copy of the CAN-1.

SE: Of what?

AW: Of the challenge, the actual challenge.

SE: The actual challenge.

AW: I think it's CAN-1.

SE: Do we have an extra copy of that?

RV: He can have mine.

SE: Was that attached to it, was that apart of it originally?

RV: Yes, that's part of Mr. Schafer's original challenge.

SE: Thank you, Mr. Vane. There is no objection to the admission of this into the administrative record? Anything else Mr. Schafer?

KS: No.

SE: Mr. Wachter, do you have any questions for, or Mr. Wachter's side, I don't know if you're here for Mr. Wachter?

JY: I'm counsel.

SE: Do you have any questions for Mr. Schafer?

AW: No, not at the time.

SE: Is there anything else to be presented on behalf of the challenge in this case? Mr. Miller, you raised your hand. Do you have anything you wish to present?

JM: Only if necessary.

SE: Mr. Wachter, do you have anything, questions by the board, I'm sorry.

DA: No.

SE: Do you have anything you wish to present in response to the petition for challenge.

AW: I do.

SE: Could you just identify yourself for the record again?

AW: My name is Adam Wachter. I live at 645 E. 58th Street, Indianapolis. This address is in Washington Township, district five. On January 28, 2004, I filed with the Clerk's office to run as a Democrat in the May 2004 primary for Washington Township Board. In 2000 and in 2002, I voted in the primary as a Democrat. These elections occurred in California where I lived for a little over four years. I have certified copies from the Los Angeles registered recorder's office. I have one original and multiple copies. These show that in March, I'm sorry, there's two copies, do you guys want a copy? These show that in March of 2002, as well as in March of 2000, I voted as a Democrat in the primary election. The second, third and fourth pages are my voter registration affidavits every time I've moved. Every time that I've moved, I voted in the Democrat, I voted, I selected my party affiliation as a Democrat. While I lived in California, I contributed to many Democratic causes, including working as a volunteer in the 2000 Democratic National Convention at the Staple Center in Los Angeles. I have photographs of myself at the convention, which I'd like to enter. I also have my credentials for the four-day convention as well more credentials on the back. At the convention, I had the privilege to spend the time with many prominent Democrats, including Joe Andrew, Maxine Waters and Evan Bayh. And you'll see photographs of all of them; some of them are a little bit more difficult to pick out. In October of 2002, I worked on the re-election campaign of then Governor Gray Davis. I have a volunteer badge as well as a Christmas card from the governor. In today's *Indianapolis Star*, Joel Miller, Executive Director of the county Democratic party, is quoted as saying that you cannot compare elections in California with that of Indiana. According to the by-laws of the National Democratic Party—here is a copy—subsections 11, letter A: "Participation in all party affairs, the Democratic party of the United States shall be open to all who desire to support the party and who wish to be known as Democrats. Participation in the affairs of the Democratic Party shall be open pursuant to the standards of non-discrimination affirmative action is incorporated into the charter of the Democratic Party of the United States." Basically, a Democrat in California is a Democrat in Indiana. If you need more copies of all that, I have them. I will allow my counsel to speak on the specific legal challenge and...

SE: Just a minute.

AW: Okay.

SE: Were you employed in California?

AW: I was.

SE: And what did you do?

AW: I worked in technology. I had my own company, a technology consultant company.

SE: Were you a delegate to the National Convention?

AW: No, I was not.

SE: What capacity did you attend in?

AW: A supporter.

SE: What were your credentials? What capacity were those issued as?

AW: Those were issued as press credentials.

SE: And what requirements were there to obtain those? Could anybody obtain those?

AW: No. I had a friend who is a secret service agent, and he was capable of getting some extra press credentials, and allowed us access. There was actually a photograph of myself on the platform right after....

SE: But you're not trying to tell us that you were there in any official capacity for the Democratic Party, are you?

AW: I was not there as a delegate. I had a statement of legal resident certificate filed April 3, and I have a copy of my birth certificate that is required. I would like to turn it over to my counsel to mention the specific IC codes.

SE: We have some questions.

AW: Absolutely.

SE: You may sit if you'd like, unless you enjoy standing. Ms. Sadler?

DA: The Hamilton County Voter Registration profile that we received that shows that you voted Republican in the primary of '94, '95 and '96, is that you?

AW: Yes, that is.

DA: Okay.

SE: And, so you voted in Los Angeles in the primary election of 2000, the general election of 2000, the primary in 2002 and the general in 2002. Is that correct?

AW: Correct.

SE: What county was that?

AW: Los Angeles county.

SE: What offices were eligible for election in the primary of 2000 that you voted for?

AW: It would, you have your U.S. Congressmen. You would have state delegates. You would city council, beyond that I'm not able to...

SE: And who was the candidate for U.S. Congress?

AW: I don't recall. Actually, it is Waxman.

SE: How do you recollect that now?

AW: Because he's been in office for 26 years.

SE: Are there any objections to the tendered documents before we admit them into the administrative records, Mr. Schafer or Mr. Miller?

JM: Just one question, actually?

SE: Okay, I'm asking about the records first right now.

JM: Well, it is a question about these records.

SE: Okay.

JM: The question here is whether or not it meets Indiana Code and whether or not the person voted in a Democratic primary. My question is, these show Democrat reg..., that the, that Adam is registered as a Democrat, but in California primaries, are there abilities to vote for both Democrats and Republicans in the primary?

AW: No, it is a closed primary.

JM: Thanks, that answers my question. Is there any record that he appeared in a close primary? Is there some record that can be shown that he voted in a Democratic primary? These are registrations that show party affiliation.

DA: Well, my understanding is that in a closed primary, you wouldn't get a ballot, you only get the ballot of the party that you are affiliated with.

JM: That you're registered with?

DA: That you're registered with.

JM: And that's California law, different from Indiana, correct?

SE: I don't know. What is tendered California law; we're not available to take judicial notice of it.

AW: If I could point out, the political party is Democrat in voting history in the primary. So I had to vote in the Democratic primary.

SE: Any objections to the documents that were tendered, pictures, press credentials? All right, we'll show them admitted in the administrative record. And, before I hear legal argument, do you have any other evidence you wish for us to consider?

AW: No, I do not.

SE: All right, at this time, we'll entertain any legal argument then. Petitioner?

KS: Well, it seems to me that Indiana Code speaks to previous primaries here in the state as opposed to out of state. I mean, this to me, is a unique situation, but it also seems to me that Mr. Wachter has a history in this state. I don't believe that California records are really relevant to what we're talking about here. What we are referring to, it seems to me, we are referring to a history in Indiana. Now, if Mr. Wachter had come here without a history from California, registered, voted once in the general election, then it seems to me that his candidacy would be valid. But it also seems to me that looking at a history, and a very clear one, you know in an adjacent county that wasn't all that long ago, you know, that puts the burden clearly on him. I don't believe that he meets that burden. Simply because you move to California, you vote as a Democrat there, you know, to allow that then says, well you can be a Republican somewhere else and come here and be a Democrat or whatever. I think the Indiana Statute is referring to an Indiana voting history, and clearly there is a voting history here that is at serious variance with the statute. And it also seems to me that if Mr. Wachter knew that, then he, you know, all he had to do was simply go over and talk to Mr. Treacy and get a letter that would allow him to run. And he didn't do that. So I don't think the California records are relevant, nor do I think the DNC charter is relevant. I think, Indiana law here controls.

SE: Mr. Miller?

JM: Just one other thing, as far as some of the evidence that was presented, the photographs of Mr. Wachter with Democrat officials, I'd hope that that doesn't carry weight with the board. I'm sure that Mr. Ricketts and Mr. Cahill would be terribly disappointed if I showed up with my photographs of Republican state representatives and Republican elected officials, some of them with Mr. Ricketts and decided to file and run as a Republican in a competition. I'm sure they would challenge me on those grounds, but photographs and attending functions of the party do not necessarily make you a member of the party. I could also have twenty people in here that are on different Republican mailing lists and different Republican web servers and that type of thing, who are very much Democrat but are just active to see what the other side is doing. And it's something that's often done in politics.

RV: May I ask a question of Mr. Wachter?

SE: Please.

RV: Any of the times that you voted in the primary when you were a resident of Hamilton County, was there a Democrat primary ballot?

AW: I do not recall.

SE: I have another question, Mr. Wachter. Do you have your candidate-2 form?

AW: Yes, I do.

SE: Your declaration form? And did you complete that form yourself?

AW: Yes, I did.

SE: And is that your signature at the bottom of the form?

AW: Yes, it is.

SE: It says, "I the undersigned certify the information in this declaration of candidacy as true and complete, and I meet the specific requirements for this office." Is that correct?

AW: That is correct.

SE: I'd ask you to read the first two lines of paragraph three under general information.

AW: I'm sorry, you said the first two lines?

SE: To the comma in the second line.

AW: "I understand that I must be affiliated with the political party indicated above to be eligible for nomination as a candidate of that party in this primary election. I understand that my party affiliation is determined by which party I voted for in the last Indiana primary election in which I voted."

SE: Thank you. Did you read that when you signed this document?

AW: Yes, I did.

SE: And what would the answer to that question have been at the time you signed this document? What was the last party you voted for in an Indiana primary election?

AW: Now, the records have shown that in 1996, I voted in the Republican primary.

SE: And that was the last Indiana primary election in which you voted?

AW: Yes.

SE: Thank you. Any other questions? Argument, counsel?

JY: Sure, it comes down to the Indiana Code...

DA: Could you state your name?

JY: I have copies provided for the board as well. And under the challenge which is the only thing stated in the complaint, and what was complained of 3-8-2-7. Nowhere does it state that that primary had to be Indiana. Mr. Schafer may think Indiana Code pertains only to Indiana and may want to take a basic fundamental Constitutionally granted right to change party affiliation over time.

SE: Where is that Constitutionally printed?

JY: You can change your mind.

SE: Parties have the right who are members. Do they not?

JY: Yes, they do.

SE: Is there Constitutional right to party affiliation?

JY: I believe under IC, especially the Indiana Code, that....

SE: Indiana Code is not the Constitution.

JY: True. I believe that under the Indiana Code, though, you have the right. That the last primary he voted Democrat and that he should be permitted to be...

SE: I believe the parties have the right who's eligible to run in their primaries, and that's what the Indiana Code says. Does it not?

JY: It does. That is true. That is true.

SE: And have not many supreme court cases around the state and the United States recognized the rights of parties to determine who may run as candidates?

JY: That is true, and also in the by-laws. You're right. I'm just simply going by what was challenged in the complaint, and there is no statement that says he had to be in Indiana for the last primary. His last primary was Democrat. It was in California, but Indiana does not recognize it only being an Indiana primary.

RV: Can I ask a question?

SE: Uh huh.

RV: To which other state would Indiana election laws apply?

JY: I am uncertain on that.

RV: I mean, do you have any evidence that the Indiana election code specifically applies to anything in California?

JY: No, I have no verification of that.

RV: Okay, that's my only question.

JY: I simply am just, Indiana Code 3-8-2-7, which is what was challenged.

SE: Did the Marion County Democratic Party hold any primary elections in California while your client was present?

JY: I do not believe so but am uncertain.

SE: Did the Indiana State Democratic Party or the Republican parties hold any elections in California while your client was present.

JY: I would not think so but am uncertain.

SE: So, what party election did he vote in 2000 and 2002?

JY: The Democratic Party.

SE: Which Democratic Party?

JY: California primary.

SE: So was there a regular party committee of the state of California, a Democratic Party of the state of California.

JY: I would think so.

SE: Is that the same as the Indiana State Democratic Party, and, excuse me, I don't have the right title there. I'm sure we have records of that.

JY: I am uncertain, but I would not think so.

SE: What is the proper state party name, anybody, anybody know? Okay, well, there is a proper name for the state party, I'm sure.

RV: Was there any, was there any attempt to secure the approval of Mr. Treacy for him to run? That's one of the, one of the ways you can get around how you voted.

AW: I met with Joel six months or so ago and spoke with him for an hour and half, two hours and explained who I was and where I come from and what I'm looking to do. Did I make an attempt to contact Ed six months ago? No. I attempted Ed when I was served this letter. Ed would not return my phone calls. Joel returned my phone call.

RV: So you're saying you made a good faith effort to inform them of your decision, or you made, to change parties or to continue your California affiliation, or you made a good faith attempt to procure a letter?

AW: I made a good faith attempt to introduce myself to the Marion County Democratic Party, and that was my meeting with Joel.

RV: In those meetings did you, or at the meeting or in the phone conversations or however you conversed, did you state to him your intent to run as a Democrat and acknowledge the fact that, because of your primary voting record in Indiana, you would need a letter?

AW: At that particular discussion, I expressed my desire to run for an elected office, and then we had talked about which offices might be, I guess, open. Indiana House 87 was a seat I considered. For various reasons, I chose not to go for that, and I then decided to go for Washington Township Board.

DA: Mr. Wachter, were you living here during the primary of 2003?

AW: What was the date? Well, actually, yes, I was.

DA: And you chose not to vote in that primary?

AW: Well, actually, it wasn't a choice. On April of 2003, I registered to vote when I enlisted in the United States Navy, Naval Reserve. And here is that document. Here is my enlistment paper. The Department of Defense did not transfer that document to the Marion County Election Division. Thus, I was not eligible to vote in that primary because that document was not transferred. So, in July of 2003, I went to a license branch and registered to vote. If I could answer one question that was raised, actually, I think you addressed it to my counsel. You asked whether or not the Indiana Code applies to California. Of course not, it does not. However, the party recognizes that a Democrat in any state is a Democrat.

SE: Which party is that?

AW: That is the Democratic Party. It's right here....

SE: Which Democratic Party? The national party?

AW: Yes, I'm sorry, this charter and by-laws are from the National Democratic Party. They were modified January 19, 2002. And you can read on page 17, section 11 what I read earlier into the record, but a Democrat is a Democrat if they claim they are a Democrat. The party recognizes that.

SE: The National Democratic Party recognizes that?

AW: The National Democratic Party recognizes that.

SE: Thank you.

KS: Mr. Eichholtz....

SE: Anything else from this side of the room?

AW: Right now, at this time, no.

SE: Final word, Mr. Schafer?

KS: Yeah, the controlling court case here Tafts (?) vs. the Republican Party of Connecticut, the Supreme Court decided in 1986, and what it says is, at least the way it implied there, was that the state Republican party and all other parties are the final arbiters of their membership as long as they do not violate someone's civil rights, you know, they can have whatever rules they wish. In that particular case, Connecticut had a closed primary, Republicans decided that they wish to open it to independents and others. They, the attorney general brought suit, and the Supreme Court basically said, if the Republican party of Connecticut, you know, wishes to do this, fine, they're the final arbiter. It seems to me that the state Democratic Party and likewise the Marion County Democratic Party are the final arbiters of their members. And I don't believe that we're

violating the charter. You know, there has to be some way of deciding who, in fact, is a member. It also seems to me that the form is clear, that the last Indiana primary you voted in, do you swear under oath that the last Democratic primary you voted in, you know, was the Democratic primary or that you don't have a primary record. Clearly, that's not the case.

SE: Thank you.

AW: Can I make one remark?

SE: Well, I suppose.

AW: Thank you. In the national by-laws, the state and local governments, state and local parties have to respect the national by-laws; otherwise, they, they would be in violation of the national party. And it is clearly stated in here. I would also like to say one thing that the Marion County Democratic Party is denying the rights of the voter in Washington Township. The voters have a right to choose who their leadership is, their Democratic leadership is. They have the right to vote for me if they so choose. The party would circumvent democracy; however, it's a travesty to the voters of Washington township.

SE: Thank you. Anything else? Okay, thank you, that concludes the hearing in this matter as indicated now. We will take these matters under advisement and deliberate. Deliberations by the board are not a public matter. The board's decision will be announced in public. Thank you.

DA: I call the meeting back to order, in order to vote on the four candidates challenges, and I'll ask Mr. Eichholtz to make a motion.

SE: Thank you. The board has deliberated on each of these matters. In the matter of Tyrone Chandler, I was moved that the board find, Mr. Chandler filed a declaration of candidacy to be a candidate for IPS school board in district five, that there are currently two board members on the IPS school board who reside in district five, that Indiana code 20-3-11-3.1 prohibits there be more than two board members from the same district, that we sustain the challenge filed by Peter Bisbecos in this matter.

DA: I second that motion. All those in favor?

RV: I.

DA: I.

SE: I.

DA: All those opposed?

SE: In the matter of Frank Davis, I move that we find that Mr. Davis filed a declaration of candidacy for the Warren school board, that Indiana law requires signatures on a petition supporting the candidacy of ten registered voters in the district that the candidate seeks to represent, that the petitions tendered by Mr. Davis contain the signatures of seven registered voters in the district that he intended to represent. I would, therefore, move to sustain the challenge filed Barb Fowler in this matter.

DA: Second of the motion, all of those in favor?

RV: I.

DA: I.

SE: I.

DA: No opposed.

SE: In the matter of Stephen Nicewanger who filed as a candidate for IPS school board. On Mr. Nicewanger, I would probably move that we find that he is required to submit a petition containing ten signatures from registered voters in the district in which he intends to represents, that the petitions tendered contained the signatures of nine voters, nine registered voters in the district in which he intended to represents. I would, therefore, move to sustain the challenge filed by James Purvis in this matter.

DA: Second the motion, all those in favor?

RV: I.

DA: I.

SE: I.

DA: No opposed.

SE: In the matter of Adam Wachter, I would move that we enter findings that Mr. Wachter filed a candidate declaration to be a candidate for the Democratic primary of the Washington township board, district five. Move for a finding that primary elections are party elections for which major political parties in the state of Indiana determine their candidates for the fall, general election. I would move further that we find that the candidate-2 form, signed by Mr. Wachter, certified that his political party affiliation was to be determined by which party he voted for in the last Indiana primary election in which he voted. Move further that we find that Mr. Wachter last voted Republican in the Hamilton county Indiana Republican primary in the year, I'm sorry....

DA: The year was 1996.

RV: 1996.

SE: ...1996. I would move, therefore, that we sustain the challenge filed by Kevin Schafer in this matter.

DA: Second the motion, all those in favor?

RV: I.

DA: I.

SE: I.

DA: All those opposed? No opposed.

SE: Thank you. That concludes the hearing in these proceedings. We do, for the purposes of the record and for possible appeal, need to preserve the documents and exhibits that were filed. If you wish to have your documents back, Mr. Wachter, you would either need to wait until any appeal time has run or indicate to us that you do not intend to appeal the decision, and we can give you your documents back.

DA: Do we need to make a motion? Jennifer, if you'll make written findings, and we'll issue those with the signatures of the board.

RV: I move the meeting be adjourned.

SE: Second.

DA: All those in favor?

RV: I.

DA: I.

SE: I.

DA: The meeting is adjourned. Thank you all.