

1 STATE OF INDIANA) IN THE LAKE SUPERIOR COURT
)SS: CIVIL DIVISION, ROOM TWO
 2 COUNTY OF LAKE) SITTING AT EAST CHICAGO, INDIANA

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 4 JOHN B. CURLEY, as Chairman of)
 the Lake County, Indiana,)
 republican central committee,)
 5 and as a registered voter, and)
 JIM B. BROWN, as member of the)
 6 Lake County Board of Elections)
 and Registration and as a)
 7 registered voter,)
 Plaintiffs,)
 8)
 vs.) CAUSE NO.
 9) 45D02-0810-PL-190
 LAKE COUNTY BOARD OF ELECTIONS)
 10 AND REGISTRATION, and the)
 HONORABLE THOMAS PHILPOT, not)
 11 individually but as Lake County)
 Clerk,)
 12 Defendants.)

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 15 REPORTER'S TRANSCRIPT OF THE TEMPORARY RESTRAINING
 ORDER HEARING held in the above-captioned cause on the
 16 3rd day of October, 2008, before the HONORABLE CALVIN
 D. HAWKINS, Judge of said Court.

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 19 APPEARANCES:
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 21 SENDAK & STAMPER
 BY: MR. TIMOTHY R. SENDAK
 22 209 South Main Street
 Crown Point, Indiana 46307
 23 appeared on behalf of the plaintiffs;

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APPEARANCES CONT'D:

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BROOKS, KOCH & SORG
BY: MR. DAVID M. BROOKS
615 Russell Avenue
Indianapolis, Indiana 46225

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appeared on behalf of the plaintiffs;

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MR. FREDERICK T. WORK
3637 Grant Street, Suite 3
Gary, Indiana 46408

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appeared on behalf of the defendants;

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MR. DAVID SAKS
6948 Indianapolis Blvd.
Hammond, IN 46324

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appeared on behalf of defendant
Thomas Philpot.

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1 THE COURT: Good morning, everyone.

2 MR. WORK: Good morning, Judge.

3 THE COURT: What a difference a day makes. All
4 right. That's great. That's great.

5 This is the case of John B. Curley, as
6 chairman of Lake County Indiana Republican Central
7 Committee and as a registered voter, and Jim B. Brown,
8 as member of the Lake County Board of Elections and
9 Registration and as a registered voter, plaintiffs, v.
10 Lake County Board of Elections and Registration, the
11 Honorable Thomas Philpot, not individually, but as Lake
12 County Clerk, Cause Number 45D02-0810-PL-190.

13 What I will do is have plaintiffs' counsel
14 introduce themselves and defense counsel introduce

15 themselves for the record.

16 MR. BROOKS: Your Honor, my name is David
17 Brooks with the law firm Brooks, Kock & Song at 615
18 Russell Avenue, Indianapolis, Indiana. Co-counsel is
19 Mr. Tim Sendak who, I think is on a phone call
20 regarding some research. He will be in in a moment.

21 Mr. Curley is one of the plaintiffs. He is
22 here today. Mr. Brown is one of the plaintiffs, and he
23 is also here today.

24 THE COURT: Okay. I'm assuming that that's Mr.
25 Sendak that just walked in here?

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1 MR. BROOKS: I believe so. I only met him two
2 days ago, your Honor, but I'm pretty sure it is him.

3 MR. SENDAK: It is I.

4 THE COURT: Defense side.

5 MR. WORK: Frederick Work, I am representing
6 the Lake County Board of Elections and Registration. I
7 have with me as a representative of that body, Sally
8 LaSota. She is the lady seated at counsel table with
9 me.

10 THE COURT: Good morning.

11 MR. SAKS: Good morning, your Honor. David
12 Saks. I have filed an appearance this morning on
13 behalf of Thomas Philpot. Mr. Philpot, as we know, is
14 the Clerk of the Court.

15 In addition to that, by virtue of his office,
16 he sits on the Election Board. He is named in this
17 other capacity. I filed an appearance on his behalf.
18 I don't know -- I've spoke with the plaintiffs in that
19 regard, and have made the representation and told them
20 of our willingness to stipulate that Mr. Philpot will
21 be bound by any order of this Court.

22 And I have asked that -- or stated that there
23 is no need for him to be -- have double representation
24 at taxpayer expense, and that he be allowed to be named
25 exclusively as a member of the Board. Any order of

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1 this Court would be obeyed, and I don't know if counsel
2 wants to comment on that. But I just don't see the
3 need for it. And I would submit to the Court that, if
4 the Court doesn't see the need for it, then my
5 involvement in this matter would come to an end.

6 THE COURT: Mr. Brooks.

7 MR. BROOKS: Your Honor, the reason the Clerk
8 was named is because the illegal satellite offices are
9 intended to be located in the Clerk's Office. We just
10 wanted to make sure that the Clerk wasn't going to be
11 operating any illegal absentee voting independent of
12 what the Lake County Board of Elections and
13 Registration did.

14 I understand that they're willing to stipulate
15 that the County Clerk would be willing to stipulate on
16 the record that they will be bound any injunctive
17 relief this Court might grant against the Board, and so
18 that's fine.

19 On the other hand, Mr. Work has filed a notice
20 of filing, notice of removal, so I suppose, perhaps the
21 first question is whether this Court retains
22 jurisdiction for any purpose.

23 THE COURT: I have not received such notice.
24 The only thing that's before me this morning is the
25 pack of the court file of yesterday, and the tender of

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1 the appearance of Mr. Saks. So I have nothing before

2 me.

3 And I was going -- my next question is going
4 to be: Plaintiffs, are you ready to proceed?

5 MR. BROOKS: The answer to that is yes, your
6 Honor.

7 THE COURT: Defendants, are you ready to
8 proceed?

9 MR. WORK: Judge, I would file at this time,
10 filing of notice of removal.

11 THE COURT: Has that been filed?

12 MR. WORK: I have file stamped it. I am
13 preparing to provide you with it now.

14 THE COURT: You may approach.

15 MR. WORK: The accompanying paperwork is en
16 route from the United States District Court.

17 THE COURT: Did you get a copy of this?

18 MR. BROOKS: We did, your Honor. But we object
19 to any kind of filing that doesn't include any proof
20 that the underlying removal has been actually filed in
21 Federal Court.

22 We don't have a copy of it. And I think it
23 would be appropriate to see that some removal action
24 has actually been filed somewhere rather than a notice
25 of filing notice of removal.

1 THE COURT: Well, my concern is -- I mean,
2 this -- and I was anticipating and/or expecting when
3 Mr. Work approached the bench, I appreciate that this
4 is a notice, but it's filed in this Court. It is not
5 anything of record showing something in the Federal
6 Court.

7 Do you have anything to that effect?

8 MR. WORK: It's en route, Judge. It was filed
9 in the Court at a quarter to 9:00 this morning.

10 THE COURT: Well, without having it in front of
11 me, with a case number, I think I'm duty bound to
12 proceed.

13 MR. WORK: I agree with the Court that you are.
14 That's your choice, Judge. But as soon as it arrives,
15 I think that the effect of it would stay any further
16 proceedings.

17 THE COURT: Well, I agree. If there's
18 something that's in the Federal Court and I see it,
19 it's stayed. But I don't have it before me now. Now,
20 what I can do is I'll give it 15 more minutes.

21 MR. WORK: That's fine.

22 THE COURT: I would hate to have to start some

23 testimony and in the middle of the stream here we get
24 this. But, you know, if you're telling me you've got
25 something, we'll give you 15 more minutes.

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1 MR. WORK: Judge, I was told that it was filed.
2 I just called again to find out why it's not here.
3 It's en route. It was filed at quarter to 9:00 this
4 morning.

5 THE COURT: Unless there are any vehement
6 objections to waiting 15 more minutes, because if
7 that's the case, we can take testimony and it will all
8 be null and void.

9 MR. BROOKS: I think we're okay to wait 15
10 more minutes. We would like to make a statement when
11 that arrives.

12 THE COURT: All right.

13 MR. WORK: Thank you, Judge.

14 THE COURT: All right. We will take a brief
15 recess, 15 minutes.

16 (A recess was taken.)

17 THE COURT: We're reconvening the case of John
18 B. Curley, et al v. Lake County Board of Elections and

19 Registration, et al.

20 Where are we now, gentlemen?

21 MR. WORK: Judge, I would ask leave to approach
22 the bench to provide you with a copy of the filings
23 that were made this morning.

24 THE COURT: Yes. Have you shared a copy of
25 what you have with Mr. Sendak?

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1 MR. WORK: Yes, I have, Judge.

2 THE COURT: Okay. I have been tendered a copy
3 of what has been delineated a notice of removal United
4 States District Court, Northern District of Indiana
5 Hammond Division, Cause Number 208 CV 287.

6 Mr. Sendak, have you had an opportunity to
7 read this document?

8 MR. SENDAK: Your Honor, I have read it.

9 THE COURT: And I'm just getting it. It looks,
10 -- having practiced in the Federal Court for aeons, it
11 looks like it's a proper file stamp. It looks like
12 it's a good cause number. Without going through every
13 aspect of the notice, do you have any response to the

14 notice?

15 MR. BROOKS: Yes, your Honor. We have several
16 points.

17 We've looked through this. Obviously this is
18 not an issue that you're going to rule on. We don't
19 believe there is any federal issue involved. We will
20 have to deal with that at some point.

21 This case is all about an interpretation of
22 four or five Indiana statutes. There are no
23 constitutional issues. We will deal with that later.

24 But yesterday, we'd like to point out, that
25 Mr. Work showed up and specifically asked this Court to

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1 postpone this hearing until this morning so that he
2 would have a chance to get his witnesses together. You
3 said it would be an evidentiary hearing.

4 In our opinion, what Mr. Work did yesterday,
5 on behalf of the Board, was consent to this Court's
6 jurisdiction.

7 When he represented to the Court that there
8 would, essentially be, "No harm, no foul. Let's just
9 wait until morning."

10 That, in our opinion, is a consent to this
11 Court's jurisdiction because obviously there is foul
12 now. This is obviously, in our opinion, a strictly
13 dilatory matter.

14 You know, yesterday when Mr. Work told the
15 Court, you know, we have until Monday, now they come in
16 this morning after telling you that they would be here
17 for a hearing, and now, they're running this over to
18 Federal Court knowing full well that the likelihood of
19 getting this matter resolved before Monday is slim.
20 And so, in our opinion, they've consented to
21 jurisdiction here.

22 Secondly, although we've not had time to do a
23 full research of this matter, I'm told by my partner,
24 who is faxing some materials, that there are federal
25 cases in which a trial court retained some sort of

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1 emergency pendent jurisdiction, and that the Courts
2 then when the Federal Court determined that case was
3 improperly removed to Federal Court, it upheld those
4 actions.

5 So, in our opinion, there is some precedent.
6 Sadly, I can't cite to you, because it's very short
7 notice. We just got this moments ago. But I don't
8 believe there is any harm. The Federal Court can
9 always remove a temporary restraining order. I mean,
10 Mr. Work himself was talking about how it's going to
11 start on Monday. This is an emergency matter.

12 This is, in our opinion, nothing more than a
13 shameless delay tactic so that they can potentially
14 start the illegal activities, that we're here to argue,
15 on Monday.

16 The people who are at risk, here, your Honor,
17 are the voters in Hammond, Gary, East Chicago, and
18 other parts of Lake County. If this is allowed to go
19 forward -- what's really happening here is that the
20 Lake County Board of Elections and Registration in
21 their zeal to gain a partisan advantage, has simply
22 ignored the risk to the voters who are going to be
23 there voting at an illegal site. The voters are the
24 ones that are going to have a risk here. Those voters
25 are going to be challenged. They may be eventually

1 discarded in any kind of recount or a contest for
2 passing illegal absentee ballot voting.

3 The one thing that is clear in the State of
4 Indiana is that absentee balloting must be done
5 absolutely by the letter of the law. The Indiana
6 Supreme Court in *Horseman v. Keller* has made that very
7 clear. What we are doing here is jeopardizing voters
8 who have other opportunities to vote legally, whether
9 by mail absentee ballot, or going to Crown Point and
10 voting, or showing up on election day. I mean, it's
11 the voters here that are being jeopardized by this
12 delay tactic.

13 We would ask the Court to retain some
14 emergency jurisdiction, hear this temporary restraining
15 order. And if the Court feels that a temporary
16 restraining order should be granted, then the Federal
17 Court can determine that it should be vacated.

18 THE COURT: I allowed Mr. Brooks an opportunity
19 to talk. Mr. Work, do you want to say anything?

20 MR. WORK: First of all, I think that one of
21 the things I want to address is that Mr. Brooks has
22 suggested that, perhaps, my request that this matter be
23 set over until this morning was somewhat akin to sharp
24 practice, and that's certainly not the case. I want to
25 assure Mr. Brooks of that.

1 The Court will recall we received notice of
2 this action at approximately 1:00 yesterday. And I
3 asked at that time Mr. Sendak whether or not he was
4 going to have the matter set for a hearing. He told me
5 that, "No. I tried to -- I notified everybody by
6 phone. I'm going over and ask for the restraining
7 order without notice."

8 I happen to get here about 3:00 or 3:30
9 yesterday, and indicated to the Court I had not even
10 had a chance -- for the first time I had even seen
11 their pleadings. After seeing their pleadings, of
12 course, a decision was made last night to remove the
13 matter, or seek removal of the matter to the Federal
14 Court so that certain federal constitutional
15 considerations could be addressed.

16 I believe that the law is very clear that once
17 a notice of removal has been filed with this Court,
18 this Court loses jurisdiction of the matter even for
19 emergency purposes.

20 And we're asking the Court to -- we're asking
21 the Court to acknowledge that as being the law of this

22 case.

23 THE COURT: Now, it will be precipitous of me
24 to do anything at this point. I have just received
25 this document. I haven't read it, except the title and

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1 looked at the stamp, so I'm not going to do that.

2 I have had a history, since I've been on the
3 bench, of not taking things, quote-unquote, under
4 advisement for, like, days, and stuff, or you say,
5 "We'll get a ruling back to you quick," because either
6 -- just make the ruling. Try to make a prudent
7 ruling. And whatever ruling that a Judge makes it
8 doesn't please everybody. That's why we have Courts of
9 Appeal.

10 I just tell folks, you know, if I'm appealed
11 just make sure my name is spelled correctly.

12 Trial judges learn all of the time. We learn
13 from the lawyers because the lawyers educate us, and
14 then you learn from the judges on high. They tell us
15 what we did right; what we did wrong.

16 What I am going to do in this situation is I'm
17 going to take a little time to read this. And it's not

18 a book so it won't take me all morning. Give you folks
19 a little time to see if you all can get some research.
20 We'll give you a little brief argument when I come
21 back. We'll give you the time. It will be 10:15. We
22 come back. That will be a definitive ruling as to
23 whether or not this case goes off to the great federal
24 hinterland or it stays here for at least the emergency
25 aspects of it and then to Federal Court, because

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1 obviously there is a notice of removal.

2 But we'll give you an opportunity to research
3 that. I will do some preliminary research. But we
4 will reconvene at 10:15. Okay.

5 (A recess was taken.)

6 THE COURT: Well, the case of John B. Curley v.
7 Lake County Board of Elections and Registration, et
8 al, et al, Cause Number 45D02-0810-PL-00109 is
9 reconvened.

10 Before I make my ruling, I'm going to give the
11 counsel an opportunity to make any arguments.

12 Mr. Work.

13 MR. WORK: Just very briefly, Judge. I think
14 the law is very clear that once a notice of removal has
15 been filed with the Court, I think the Court then loses
16 jurisdiction in the matter. I'm referencing, 28 U.S.C.
17 Section 1446. It specifically provides as follows,
18 this is 1446(d), "Promptly after the filing of such
19 notice removal of a civil action, the defendant or
20 defendants shall give written notice there to all
21 adverse parties." That's been done.

22 "And shall file a copy of the notice with the
23 Clerk the State Court..."

24 That's been done.

25 "...which will affect the removal, and the

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1 State Court shall proceed no, shall proceed no further
2 unless and until the case is remanded."

3 It makes no reference at all to emergency
4 situations or anything else. I think the Court loses
5 jurisdiction.

6 If we go to Section 1450 of the Removal Act,
7 and I think that we can infer from reading of that it
8 talks about all injunctions, orders and other

9 proceedings had in such actions prior to removing will
10 remain in effect until modified or dissolved by the
11 Federal Court. But I think that this is -- I think
12 the statute is quite clear, and I think that -- I think
13 this Court, once the notice has been filed with the
14 Clerk and provided to the Court, I think the Court
15 loses jurisdiction.

16 One of the interesting things that counsel
17 said, he talked about my submitting to the jurisdiction
18 to this Court yesterday.

19 In some rare instances, there can be actions
20 taken that constitute a waiver, and, thus, that may
21 affect some proceedings, but those are very rare
22 instances. And certainly if we review the case of
23 Rodman v. City of Chicago, it's found at volume 879 F.
24 2nd at Page 1402, that is a case in which there was
25 even an attempt to dissolve a restraining order, came

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1 in to defend, and then filed his notice of removal.

2 And they said the defensive actions are not --
3 do not constitute a waiver. And so whatever occurred

4 on yesterday, which I, first of all, disagree with Mr.
5 Brooks as to what was said, but, nevertheless, I
6 certainly took no actions that constitute a waiver or
7 submission to the jurisdiction of this Court.

8 THE COURT: Thank you.

9 MR. SENDAK: If the comments of counsel
10 yesterday were to be construed as a waiver, we think in
11 an emergency situation such as this, that it would be
12 appropriate. The worst thing that happens, from what
13 we've been able to read during this interval, is that
14 if a hearing is held and if the Court takes action of
15 some sort, it can be ruled invalid by the Federal Court
16 upon a removal.

17 Now, in the alternative, if the Court decides
18 that, in fact, this matter is stayed as to emergency
19 proceedings, such as this, we would ask, first, that
20 the Court order that the records of this proceeding be
21 immediately boxed up and released to counsel for the
22 plaintiffs to take immediately to Federal Court. And
23 we are notifying counsel by this statement at this
24 moment, and anyone else who wants to know, that we will
25 proceed immediately to Federal Court and we will wait

1 there until we can be heard by a Judge to complete this
2 hearing.

3 So we're going to, if that is the Court's
4 ruling.

5 THE COURT: Thank you, both.

6 Integrity of the election process is always
7 paramount in a democratic society. Courts in the
8 exercise of jurisprudence historically prioritize the
9 matter, these types of matters, before their dockets.

10 This is now especially true with the pending
11 national and state elections. Legally every "T" needs
12 to be crossed, and every "I" dotted to ensure that
13 every person who is legally registered to vote is not
14 disenfranchised. Moreover, it is imperative that every
15 valid vote is counted.

16 In these few moments, this Court has looked at
17 two areas of the law: TR Rule 65, which brought into
18 being the matter that's presently before this Court, as
19 well as the ancillary cases related thereto. And
20 that's in juxtaposition with what Mr. Work has just
21 underscored, 28 U.S.C. 1446, as well as the ancillary
22 cases related thereto.

23 Once notice of removal is made to Federal
24 Court, the State Court's jurisdiction is relinquished
25 sometimes permanently, sometimes provisionally.

1 In this instance, as I looked at Paragraph 8
2 in the notice of removal of defendant's notice, we do,
3 indeed, have an emergency proceeding. That emergency
4 proceeding, if commenced this morning, I'm convinced,
5 will prompt an even greater and immediate response from
6 the federal judiciary.

7 Consequently, I'm going to proceed with this
8 hearing.

9 Call your first witness.

10 MR. SENDAK: I suppose, in the absence of my
11 lead counsel, who apparently was called out into the
12 hall for some reason... I just sent someone after him,
13 your Honor. We can proceed to deal with Mr. Saks'
14 issue, which is whether or not he's going to be
15 required to stay.

16 THE COURT: Do you have any objection to him
17 leaving?

18 MR. SENDAK: No.

19 THE COURT: Okay. You're excused, Mr. Saks.

20 MR. SAKS: Thank you.

21 THE COURT: I've requested, and this is the
22 second time, call your first witness.

23 MR. BROOKS: Can I have a brief opening
24 statement to try to put the case in perspective?

25 THE COURT: You may.

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1 MR. BROOKS: Do you prefer I speak at the
2 podium?

3 THE COURT: Whatever makes you feel more -- I
4 think the podium, according to the court reporter, so
5 we make sure your comments are recorded.

6 MR. WORK: We have one other (indiscernible)
7 that we'd like to make, Judge.

8 THE COURT: Okay.

9 MR. WORK: We call the Court's attention to
10 Section 3-6-5.2-9. It appears that this Court does not
11 have jurisdiction to hear this matter because it has to
12 be, according to that section of the statute, have to
13 be taken up before the Circuit Court.

14 THE COURT: Mr. Sendak.

15 MR. SENDAK: We're ready to address that
16 issue, your Honor.

17 In fact, there is a statute, and I had it
18 written down here somewhere. In fact, I have it
19 marked, I think -- Who took Title 33? -- that the
20 Superior Courts have concurrent jurisdiction in all
21 matters with the Circuit Court.

22 It is 33-33-45-6, the Court has the same
23 jurisdiction as the Lake Circuit Court in all civil and
24 probate cases and matters whether original or
25 appellate.

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1 And having litigated that particular statute
2 once, I believe what it means is any time it says
3 Circuit Court, you can pretty much interlineate
4 Superior Court. And that statute has been around a
5 long time also.

6 MR. WORK: It's been around a long time except
7 we have a specific section of the election code that
8 was enacted in 2005. And it's the statute that creates
9 the combined board of registration and election and it
10 specifically references Circuit Court. And I think
11 that it means exactly what it says, and that is that

12 any appeal from -- any appeal from an action taken by
13 the Election Board has to be heard by the Circuit Court
14 Judge.

15 THE COURT: Your objection is well taken, Mr.
16 Work, but we're going to proceed under the arguments
17 that were underscored by Mr. Sendak. That's my
18 understanding of the law.

19 MR. SENDAK: Thank you, your Honor.

20 MR. BROOKS: Your Honor, we're going to be
21 talking about a number of statutes, which I've run some
22 copies of, so if it's convenient for the Court to
23 follow along with the exact statutes, I'd be happy to
24 provide them if that's acceptable.

25 THE COURT: You may approach.

21

1 (Statutes tendered.)

2 MR. BROOKS: Thank you, your Honor.

3 The statutes we're going to be referring to
4 generally throughout this proceeding are I.C. 3-6.5.2,
5 which is the chapter that creates the Lake County Board
6 of Elections and Registration, as opposed to what
7 almost every other county in the state has, which is

8 just a county election board. We will come back to
9 that.

10 The statutes that are substantively being
11 violated and have been violated by the Board, County
12 Board, are 3-11-10-26, which is the Section that tells
13 us that where absentee -- in-person absentee voting may
14 take place. In particular, it tells us that it can
15 -- if you're in a county that is not Lake County, you
16 get that voting to take place in the Office of the
17 Circuit Court, or you can vote in a satellite office
18 pursuant to I.C. 11-10-26.3. That establishment of
19 satellite office, however, which is set forth in one of
20 the statutes I just gave you, that being Section 26.3,
21 requires a unanimous vote in order to do so.

22 The other statute that has been violated or is
23 about to be violated is I.C. 3-11-10-37, that is the
24 statute that requires that in order to conduct
25 electronic voting for absentee balloting that there

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1 must be a notice to county chairs of both parties at
2 least ten days prior to conducting such absentee ballot

3 voting.

4 The third statute that has been violated is
5 I.C. 3-11-10-26.2. That statute sets forth the
6 procedure by which electronic voting can take place,
7 whether that be at the main office of the Board or if
8 there's properly designated satellites. But the effect
9 of that statute is that there must be a unanimous vote
10 in order to permit electronic voting.

11 What the evidence is going to show when we
12 call these witnesses, your Honor, are -- the factual
13 part of it is, really, I don't think we're going to
14 have much of an argument as to what happened. We think
15 that the evidence will show and the relevant facts are
16 that on February 29th, 2008, the Board passed
17 Resolution 2008-1.

18 And in that particular resolution it
19 establishes that electronic voting may take place at
20 the Board's offices and only at the Board's offices.

21 On April 7th, 2008, there was a resolution of
22 the Board authorizing satellite absentee voting sites
23 in Hammond, East Chicago, and Gary. Consistent with
24 the statutory requirement in Section 26.3, that vote
25 was passed unanimously, but it was limited to the

1 specific times therein and limited to the primary.

2 Most recently on September 23rd, there was a
3 meeting of the Lake County Board, in which there was a
4 resolution set forth pursuant to Section 26.3 in order
5 to establish satellite offices in Hammond, Gary, and
6 East Chicago. That vote ended up being three to two;
7 three in favor and two against. But by definition that
8 is a failed vote, because Section 26.3 requires
9 unanimous consent by the Board.

10 So in the face of the failure to authorize
11 legal satellite offices, the Board proceeded to have
12 another vote, purportedly under Section 26(a)(1). And
13 in doing so, came up with what I would have to describe
14 as an incredibly contrived reading in order to
15 accomplish what it could not accomplish legally under
16 Section 26.3.

17 And we believe that when those facts are
18 established and we go back and have a closing argument
19 on what all of those statutes mean relative to those
20 facts that it will be compelling for this Court to
21 issue an injunction against the Board in order to
22 restrain them from three different things: One is
23 starting any absentee ballot voting at a satellite
24 office prior to giving ten days' to the county chairmen

25 as required by Section 20 -- or 37; two, that

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PLTF'S WIT. JIM B. BROWN-DIRECT BY MR. BROOKS

1 electronic voting not be permitted in any office other
2 than the Lake County Board's office, because that's the
3 only place in Resolution 2008-1 that it was statutorily
4 authorized; and then, finally, to enjoin them from
5 having any satellite offices; in particular, not have
6 any absentee voting take place outside of Crown Point.

7 That being said, your Honor, we would call --
8 unless you prefer to have opening arguments from --

9 THE COURT: Mr. Work may want to make an
10 opening.

11 MR. BROOKS: Do you want to make an opening
12 argument?

13 MR. WORK: No.

14 MR. BROOKS: Okay.

15 At this time, we would call Jim Brown.

16 THE BAILIFF: State your name.

17 THE WITNESS: Jim B. Brown

18 (Witness duly sworn.)

19 JIM B. BROWN,

20 having been first duly sworn, was examined and

21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BROOKS:

24 Q Mr. Brown, would you please state your full
25 name and your address for the Court.

25

PLTF'S WIT. JIM B. BROWN-DIRECT BY MR. BROOKS

1 A Jim B. Brown. I currently reside at 1832
2 Cottonwood Court, Crown Point, Indiana.

3 Q Are you a registered voter in Lake County?

4 A Yes, I am.

5 Q Would you be registered at the address you
6 just gave the Court?

7 A I have not changed my registration at this
8 time. I formerly lived at 522 West South
9 Street in Crown Point, Indiana.

10 Q Do you serve on the Lake County Board of
11 Elections and Registration?

12 A Yes, I do.

13 Q How long have you served?

14 A I can't recall offhand. I was appointed by
15 Chairman Curley when he was first appointed

16 Chairman of the Lake County Republican
17 Central Committee. I think it's in excess of
18 three years, I believe.

19 Q Mr. Brown, I'm going to hand you what's now
20 been marked as Plaintiff's Exhibit 1 and ask
21 you to take a look at that document, and tell
22 me whether or not your recognize that, and
23 are familiar with it?

24 A Yes, I do recognize it and I am familiar with
25 it.

26

PLTF'S WIT. JIM B. BROWN-DIRECT BY MR. BROOKS

1 Q Okay. Would I be correct to state this is the
2 resolution passed unanimously by the Lake
3 County Board of Elections and Registrations
4 on the 29th of February, 2008?

5 A Yes, that is correct.

6 Q And that would be your signature on the second
7 page of this document?

8 A Yes, it is.

9 Q And if I could draw your attention quickly to
10 Section 1 on Page 2, would it be a fair

11 reading to say you voted for, as did the rest
12 of the Board members, to permit an electronic
13 voting system but only in the Lake County
14 Board of Elections and Registration office?

15 A Yes, that would be a fair reading.

16 MR. BROOKS: At this time, your Honor, we would
17 offer Plaintiff's Exhibit 1 into evidence.

18 THE COURT: Any objection?

19 MR. WORK: No objection.

20 THE COURT: Plaintiff's Exhibit 1 is entered
21 into evidence there being no objection.

22 (Plaintiff's Exhibit 1 was
23 admitted into evidence.)

24 BY MR. BROOKS:

25 Q Since your time on the Board, has there ever

27

PLTF'S WIT. JIM B. BROWN-DIRECT BY MR. BROOKS

1 been a resolution before the Board to
2 authorize electronic voting at any site other
3 than the Lake County Board of Elections and
4 Registration office?

5 A I don't recall that occurring.

6 Q Have you ever voted for electronic voting in

7 any office other than the Lake County Board
8 of Elections and Registrations?

9 A No, I can't recall ever having done that.

10 Q Were you present at a meeting of the Lake
11 County Board of Elections and Registrations
12 on or about April 7, 2008?

13 A Yes, I was.

14 Q Do you recall a proposal pursuant to I.C.
15 3-11-10-26.3 to establish satellite absentee
16 voting sites in Hammond, Gary, and East
17 Chicago for the primary election?

18 A Yes, I do recall that.

19 Q What was the result of the vote on that?

20 A As I recall, the Board -- all members of the
21 Board voted unanimously in favor of that
22 action.

23 Q To be specific, your recollection that it was
24 specifically noted on the record that this
25 vote was to establish satellite offices

28

PLTF'S WIT. JIM B. BROWN-DIRECT BY MR. BROOKS

1 pursuant to Section 26.3?

- 2 A Yes.
- 3 Q Were you also present at a meeting of the Lake
4 County Board of Elections and Registration on
5 or about September 23rd, 2008?
- 6 A Yes, I was.
- 7 Q Was there a similar proposal pursuant to
8 Section 26.3 to establish satellite voting
9 sites for absentee ballots in Hammond, Gary,
10 and East Chicago for the general election?
- 11 A Yes, there was.
- 12 Q What was the result of that vote?
- 13 A The result of that was that there were three
14 members of the Board who voted in favor of
15 that resolution. Two members voted against
16 that resolution; I being one of the persons
17 who voted against that resolution.
- 18 Q And was it determined that at that time that
19 that motion would fail by virtue of the fact
20 it was not the unanimous vote required by
21 Section 26.3?
- 22 A Yes.
- 23 Q Did another vote take place regarding absentee
24 ballot voting sites in Hammond, Gary, and
25 East Chicago after that vote?

PLTF'S WIT. JIM B. BROWN-DIRECT BY MR. BROOKS

1 A Yes.

2 Q Could you tell us what was the proposal and
3 the result of that vote?

4 A The proposal was to have absentee ballots
5 under...I believe it was Section 26 of the
6 code...to have absentee ballot voting in
7 Hammond, East Chicago, and Gary, Indiana.
8 And the vote was three in favor, two opposed.

9 Q Was it designated that the voting sites in
10 Hammond, Gary, and East Chicago would be in
11 the Clerk's Offices?

12 A In the Clerk's Office of the Superior Court in
13 each of those cities, yes.

14 Q Mr. Brown, are you, as a member of the Board
15 aware as to whether or not the election board
16 -- or the Lake County Board of Elections and
17 Registration when they plan on beginning
18 absentee voting at the Clerk sites in
19 Hammond, Gary, and East Chicago?

20 A It is my understanding that they are preparing
21 and intend to commence that activity this
22 coming Monday.

23 Q And are you aware as to whether or not the

24 Board intends to implement electronic voting
25 machines and voting at the Hammond, East

30

PLTF'S WIT. JIM B. BROWN-DIRECT BY MR. BROOKS/
CROSS BY MR. WORK

1 Chicago, and Gary site?

2 A Yes, that is my understanding that they do
3 intend to use electronic voting machines.

4 MR. BROOKS: I have no further questions for
5 this witness, your Honor.

6 THE COURT: Cross exam.

7 CROSS EXAMINATION

8 BY MR. WORK:

9 Q Mr. Brown, you have been a member of the
10 combined Board for how long?

11 A Mr. Work, I believe it's in excess of three
12 years if not longer.

13 Q You were a member of that Board on February
14 28th of 2008; is that correct?

15 A Yes, that's correct.

16 Q The resolutions that you've referenced and
17 that have been marked for purposes of
18 identification as Plaintiff's Exhibit 1, was

19 that resolution ever rescinded?

20 A I do not -- no, I don't believe it was, Mr.

21 Work.

22 Q And you are an attorney, so I am certain that

23 you are aware that absent a rescinding or a

24 nullification of the resolution, that

25 resolution becomes the policy of the Board,

31

PLTF'S WIT. JIM B. BROWN-CROSS BY MR. WORK

1 is that correct, or the organization?

2 A I would say that's an accurate statement.

3 Q So if this resolution had not been --

4 A So far as --

5 Q If this resolution had not been rescinded,

6 what was the need for a vote in September as

7 to the establishment of either electronic

8 balloting as it relates to satellite offices?

9 A Because there was no -- that particular

10 resolution, I believe we're speaking of the

11 same one, 2008-1...

12 Q Yes.

13 A ...dealt strictly with electronic voting at

14 the office of the Board of Elections and

15 Registration in Crown Point. That was as far
16 as it went.

17 Q Does it suggest that -- does the resolution
18 reference the site of the office of the Lake
19 County Board of Elections and Registration or
20 do you recall?

21 Does it specifically indicate that
22 office shall be located or that you're
23 referencing only the Crown Point office?

24 A That is the only office where the Board of
25 Election and Registration -- that is the

32

PLTF'S WIT. JIM B. BROWN-CROSS BY MR. WORK

1 only location that the Board of Registration
2 and Elections has is the Crown Point, Indiana
3 office.

4 Q Do you know whether or not the Director at any
5 point made arrangements to secure space at
6 any other locations?

7 A I don't believe so. And I don't believe the
8 Director would have such authority.

9 Q In the primary of 2008, by what authority was

- 10 voting conducted at satellite offices?
- 11 A I believe I testified, Mr. Work, that that
- 12 occurred at a meeting on or -- in April. I
- 13 can't recall the specific date now, but I
- 14 believe it was April 8th if I'm not mistaken.
- 15 Q Was that reduced to a resolution?
- 16 A I don't recall that. I do recall the vote
- 17 though, Mr. Work.
- 18 Q If it had been reduced to a resolution, do you
- 19 agree that that resolution would also have to
- 20 be rescinded by the Board?
- 21 A No, I don't agree with that.
- 22 Q Well, I thought that you previously indicated
- 23 that a resolution is in full force and effect
- 24 until rescinded?
- 25 A With respect to the 2008-1.

33

PLTF'S WIT. JIM B. BROWN-CROSS BY MR. WORK

- 1 Q Well, with respect to any resolution of any
- 2 Board; is that not correct?
- 3 A Well, with respect to that particular action,
- 4 it was limited strictly to the May, 2008
- 5 primary election. It went no further.

6 Q And to your knowledge, the resolution
7 specifically addresses satellite offices for
8 that particular election?

9 A Yes.

10 Q Okay. If it did not, then you would agree
11 that that resolution would have to be
12 rescinded; right?

13 A I believe that that would be a fair argument.

14 Q Now, in your petition, you've -- for a
15 temporary restraining order, you talk about
16 irreparable harm. Irreparable harm to who,
17 sir?

18 A To the voters of Lake County.

19 Q Okay. And are we talking about all of the
20 voters or just those voters who live and
21 reside in the Crown Point area?

22 A Myself, I'm talking about all of the voters,
23 Mr. Work.

24 Q Okay. Are you aware of the Federal Voting
25 Rights Act that mandates that we establish

34

PLTF'S WIT. JIM B. BROWN-CROSS BY MR. WORK

1 voting sites that are accessible to potential
2 voters?

3 A I'm aware of that Act and I'm aware of your
4 arguments in your petition for removal.

5 Q Do you disagree with it?

6 A Your arguments as to this case, yes, I do, but
7 not as to the Act.

8 Q If the voting process began on Monday, and
9 let's assume that -- let's say 500 people
10 vote on Monday, what would be the irreparable
11 harm -- who would be harmed?

12 A Well, depending upon where those voters might
13 vote, should they vote at the Crown Point
14 office, I don't think that there would be any
15 potential for harm.

16 Q Okay. Distinguish, if you would, why voting
17 at Crown Point would be valid and voting
18 somewhere else would not be?

19 A Well, I think that's the crux of our being
20 here today, is that, in my opinion, Mr. Work,
21 there's no question that the absentee voting
22 process, the early voting process is
23 absolutely appropriate at the Crown Point
24 office without any action of the Board.
25 That's a statutory entitlement.

PLTF'S WIT. JIM B. BROWN-CROSS BY MR. WORK

1 Q I understand that.

2 A With respect to the Hammond, Gary -- and
3 persons who might vote in Hammond, Gary, and
4 East Chicago, whether they reside in those
5 communities or otherwise, because you don't
6 have to be a resident of either Crown Point
7 -- or a resident of Gary, Hammond, or East
8 Chicago. Anyone in Lake County can vote at
9 those sites. My concern is should those
10 votes be cast there and then later deemed to
11 be improperly cast or illegally cast, there's
12 a likelihood that those voters may well not
13 have another opportunity to cast an
14 appropriate ballot.

15 Q Well, in seeking an emergency restraining
16 order, such as you're seeking here today, I
17 believe that the burden is to establish some
18 irreparable harm; correct?

19 A (No response.)

20 Q And am I correct in interpreting that you're
21 saying the irreparable harm would be that at
22 some later date and at some later time that

23 these votes may be challenged and that
24 constitutes the irreparable harm?

25 A I think these ballots, as a practical matter,

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PLTF'S WIT. JIM B. BROWN-CROSS BY MR. WORK

1 being challenged -- those potential votes,
2 as a practical matter, are being challenged
3 right now.

4 And, yes, I can think of nothing more
5 important or more sacred than the ability of
6 a person to go in and cast a ballot and to
7 have their ballot counted. And should those
8 ballots then be held to be illegally cast, I
9 would say there is a great danger that you
10 would not be able to identify and get all of
11 those folks who may have cast an illegal
12 ballot back to a polling place to cast an
13 appropriate ballot.

14 I think to a person they could be
15 damaged in their right to vote and their
16 franchise would be impaired.

17 Q You, as, in your individual capacity,

18 acknowledge that you're not likely -- that
19 you don't have standing to bring this action.
20 Would you acknowledge that?
21 In other words, your voting right is not
22 going to be impaired; right?
23 A Probably not.
24 Q Okay. And the same would be true with your
25 co-plaintiff?

37

PLTF'S WIT. JIM B. BROWN-CROSS BY MR. WORK

1 A Probably not.
2 Q So what you're saying, then, you're really
3 bringing this -- in order to have standing,
4 you're bringing this in your capacity as the
5 republican member of the Lake County Election
6 Board?
7 A Yes, yes.
8 Q And, of course, the republican party has an
9 interest, I'm certain, in making certain that
10 those who do vote early are going to have to
11 suffer the inconvenience of having to come to
12 Crown Point, particularly those residents in
13 the north side of the County; is that

14 correct?

15 A No, that's not correct.

16 Q In the event that these votes were challenged
17 -- or in the event that this Court at some
18 point entered an order enjoining the Election
19 Board from setting up the satellite offices,
20 would there be sufficient time between today
21 and election day to notify those who have
22 voted telling them that their votes are
23 invalid because of the vote being conducted
24 at, what you describe, to be an improper
25 site? Would there be sufficient time?

38

PLTF'S WIT. JIM B. BROWN-CROSS BY MR. WORK

1 A It's possible that that could be done
2 depending upon a myriad of factors.

3 Q So, yeah, but I'm saying that certainly
4 notice, just as notice is printed advising
5 people that they can vote at a satellite
6 site, a similar notice could be generated
7 that would advise them that those votes will
8 not be counted and these people would be

- 9 given another opportunity to vote; is that
10 correct? That's certainly --
- 11 A Theoretically, that's correct. Practically, I
12 don't know how fast the courts operate and
13 -- that assumes that there would be an
14 immediate order.
- 15 Q Assume that this Court would have an
16 opportunity to have a full-blown hearing on
17 this issue, would you then conclude that,
18 perhaps, a temporary restraining order is not
19 necessary?
- 20 A No, I would not conclude that.
- 21 Q What was the basis for your decision in April
22 to approve satellite voting in the primary
23 and now today your position is that that is
24 improper? Why was that action taken by you
25 and your co-plaintiff?

39

PLTF'S WIT. JIM B. BROWN-CROSS BY MR. WORK

- 1 A I went along with the proposal in the primary
2 because it was a request of the county
3 chairman and my chairman that we do so, and
4 because there was a contested democrat

5 primary election.

6 Q Can you tell us what has changed between April
7 and your position today, or your position in
8 September of 2008?

9 A What has changed is that this is now the
10 presidential election and not a primary
11 election, and we had some complications with
12 that process in the May election.

13 Q Were your concerns any different in the
14 primary election saying that people are not
15 disenfranchised from voting, having the right
16 to vote? Is there a distinction between the
17 primary and the general election?

18 A I think your characterization of
19 disenfranchisement is incorrect because
20 everyone has an opportunity to vote in
21 Indiana on election day, November 4, 2008.

22 Q They have the same right during the primary?

23 A Yes.

24 Q I'm asking you what distinguishes the primary
25 from the general election?

40

PLTF'S WIT. JIM B. BROWN-CROSS BY MR. WORK

- 1 A In the primary we had several instances, one
2 in particular because of the way things were
3 voted and so forth, we discovered at least
4 one person had voted twice in that election.
- 5 Q That's not the first time that that's occurred
6 in Lake County?
- 7 A When you discover those things, that would
8 suggest you would try to eliminate that
9 possibility.
- 10 Q But the elimination process, or the attempts
11 to eliminate that possibility certainly are
12 not impacted by satellite voting; is that
13 correct?
- 14 A They were simply because we do not and did not
15 have current data at the satellite voting
16 stations. We were working off stale data
17 that was not current on a day-to-day basis
18 because of the way the State handles its
19 voter registration.
- 20 Q That would have occurred whether the voting
21 had taken place at Crown Point or the
22 satellite offices?
- 23 A No, that would not occur in the Crown Point
24 office because we were directly tied into the
25 State voter registration data base and all of

PLTF'S WIT. JIM B. BROWN-REDIRECT BY MR. BROOKS

1 our information was current on a daily basis,
2 Mr. Work.

3 MR. WORK: I have no further questions at this
4 time.

5 THE COURT: Redirect.

6 MR. BROOKS: Just a couple of quick follow-ups.

7 REDIRECT EXAMINATION

8 BY MR. BROOKS:

9 Q Mr. Brown, you reference that voters who would
10 not be -- should this injunction be granted
11 by this Court, there would be not have
12 -- there would not be availability of the
13 satellite in-person absentee ballot voting
14 sites. What are the -- what's a range of
15 options for these voters?

16 A I'm sorry, I don't -- I guess I didn't follow
17 your question.

18 Q Would anybody who didn't have a satellite
19 -- one of these illegal satellite offices
20 available would still have the opportunity to
21 vote absentee by mail; correct?

22 A Yes, that's correct. They could vote by mail.
23 I understand now. They can vote by
24 mail. They certainly can vote in person at
25 the Crown Point office.

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PLTF'S WIT. JIM B. BROWN-REDIRECT BY MR. BROOKS

1 Q By absentee?
2 A By absentee ballot.
3 Q And they could vote in person on election day?
4 A And on election day, of course.
5 Q So there are plenty of remedies and ways to
6 get a vote?
7 A Yes. There are polling places in every
8 precinct in Lake County, which encompasses
9 over 500 different precincts.
10 Q Do you recall who proposed the Hammond, Gary,
11 and East Chicago sites for the general
12 election?
13 A There were a group of persons who appeared on
14 the 23rd, among which were Chairman Clay --
15 Q Actually, let me limit that. Not to stop you,
16 but who on the Board or the staff of the

17 Board made the proposal or suggested that
18 Gary and East Chicago and Hammond should be
19 the sites?

20 A That resolution was introduced and I believe
21 the resolution was -- a motion was made to
22 adopt that resolution, I believe by Mr. Al
23 Salinas, a democrat member of the Board.

24 Q And did any democrat member of the Board
25 suggest any locations other than Hammond,

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PLTF'S WIT. JIM B. BROWN-REDIRECT BY MR. BROOKS/
EXAM BY THE COURT

1 Gary, or East Chicago?

2 A No. It was strictly limited to Gary, Hammond,
3 and East Chicago.

4 Q And what would be the general demographic
5 republican versus democrat makeup of those
6 three cities historically?

7 A I think historically, the voting in those
8 three areas is predominantly, overwhelmingly
9 democratic.

10 Q Just to clarify, your position is that the
11 Board should be enjoined from illegal
12 activity; correct?

13 A Absolutely.

14 MR. BROOKS: All right. I don't have any more
15 questions for this witness, your Honor.

16 THE COURT: All right. Any recross?

17 MR. WORK: No recross.

18 THE COURT: I have a few questions.

19 EXAMINATION BY THE COURT

20 Q All right. I think Mr. Work posed some
21 questions to you, Mr. Brown. It wasn't clear
22 to me, so if you can clarify it for me...

23 You voted to have these sites in the
24 2008 primary; is that correct?

25 A Yes, for a ten-day period of time, your Honor.

44

PLTF'S WIT. JIM B. BROWN-EXAM BY THE COURT

1 Q Correct.

2 And I thought I heard you say that the
3 reason you didn't want to do it for the
4 November elections is because it was a
5 presidential election as compared to --

6 A Well, that's the dif -- it is a presidential
7 election, but I also said because there were

8 some irregularities found in those locations
9 with double voting.

10 Q Do you have any definitive numbers for those
11 various locations where you have contended
12 there were irregularities?

13 A There was at least one that was brought to our
14 attention.

15 Q Just one?

16 A One that we identified.

17 Q In what office?

18 A I can't recall. I believe it was in the Gary
19 office. I think Ms. LaSota would be able to
20 tell you exactly but I --

21 Q Was it acted upon?

22 A Pardon me?

23 Q Was it acted upon?

24 A I believe we, in fact, referred that to the
25 Lake County Prosecuting Attorney's Office.

45

PLTF'S WIT. JIM B. BROWN-EXAM BY THE COURT

1 Q I guess I follow up because the impression
2 that I got was that one election is far more
3 important than the other, and I thought that

4 elections, all elections, are important and
5 every vote depending on whether it's dog
6 catcher or whatever is important?

7 A Absolutely.

8 Q That's the democratic process?

9 A That's the democratic process. I don't
10 disagree with that.

11 THE COURT: All right. Are there any questions
12 that you may want to pose as a result of the ones that
13 I've tendered?

14 MR. BROOKS: No, your Honor.

15 MR. WORK: No.

16 THE COURT: Okay. Call your next witness.

17 You may step down, Mr. Brown.

18 (Witness excused.)

19 MR. BROOKS: Call Nick Gasparovic.

20 THE BAILIFF: State your name, please.

21 THE WITNESS: Nicholas Gasparovic.

22 (Witness duly sworn.)

23 NICHOLAS GASPAROVIC,

24 having been first duly sworn, was examined and

25 testified as follows:

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PLTF'S WIT. N. GASPAROVIC-DIRECT BY MR. BROOKS

1 DIRECT EXAMINATION

2 BY MR. BROOKS:

3 Q Mr. Gasparovic, would you please state and
4 spell your last name for the Court and give
5 your address?

6 A It's Nick or Nicholas Gasparovic,
7 G-a-s-p-a-r-o-v-i-c. I live at 3557 Oakcrest
8 Place in Crown Point, Indiana.

9 Q Do you hold a position with the Lake County
10 Board of Elections and Registration?

11 A I do.

12 Q I'm going to hand you an affidavit which you
13 executed that was attached to the pleadings
14 which were filed in connection with this
15 case, and ask you if that is your signature?

16 A Yes, it is.

17 Q Would you please just take a minute and read
18 through each of the assertions which you made
19 in that affidavit?

20 A Uh-huh.

21 Q Well, as you sit here today under oath as
22 opposed to the date you signed this, you
23 affirm that each statement is true and
24 accurate?

25 A I do.

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PLTF'S WIT. N. GASPAROVIC-DIRECT BY MR. BROOKS

1 Q Were you present at the September 23rd or
2 thereabouts Board meeting?

3 A I was, yes.

4 Q And would you -- would you agree with Mr.
5 Brown that there was a vote to have satellite
6 offices pursuant to 26.3, which failed by
7 virtue of not having a unanimous vote?

8 A Yes.

9 Q Would you also agree that the Board proceeded
10 to have a three-to-two vote to establish
11 offices in the Superior Court Clerk's Office
12 in Hammond and East Chicago pursuant to
13 Section 26?

14 A Yes.

15 Q And in your capacity as Assistant Director of
16 the Board of Elections and Voter
17 Registration, do you have knowledge as to
18 whether or not the Board is preparing to
19 begin absentee ballot voting at sites in
20 Hammond, Gary, and East Chicago?

21 A Yes, we are.
22 Q When are you preparing to do that?
23 A On Monday the 6th.
24 Q Is the Board also preparing to provide
25 electronic voting machines at the Hammond,

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PLTF'S WIT. N. GASPAROVIC-DIRECT BY MR. BROOKS/
CROSS BY MR. WORK

1 East Chicago, and Gary sites?
2 A Yes, two machines for each location.
3 Q Have you ever heard of or seen any resolution
4 in your capacity as Assistant Director of the
5 Board of Elections and Registration which
6 would authorize electronic voting in Hammond,
7 Gary, or East Chicago for the general
8 election?
9 A Not to my knowledge.
10 MR. BROOKS: I don't have any further questions
11 for this witness, your Honor.
12 THE COURT: Cross exam.
13 CROSS EXAMINATION
14 BY MR. WORK:
15 Q To your knowledge, sir, has there ever been a

- 16 -- has Resolution 2008-01 been rescinded?
- 17 A And that is what?
- 18 Q That's the resolution concerning the use of
- 19 electronic voting systems.
- 20 A Has never been rescinded not -- I don't
- 21 believe it has.
- 22 Q The satellite offices that are proposed to be
- 23 used on Monday, to your knowledge, has there
- 24 been a Quest (Phonetic) contact made that
- 25 would connect those offices with the State?

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PLTF'S WIT. N. GASPAROVIC-CROSS BY MR. WORK

- 1 A Well, talking to the Director, Sally LaSota, I
- 2 know she was in contact with Quest, and I
- 3 believe was told would be able to get
- 4 passwords to be able to use that system.
- 5 Q Of course, if those passwords, were, in fact,
- 6 issued and there was a connection or contact
- 7 with Quest, then you would be able to do the
- 8 same thing at the satellite offices that
- 9 you're doing at the main office in Crown
- 10 Point; is that correct?
- 11 A Yes, but I'm not really sure of that, but it

12 should work that way.

13 Q Well, it's the same information source, would

14 it not?

15 A Pardon?

16 Q It would be the same information source; is

17 that correct?

18 A It should, yes.

19 Q Now, in April of 2008, satellite offices were

20 used during the primary; is that correct?

21 A That's right.

22 Q And was that by virtue of a resolution?

23 A I don't believe so.

24 Q So if it were not done by resolution, then, I

25 take it that it was in violation at that

50

PLTF'S WIT. N. GASPAROVIC-CROSS BY MR. WORK

1 time?

2 A You're asking me something I have no idea if

3 it was a violation or not.

4 Q Well...

5 A All I know is that it passed by unanimous vote

6 in April.

7 Q But it was by resolution benefit; is that
8 correct?

9 A It was a unanimous vote. I don't believe
10 there was a resolution.

11 Q If there was a resolution to that effect, do
12 you know whether or not that resolution was
13 ever rescinded?

14 A I don't believe there was a resolution, but if
15 -- and I don't believe they would -- that
16 there was one rescinded.

17 MR. WORK: I have nothing further.

18 THE COURT: Redirect.

19 MR. BROOKS: No.

20 THE COURT: Don't step down. I've got
21 questions.

22 THE WITNESS: Okay.

23 EXAMINATION BY THE COURT

24 Q Could you -- your position is what with
25 this --

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PLTF'S WIT. N. GASPAROVIC-EXAM BY THE COURT

1 A I'm the Assistant Director of the Board of
2 Elections. We are a republican and

3 democratic office.

4 Q I understand.

5 A So I am the counterpart to Sally LaSota.

6 Q You are the democrat or the republican?

7 A The republican.

8 Q The republican?

9 A Yes, sir.

10 Q Now, there has been mention of a vote that
11 dealt with -- an April vote that dealt with
12 the primary of 2008; is that correct?

13 A Yes.

14 Q Were you there?

15 A I was.

16 Q Okay. And what's unclear to me was it just a
17 vote or was there a resolution?

18 A Your Honor, I believe it was a five-oh
19 unanimous vote to establish those voting
20 satellite offices. I don't believe there was
21 a resolution.

22 Q So you're arguing over state law, and the
23 state law requires a resolution, a unanimous
24 vote. Are you saying essentially if it's
25 just a vote, there was no resolution of which

PLTF'S WIT. N. GASPAROVIC-EXAM BY THE COURT/
REDIRECT BY MR. BROOKS/FURTHER EXAM BY THE COURT

1 you are aware?

2 A There was no resolution that I'm aware.

3 Q Okay. All right. That's all.

4 THE COURT: Any questions based on the ones
5 that I posed?

6 REDIRECT EXAMINATION

7 BY MR. BROOKS:

8 Q Do you recall the precise language of the
9 motion enough to know whether it would have
10 been a verbal resolution versus something
11 else?

12 A I can't recall.

13 Q Fair enough.

14 MR. BROOKS: No more questions.

15 THE COURT: That raises another question unless
16 you have --

17 MR. WORK: No.

18 FURTHER EXAMINATION BY THE COURT:

19 Q You all deal with verbal resolutions as
20 opposed to written resolutions?

21 A There was a motion to establish on satellite
22 offices in Gary, Hammond, and East Chicago
23 and that motion passed --

24 Q That's not my question.

25 A -- unanimously.

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PLTF'S WIT. N. GASPAROVIC-FURTHER EXAM BY THE COURT/
REDIRECT BY MR. BROOKS

1 Q That's not my question. Procedurally since
2 you've been with the Board, there is a
3 written resolution that's part of the
4 evidence, Resolution 2008-01, that's written?

5 A I didn't understand your question.

6 Q Okay. I understand. And I'm kind of
7 following up your counsel here. Are there
8 such a thing in your operations as verbal
9 resolutions?

10 A They have been written resolutions.

11 Q Okay. No verbal?

12 A No verbal.

13 THE COURT: Thank you. That's all.

14 MR. BROOKS: One follow-up, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. BROOKS:

17 Q Are you aware as to whether or not the Board's
18 staff has ever prepared the minutes for any
19 other documents relating to the April

20 meeting?

21 A To the meeting establishing the satellite

22 offices?

23 Q Yes.

24 A To my knowledge, there have been no minutes.

25 Q Have there been any minutes or other

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PLTF'S WIT. N. GASPAROVIC-REDIRECT BY MR. BROOKS/
FURTHER EXAM BY THE COURT

1 documentation provided to the public from the

2 September meeting?

3 A I'm not sure.

4 Q Okay.

5 A I'm not sure.

6 MR. BROOKS: I don't have any more questions.

7 THE COURT: Mr. Work, do you have any more

8 questions?

9 MR. WORK: No, Judge.

10 THE COURT: I've got some.

11 FURTHER EXAMINATION BY THE COURT:

12 Q Are you saying when you all meet, you don't

13 have minutes?

14 A Your Honor, we do. But we don't always have

15 those minutes current, okay. They
16 -- there's some that could be six months
17 past, and some that have actually been longer
18 than that.

19 Q They are not transcribed and -- is that what
20 you mean?

21 A Yes.

22 Q Okay. All right.

23 THE COURT: Any other questions? Mr. Brooks?

24 REDIRECT EXAMINATION

25 BY MR. BROOKS:

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PLTF'S WIT. N. GASPAROVIC-REDIRECT BY MR. BROOKS

1 Q Who is responsible for producing the minutes
2 and documentation of those meetings?

3 A Well, the office administrators share that
4 responsibility, both the democrat and the
5 republican office administrators.

6 Q Do you recall whether the meetings are taped?

7 A Yes, they are.

8 Q If there was a tape produced at some point in
9 these proceedings, would you be able to
10 recognize the voices and understand -- be

11 able to identify a meeting by virtue of the
12 subject matter?
13 A I believe so.
14 Q Okay.
15 MR. BROOKS: I don't have any more questions.
16 THE COURT: Re, recross, Mr. Work.
17 MR. WORK: No.
18 THE COURT: You may step down, sir.
19 (Witness excused.)
20 THE COURT: Call your next witness.
21 MR. BROOKS: John Curley, please.
22 THE BAILIFF: State your name, please.
23 THE WITNESS: John B. Curley.
24 (Witness duly sworn.)
25 JOHN B. CURLEY,

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PLTF'S WIT. JOHN B. CURLEY-DIRECT BY MR. BROOKS

1 having been first duly sworn, was examined and
2 testified as follows:
3 DIRECT EXAMINATION
4 BY MR. BROOKS:
5 Q Mr. Curley, would you please state your full

- 6 name and your address for the Court?
- 7 A John B. Curley, 10810 Bridgewater Court,
8 Winfield, Indiana.
- 9 Q Are you a registered voter at that address?
- 10 A Yes, I am.
- 11 Q Are you familiar with I.C. 3-11-10-37, which
12 requires the Board of Elections to give you
13 ten days' notice in order to have a chance to
14 appoint absentee voter boards?
- 15 A To be honest with you, I just became aware of
16 that statute within the last four, five days.
- 17 Q For purposes of this election, have you been
18 notified in any fashion by the Lake County
19 Board of Elections and Registrations of the
20 number of absentee voter boards that would be
21 required for you to make appointments?
- 22 A When you say "notified," are you talking about
23 being notified?
- 24 Q Any kind of notification?
- 25 A Yes. Nick Gasparovic talked to me last

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PLTF'S WIT. JOHN B. CURLEY-DIRECT BY MR. BROOKS

- 1 Wednesday in the afternoon, and said they

2 would be needing people at these sites and
3 asked me. And at that time I said, "Well,
4 find people."

5 Q Wednesday being two days ago?

6 A Yes, sir.

7 Q Did he inform you that that was an official
8 communication on behalf of the Board?

9 A To be honest with you, I've never been -- in
10 my four years, I've never been given official
11 notification or told that it had to be
12 official.

13 Q Did you -- did Mr. Gasparovic during this
14 conversation call you to tell you that or did
15 you initiate the contact to ask him?

16 A I think I initiated it, talked to him, and he
17 said that he had had a request to get those
18 people. And I told him to go ahead.

19 Q Okay. Are the -- do you consider Mr.
20 Gasparovic to be your agent, as the County
21 Chairman for purposes of notification from
22 the Election Board?

23 A Maybe in retrospect today, but I've never
24 known that I was supposed to have a
25 notification. For four years, they haven't

PLTF'S WIT. JOHN B. CURLEY-DIRECT BY MR. BROOKS/
EXAM BY THE COURT

1 told me. So to think today all of a sudden,
2 I'm this official notification, I'd have to
3 say, yes, I've talked to him. But whether it
4 was official or not, if it deems talking to
5 me and telling me, yes, that would be
6 official.

7 MR. WORK: Judge, could we approach the bench?

8 THE COURT: Yes.

9 (Counsel approach the bench.)

10 MR. BROOKS: I don't have any more questions of
11 this witness, your Honor.

12 THE COURT: Cross exam, Mr. Work.

13 MR. WORK: I have no questions.

14 EXAMINATION BY THE COURT:

15 Q Mr. Curley, I have a few. I thought I heard
16 you say you just -- are you saying you just
17 became aware of the notification
18 -- statutory notification process three days
19 ago?

20 A Yes, your Honor. Since I've been Chairman,
21 granted, I don't go in there, and Nick
22 Gasparovic as the Assistant, he called and

23 said, "We need to get ready for the sites
24 they want to open on Monday."
25 I told him, "Go ahead."

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PLTF'S WIT. JOHN B. CURLEY-EXAM BY THE COURT

1 Through the years -- I don't read that
2 book. I'd be confused when they start
3 running those numbers out, and statutes and
4 everything. So to officially know that I was
5 supposed to be told, I have never known that
6 until about three days ago.

7 Q In terms of your position, you've been a
8 county chair for how long?

9 A About four years.

10 Q That has encompassed how many elections,
11 roughly?

12 A Probably three. Maybe even I came in the
13 middle of one, three primary ones.

14 Q Is your testimony, in essence, that the
15 compliance of the state statute has not been
16 followed as it relates to notification by you
17 from whomever?

18 A Well, you're right, your Honor. I didn't know

19 I would need official notification if someone
20 says we're getting clerks or judges or
21 something. Yes, I participate in that, but
22 no one calls me or tells me we should. And I
23 think rightly so they understand I maybe
24 should know it. But to -- until I get here
25 to find out I'm officially supposed to be

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PLTF'S WIT. JOHN B. CURLEY-CROSS BY MR. WORK

1 notified, no, I did not know that.

2 THE COURT: Mr. Brooks, any follow-up
3 questions?

4 MR. BROOKS: No, sir.

5 THE COURT: Mr. Work.

6 CROSS EXAMINATION

7 BY MR. WORK:

8 Q Were you notified verbally of -- were you
9 notified verbally of the -- that you were to
10 make written recommendations for
11 appointments?

12 A I was told Wednesday when I talked to Mr.
13 Gasparovic.

- 14 Q In the past, have you not received written
15 notification (indiscernible)?
- 16 A No, sir, I've never received written notice.
- 17 Q If they were sent to the party headquarters,
18 would that -- you wouldn't dispute that?
- 19 A I wouldn't dispute it. I've never seen it.
- 20 Q You have always participated in the process,
21 have you not?
- 22 A Yes, sir.
- 23 Q And you were prepared to participate in the
24 process with regards to the absentee early
25 voting?

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PLTF'S WIT. JOHN B. CURLEY-CROSS BY MR. WORK

- 1 A Sir, let's back up a little bit.
- 2 When you say I've always participated in
3 the process, we got a huge process going on.
4 What are you --
- 5 Q I'm talking about the process of recommending
6 the persons to work these sites.
- 7 A To work the polls during the elections?
- 8 Q Yeah.
- 9 A Correct.

10 Q You, of course, indicated to Ms. LaSota you
11 would do so with regards to the satellite
12 sites, did you not?

13 A No. Nick said to me Wednesday they are going
14 ahead with this, which tells me that the
15 majority of the voters are going ahead with
16 it. That didn't say I was going ahead with
17 it, and that didn't say I wanted it.

18 But what I'm saying to you is if you're
19 going to go ahead with it and I don't believe
20 it's right, I'm not going to let you do it
21 without at least having some republicans
22 there.

23 Q Okay. So you had indicated that you would
24 have to have a --

25 A I didn't indicate to her. I indicated to Nick

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PLTF'S WIT. JOHN B. CURLEY-CROSS BY MR. WORK

1 to go ahead and get the people if that's what
2 they're going to go ahead and do.

3 Q All right. To your knowledge, were these
4 people determined?

5 A Pardon me?

6 Q Did you determine the identity of these people
7 that you were going to get?

8 A From talking today, I don't even think it's
9 all determined today that we have --

10 Q At any rate, some assurances had gone back to
11 Ms. LaSota saying that you would do that;
12 right?

13 A I don't know, sir. I didn't give her the
14 assurances.

15 Q All right.

16 THE COURT: Any redirect?

17 MR. BROOKS: No, your Honor.

18 THE COURT: Okay, Mr. Curley, you may step
19 down.

20 (Witness excused.)

21 THE COURT: Next witness.

22 MR. BROOKS: We would call Sally -- I've not
23 quite figured it out. Is it LaSorta or LaSota?

24 MS. LaSOTA: No, LaSota.

25 THE COURT: Ms. LaSota.

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PLTF'S WIT. SALLY LaSOTA-DIRECT BY MR. BROOKS

1 MR. BROOKS: Sorry about that.

2 THE BAILIFF: State your name for the record.

3 THE WITNESS: Sally LaSota

4 (Witness duly sworn.)

5 SALLY LaSOTA,

6 having been first duly sworn, was examined and

7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BROOKS:

10 Q Would you please state your full name and give
11 your address to the Court?

12 A My name is Sally LaSota, L-a-S-o-t-a. I live
13 at 9210 Prairie Avenue in Highland, Indiana.

14 Q And would I be correct that you are the
15 Director of the Lake County Board of
16 Elections and Registration?

17 A That's correct.

18 Q And how does -- how did you become the
19 Director? What's the process?

20 A I am appointed by the Democratic County
21 Chairman.

22 Q Okay. And would you describe your duties,
23 just generally?

24 A Responsible for voter registration and the
25 elections.

PLTF'S WIT. SALLY LaSOTA-DIRECT BY MR. BROOKS

- 1 Q Would you be responsible for setting up any
2 satellite absentee ballot voting sites?
- 3 A Yes, sir.
- 4 Q Would you be responsible for determining which
5 type of voting system, that is in paper or on
6 electronic voting machines would go to those
7 sites?
- 8 A Via the Board, yes.
- 9 Q Have you been directed by the Board or someone
10 that you believe is a representative of the
11 Board to begin absentee ballot voting in
12 Hammond, East Chicago, and Gary on Monday?
- 13 A Yes.
- 14 Q What type of voting have you arranged or
15 anticipate?
- 16 A It would be the same as in our office in Crown
17 Point, except it would be in the Clerk's
18 Offices in Hammond, Gary, and East Chicago.
19 It would be on our Infinity (Phonetic)
20 machines.
- 21 Q It would be an electronic -- so you've been

22 directed to implement electronic voting in
23 those three locations?

24 A That's correct.

25 Q Okay. Did you or anyone else on behalf of the

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PLTF'S WIT. SALLY LaSOTA-DIRECT BY MR. BROOKS

1 Board provide any notice to the Republican
2 County Chair as to how many, that is the
3 number of absentee voter boards that would be
4 required in order to open and operate the
5 voter sites?

6 A I would say, in our office, yes. Verbally to
7 the Assistant Director, yes.

8 And if I can explain, everyone who works
9 for us has to be authorized by both parties,
10 democrat and republican. That goes from
11 voter boards to our mechanics to couriers to
12 counters, election day workers for us.

13 So the ones that are for Crown Point
14 and, in fact, I had asked the Assistant
15 Director if we could use two additional
16 because of the mass volume of voters we're
17 going to get. We did in 2004, we had a huge

18 number of people come through our county
19 office, and there were long lines then. So
20 the initial letter that went out to both
21 chairmen was for the two absentee voter
22 workers in our office.

23 I told Nick, I said, "We're going to
24 need two more in here. I'm going to need
25 three out in Hammond, Gary, and East Chicago

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PLTF'S WIT. SALLY LaSOTA-DIRECT BY MR. BROOKS

1 on the democratic side, and I'm going to need
2 three republicans also," and that was verbal.

3 Q But your -- far as you know, has there been
4 any communication from the Board directly to
5 the County Chair as opposed to --

6 A Not to my knowledge.

7 Q As -- as opposed to Nick?

8 Okay. And when you were talking about
9 this republican, democrat, I guess, sharing
10 responsibilities, were you talking about just
11 the Boards -- absentee voter boards or
12 talking about staff generally at the election

13 board?

14 A Everybody. Everybody.

15 Q The staff?

16 A The staff, people that we hire in by both

17 respective parties, it's always one

18 democrat, one republican.

19 Q So there's lots of republicans that are

20 working for the Board.

21 A Yes. They generally have a difficult time,

22 but through --

23 Q (Laughter.)

24 A -- but through getting people --

25 Q Imagine that.

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PLTF'S WIT. SALLY LaSOTA-DIRECT BY MR. BROOKS

1 A Well, no, to get people to work. We've gone

2 to schools to ask for, you know, the 16 and

3 17-year-olds because they don't have party

4 affiliation. And that helps the republicans.

5 And that's not to belittle them, but, of

6 course, we can, you know, even with the

7 democratic side some areas have difficulties

8 having people work.

9 People just either don't want to do it.

10 But in this election the interest is so huge
11 that a lot of people want to participate.

12 Q Okay. I'm just teasing you a little bit by
13 the way. I shouldn't. I'm sorry. We
14 appreciate the fact that you spend time in
15 public service. We really do.

16 Let me ask you in terms of the satellite
17 voting for the general election, were you
18 informed as to what legal authority there was
19 to do that?

20 A I was told that in one of the code cites that
21 every voter had a right to vote in person,
22 absentee in the Clerk's Office.

23 Q That's the statute that we would have --

24 A Yes.

25 Q Okay. You were aware that there was no

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PLTF'S WIT. SALLY LaSOTA-DIRECT BY MR. BROOKS/
EXAM BY THE COURT

1 unanimous vote on the part of the Board to
2 establish a satellite office, though, as it
3 was done in the primary election; correct?

4 A Correct.

5 Q Okay.

6 MR. BROOKS: I don't have any more questions,
7 your Honor.

8 THE COURT: Cross exam.

9 MR. WORK: No cross examination.

10 THE COURT: I have a few questions.

11 EXAMINATION BY THE COURT:

12 Q Ms. LaSota, just generally can you relate what
13 your duties are as Director?

14 A I am to make sure that voters are correctly
15 registered/then steps in elections to make
16 sure that all of the precincts, the boards
17 are filled for our poll workers, that our
18 polls open up on election day.

19 We are responsible, of course, for pay
20 claims. We are responsible for having our
21 mechanics go out. It's, I could safely say,
22 close to 3,000 people, 561 precincts. And on
23 election morning at 6:00, it all opens up.

24 Q What is your nexus to the Board itself in
25 terms of responsibility?

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PLTF'S WIT. SALLY LaSOTA-EXAM BY THE COURT

- 1 A The Board gives me the day-to-day operation.
- 2 Q And you've been a Director for how long?
- 3 A Since, I believe, March of '97, 1997.
- 4 Q So you've had a track record with the Board of
5 Elections in Lake County?
- 6 A Yes, sir.
- 7 Q As I look at the statute here, are you
8 familiar with the statute that we're dealing
9 with today, 3-11-10-37, about absentee voter
10 boards and recommendations for appointments?
- 11 A Yes, sir.
- 12 Q The language says each County Election Board
13 shall notify the County Chairmen, both of
14 them. Who is charged to follow that mandate
15 in your office if you know?
- 16 A It would be my responsibility to see that both
17 party chairs are notified. And in this case,
18 they have received letters, except, again,
19 for this in person in the Clerk's Office.
20 That was a verbal that the Assistant Director
21 and I had.
- 22 Q Do you do that within the ten-day period as
23 the statute requires?
- 24 A We would have had -- we had the names,
25 submitted those names, because no one can

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PLTF'S WIT. SALLY LaSOTA-EXAM BY THE COURT/
REDIRECT BY MR. BROOKS

1 work for us unless they come on party
2 stationery, that they are authorized by those
3 parties.

4 Q I think you may be misunderstanding. Let me
5 clarify my question.

6 Did you notify each county chairman ten
7 days before the absentee voting pursuant to
8 statute in this instance?

9 A I failed with the republican party, but I did
10 notify, not in writing, verbally, the
11 Democratic County Chairman.

12 THE COURT: That's all the questions. Any
13 response to the questions I posed, Mr. Brooks?

14 REDIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q Ms. LaSota, would it be just your recollection
17 that you did not discuss the number of
18 absentee voter boards required for the
19 Hammond, Gary, and East Chicago offices with
20 Nick Gasparovic until this Monday, this week?

- 21 A No, that's incorrect. I told him last week I
22 needed three republicans, actually four, the
23 additional one in our offices.
- 24 Q Do you know what day that would have been?
- 25 A It had to be not -- no, not what specific

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PLTF'S WIT. SALLY LaSOTA-REDIRECT BY MR. BROOKS

- 1 date, but I believe it was last week or after
2 the Board met we were trying to find people
3 to work these offices.
- 4 Q Did you give Mr. Gasparovic any instruction to
5 contact the Republican County Chair?
- 6 A I would assume as Assistant Director he would
7 do that. He does it in other cases.
- 8 Q My question is: Did you direct him to do
9 that?
- 10 A Not to call his chairman, no.
- 11 Q Okay. Thank you.
- 12 THE COURT: Mr. Work, questions?
- 13 MR. WORK: No questions.
- 14 THE COURT: You may step down, ma'am. Thank
15 you.
- 16 (Witness excused.)

17 THE COURT: Call your next witness.
18 MR. BROOKS: We have no more witnesses, your
19 Honor. We rest.
20 THE COURT: You're resting.
21 MR. BROOKS: Yes.
22 THE COURT: Mr. Work.
23 MR. WORK: We are calling no witnesses.
24 THE COURT: Calling no witnesses.
25 Well, I guess if you want to make a closing

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PLTF'S WIT. N. GASPAROVIC-DIRECT BY MR. BROOKS

1 argument...
2 MR. BROOKS: Can we have a quick five-minute
3 break?
4 THE COURT: Five-minute break is granted.
5 (A recess was taken.)
6 THE COURT: We have reconvened on the case of
7 John B. Curley, et al, v. Lake County Board of
8 Elections and Registration, et al.
9 Are now ready for closing arguments, Mr.
10 Brooks.
11 MR. BROOKS: If I could, your Honor, we would

12 request that I be allowed to recall Nick Gasparovic for
13 one -- I don't want to say totally omitted question.
14 It's really in response to some testimony of Ms.
15 LaSota.

16 THE COURT: This is in the line of rebuttal?

17 MR. BROOKS: It would have been.

18 THE COURT: Rebuttal?

19 MR. BROOKS: Yes.

20 THE COURT: Mr. Gasparovic, you've been
21 previously sworn. You may be seated.

22 NICHOLAS GASPAROVIC,
23 having been previously duly sworn, was recalled as a
24 witness and was examined and testified further as
25 follows:

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PLTF'S WIT. N. GASPAROVIC-DIRECT BY MR. BROOKS

1 DIRECT EXAMINATION

2 BY MR. BROOKS:

3 Q Just one quick question.

4 When were you first informed by Sally
5 LaSota the number of absentee ballot voter
6 boards which would be required for the
7 general election?

8 A It would have been Monday.

9 Q This week?

10 A Right.

11 MR. BROOKS: Thank you. I have no further
12 questions.

13 THE COURT: Cross.

14 MR. WORK: No questions.

15 THE COURT: You may step down, sir.

16 (Witness excused.)

17 THE COURT: Are you ready to close now?

18 MR. BROOKS: I am, your Honor.

19 THE COURT: You may proceed, Mr. Brooks.

20 MR. BROOKS: Your Honor, as you recall in
21 opening argument, I indicated that I didn't think that
22 there would be too much disputed testimony and factual
23 matters, and I believe that is exactly what happened in
24 this testimony.

25 And I indicated that there were essentially

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1 three statutory violations, and let me take them not
2 necessarily in order of importance, but let me begin

3 with I.C. 3-11-26-2. This section says that a
4 resolution adopted under this Section, this is (b),
5 must be adopted by a unanimous vote of the Board's
6 entire membership. This is the only way that legally
7 electronic voting systems can be used for in-person
8 absentee ballots. There was no other unanimous vote.

9 In fact, if you look at our only Exhibit
10 2008-1, it quite clearly authorizes it in the office of
11 the Board of Elections and Registration. We're not
12 disputing that.

13 However, the testimony is undisputed that
14 there has simply never been any other vote, let alone a
15 unanimous vote, which would authorize electronic voting
16 in Gary, Hammond, or East Chicago. So we think that
17 the plain and easy reading of this statute indicates
18 that the Board is on the verge of, according to the
19 testimony of Ms. LaSota, of illegally placing
20 electronic voting machines in Hammond, Gary, and East
21 Chicago for absentee balloting.

22 With respect to Section 37, again, I think
23 that the statute is clear, it reads, (a), not later
24 than ten days before absentee voting begins under
25 Section 26 of this chapter each county election board

1 shall notify the current county chairmen -- the county
2 chairmen of the two political parties, and then it goes
3 on as the testimony indicated, the county chairman has
4 an opportunity to pick his partisan -- make his
5 partisan selection as the democrat gets to make his
6 partisan selections.

7 It's indisputable after the testimony, that
8 no, no direct communication was made at all from the
9 election board to the republican county chairman.

10 Granted, Mr. Curley has admitted to the Court
11 that he did find out Wednesday from Mr. Gasparovic, but
12 he called Mr. Gasparovic and it came up in
13 conversation.

14 According to Ms. LaSota, she never gave Mr.
15 Gasparovic a direction to call or talk to the
16 republican county chairman; and according to Mr.
17 Gasparovic, he didn't even know about it until Monday.

18 So even assuming arguendo, that somehow,
19 although there is no evidence of it, that Mr.
20 Gasparovic was an agent of the county chair, which we
21 don't believe that he is, he would have only got notice
22 on Monday, and the county chair didn't notice -- or
23 wasn't informed until Wednesday, just have simply not
24 complied with the ten-day notice requirement, which we

25 believe should be enjoined. That is, in particular,

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1 the Board should be required to follow the law and not
2 start conducting absentee balloting until ten days from
3 whatever day your Honor believed that it -- the ten
4 days should start. But we don't believe it can start
5 any earlier under any argument than Monday, which means
6 that Thursday of next week would be the earliest that
7 it could commence.

8 Lastly, more importantly what we talked about,
9 and that is the issue of whether or not we can have the
10 satellite offices at all. If we look at I.C.
11 3-10-11-26(a)(1) and (a)(2), I think what we see here
12 is a fairly easy read in terms of where you can vote.
13 Section 1 sells us -- I will come back do it in a
14 little more detail, but Section 1 tells us that you get
15 one spot per county to conduct live absentee ballot
16 voting in. And in the case of number Subsection 1, you
17 get to do it in the office of the Circuit Court Clerk
18 unless you're a county subject to I.C. 5-6-5-2.
19 Everybody acknowledges that that's Lake County.

20 So it's saying in parentheses, "or Board of Elections
21 and Registration in a county subject to." Well, Lake
22 County is in that. That's where they get to vote.
23 Just like every other county, they get one spot.
24 If you want to have more than one spot, Lake
25 County, as every other county in the state can do is

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1 establish a satellite office under Section 26.3. 26.3
2 requires a unanimous vote of the vote of the Board.
3 The testimony is clear and undisputed that for purposes
4 of this election, there is no authorization, no
5 unanimous vote to establish a satellite office. And
6 this is not a complicated thing to understand. In
7 fact, I think if you look at the Resolution 2008-1 and
8 you understand that they did it right, depending on how
9 we define resolution, but at least there was a
10 unanimous vote, per that Section 26.3, in April and
11 they tried to do it right again in September. If
12 they're reading that you can put it in any and all
13 Clerk's Offices -- and I will come back to that in more
14 detail -- was correct, that doesn't require any vote at
15 all.

16 They knew where they were supposed to vote in
17 2000 -- in February, when in 2008-1 they designated
18 that's where the electronic voting was going to be.
19 Why? Because that's where it's supposed to be clearly
20 under 26(a)(1). Then they knew that if they had to get
21 more -- wanted more offices to be satellite offices,
22 they'd have to get a unanimous vote. They did that in
23 April. But it was limited to the primary because the
24 specific days were designated upon which they were
25 going to do it. They knew in September that the

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1 satellite offices required a unanimous vote and brought
2 it up that way.

3 But when it was defeated, then all of a
4 sudden, we're going to do it anyway as if Lake County
5 doesn't have to follow these statutory requirements.

6 I think -- although, we are talking about a
7 TR0, you may hear this argument, sort of this no harm,
8 no foul. Well, we could let all of these people vote
9 illegally and then maybe in a couple of weeks or three
10 weeks or day before the election if it gets determined

11 at a later hearing that sites were illegal, we can
12 contact them and figure out a way to vote legally.

13 But the no harm, no foul thing, I think is
14 just another indication that the Board doesn't seem to
15 think it's subject to the statutes. You don't get to
16 opt whether you follow the statutes or not, because you
17 think maybe nobody will notice or maybe it's a good
18 thing although it's illegal.

19 So let me go to -- and let's keep in mind
20 that they have -- that they want to have four sites.
21 One is at the Board of Election and Registration
22 office, which is authorized we think and agree, and
23 then three other sites at Clerk's Offices.

24 So let's figure out how it is and how
25 contorted you have to make this statute in order to

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1 determine that they can have four sites without using
2 Section 2 for the satellite office.

3 They may very well argue that the word "or" in
4 Section 1, gives them an alternative -- an alternate.
5 I think because it's in there inside the parentheses
6 and because Lake County is subject to it, it's very

7 clear that that's they're site. But if they argue that
8 no, we get to -- that it's alternative, that is we can
9 do it in the office of the Circuit Clerk or the office
10 of the Board of Elections, that would require this
11 Court, in my opinion, to move the word "or" outside the
12 parentheses, which would be the normal English reading
13 to give somebody a choice.

14 I would also say that once you do that they
15 want to keep in mind they don't want to do one or the
16 other; they want to do all of it. They want to do both.
17 So now, let's assume that you can, just for argument's
18 sake, somehow for Lake County use the office of the
19 Circuit Court Clerk to conduct onsite absentee ballot
20 voting pursuant to that section.

21 Well, it says, in the office, that is a
22 singular term quite clearly. So in order for them to
23 be able to choose the Circuit Court Clerk option, we
24 would have to move the "or" outside the parentheses.
25 Then we'd have to change the word "office" to "offices"

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1 or "all offices" or "any offices," and just avoid the

2 plain singular meaning there.

3 Next, I think we have serious concerns about
4 the fact that they're calling the Superior Court
5 Clerk's Offices here in East Chicago, Hammond, and Gary
6 the offices of the Circuit Court Clerk.

7 The Circuit Court Clerk is a constitutional
8 office established in Articles VI, II and IV, I
9 believe. I believe it indicates that the statute --
10 that they're duties are assigned by statute. And so
11 one of the statutes that I gave you was 33-32-2-1, I
12 hope. One second. It tells you what the Circuit Court
13 reads, in a county having one or more superior courts
14 or a county, municipal or probate court the clerk shall
15 serve as clerk of the superior, county and probate
16 court as well as the clerk of the Circuit Court.

17 So depending on how many courts one has in the
18 county, in this case, actually I don't know the total
19 number. But I know there are seven or eight superior
20 courts, I think, plus a Circuit Court. So the Circuit
21 Court Clerk is the Circuit Court Clerk with
22 responsibilities to deal with the Circuit Court. He is
23 also the clerk of the superior court, the clerk of the
24 county court, and the clerk of the probate court. Each
25 of those assignments, or designations bring their own

1 separate duties.

2 And the question for us is what Circuit Court
3 function -- clerk functions at all are performed here
4 in East Chicago? We believe the answer to that is
5 none, as is true with Hammond and as is true with Gary.

6 The legislature when it indicates that voting
7 take place in the office of the Circuit Court Clerk, we
8 presume is well aware of the fact that every county has
9 a Circuit Court.

10 And with the one exception that I don't quite
11 understand in Delaware County where they've got
12 divisions of the Circuit Court, I believe every county
13 has one Circuit Court, one Circuit Court Clerk.

14 So in an effort to be fair and uniform, we
15 have to presume that the legislature intended that the
16 voting be in the office of the Circuit Court Clerk, not
17 the office of the Clerk of the Superior Court, not the
18 office of the Clerk of the Probate Court, and so on and
19 so forth.

20 So we think that even if you can contort the
21 statute enough to provide for multiple offices and
22 provide it could be in the office of the Circuit Court
23 Clerk, that this -- there is no Circuit -- Office of

24 the Circuit Court Clerk in Hammond, Gary, and East
25 Chicago. That office resides solely in Crown Point.

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1 If you want to file in Circuit Court, you want to see
2 what the pleadings and the records are for Circuit
3 Court, you got to go to Crown Point not here.

4 I'm going to stop, because obviously your
5 Honor, you are pretty familiar with what's going on
6 with your Court and this is my first time here.

7 THE COURT: I have a question for you, though.

8 MR. BROOKS: Uh-huh.

9 THE COURT: You raise that issue about the
10 Clerk. The issue was raised on the other side about
11 the Judge. You know, I am not a Circuit Court Judge.
12 I'm a Superior Court Judge; right?

13 MR. BROOKS: Right.

14 THE COURT: We made that ruling I'm presiding
15 over this case with Mr. Work.

16 You see that as the same?

17 MR. BROOKS: No, I don't. The reason is for
18 the reasons that Mr. Sendak stated that there is a

19 statute that combines the jurisdiction of the Circuit
20 Court -- the Circuit Court and the Superior Courts as
21 I understand it. And if ever the question, let Mr.
22 Sendak describe it, because obviously I don't practice
23 much in Lake County. So there is a statute that allows
24 you to do things that would have ordinarily been in
25 Circuit Court. But as I understand it, there are still

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1 Circuit Court filings that aren't made here. You may
2 have Circuit Court jurisdiction but, for some filings,
3 but any action captioned with the Circuit Court doesn't
4 get filed here. It has to go to Crown Point.

5 Again, further questions on that one, Mr. --

6 THE COURT: The same is true if something is
7 captioned here as a D02.

8 MR. BROOKS: Let me go -- let me -- I don't
9 understand --

10 THE COURT: You're not from Lake County.

11 MR. BROOKS: Totally with that. But I am
12 familiar with -- and we're talking about the judges. I
13 am familiar with the way the Circuit Court Clerk's
14 duties are set up. And really one is jurisdiction of

15 this Court, but the other is what's the Circuit Court
16 Clerk? In 33-32-2-1 it says quite clearly that
17 those are different duties. You're going to be -- in
18 some counties you may just have the Circuit Court. In
19 some counties, you may have a clerk of the two superior
20 courts and some in others. So consequently, the
21 question is --

22 THE COURT: Doesn't that statute say that he
23 is, and in this instance it would be Mr. Philpot, is
24 the Clerk here, Circuit Court, Superior Court, all of
25 this County? He is the Clerk.

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1 MR. BROOKS: I don't dispute that. What I am
2 disputing is the idea that the office of the Clerk of
3 the Superior Court is the same as the office of the
4 Circuit Court. That's what I'm suggesting, because
5 there are no --

6 THE COURT: Do you have any case law to
7 support that?

8 MR. BROOKS: I do not other than, I think, the
9 plain reading of statute here is the different

10 functions you get to do depending on what county you're
11 in. So the question is this --

12 THE COURT: Well, the Superior Court has the
13 same jurisdiction in this County as the Circuit Court.

14 MR. BROOKS: Well, I'm going to stop making
15 this argument, your Honor.

16 THE COURT: All right.

17 MR. BROOKS: So anyway, I mean that sort of
18 summarizes where we are on this issue. I mean, we think
19 it's, number one, it's clear that you get one option,
20 one option only. And if you're in Lake County, it
21 quite clearly tells you you get to vote at the Board of
22 Elections and Registration unless you do the satellite
23 procedure under 26.3.

24 To get to the multiple locations you got to
25 move the "or", you got to make "offices" plural, and

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1 you have to under -- and believe -- and I told you I
2 was going to stop. So you have to believe that the
3 office of the Superior Court Clerk is the same as the
4 office of the Circuit Court Clerk despite separate
5 statutory duties.

6 So in closing, I would just say that there's
7 no dispute about the facts. The statutes are very
8 clear. And it's very clear that the Board fully
9 intends to, contrary to three different statutory
10 requirements, commence satellite voting without having
11 followed the procedure, not just without having
12 followed it, but having affirmatively tried and failed
13 to follow Section 26.3.

14 Again, I think I would point out that the idea
15 that the Board shouldn't have to follow these statutes
16 is contrary to what a Court does. A Court has to
17 assume that the legislature has a reason for these, and
18 there are reasons to be fair, and so that all the
19 counties have a uniform way of voting. The people who
20 have the risk are the people who are the voters who may
21 very well be casting illegal votes that may be subject
22 to challenge at a later point.

23 So we believe that it is appropriate and
24 compelling that this Court would grant a temporary
25 restraining order restraining the commission from

1 violating the three statutory claims that we have made.

2 And at this point we would tender to the Court
3 a proposed temporary restraining order.

4 That concludes my closing argument, your
5 Honor.

6 I would say before we leave that on behalf of
7 my clients we appreciate your patience and your efforts
8 to be fair about this process both yesterday and today,
9 and it's been a pleasure to practice law in your Court.

10 THE COURT: Thank you, Mr. Brooks.

11 Mr. Work.

12 MR. WORK: I will be very, very belief, Judge.

13 We've got a case here in which we're talking
14 about resolutions rescinded, are not rescinded;
15 resolutions that are in writing, not in writing;
16 practices of the Board that are sometimes good,
17 sometimes not good. And we can spend the rest of the
18 day trying to sort out what procedure is being followed
19 in the conducting of the affairs of the Lake County
20 Board of Elections and Registration. But what I want
21 to address, because I think the Court, and I think
22 everybody in this room knows what this case is all
23 about.

24 It's all right in the primary because it
25 didn't affect them in the primary. All of a sudden in

1 the general election now, we're going to dot all of the
2 "Is," cross all of the "Ts" and that's designed, of
3 course, to allow people who are perhaps from the more
4 affluent south side of the County to vote, clearly
5 absentee, and people from perhaps the less -- the
6 least affluent part of the County deprive them of the
7 right of the convenience and accessibility of voting.

8 What I'm concerned about that they haven't
9 shown yet under Trial Rule 65, there's got to be
10 irreparable harm and some emergency. And I, for the
11 life of me, I don't see that. If the votes are
12 illegally cast, there's a remedy.

13 If they are, in fact, determined to be in
14 compliance with the Federal Voting Rights Act, that's
15 going to be one avenue. On the other hand, if that is
16 not applicable and these statutes that seem to infringe
17 upon the rights given under the Federal Voting Rights
18 Act, if -- they can contest those results. I just
19 don't see the need for a temporary restraining order.

20 I don't think it meets the criteria set forth
21 in Trial Rule 65, and so that's where we are, Judge.
22 That's the position we take.

23 But the one thing that does bother me is that,
24 you know, you can't keep going back and forth. If it's
25 all right one time and we voted for the primary, it

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1 ought to be good for that -- at least the general
2 election of that year.

3 THE COURT: All right. Ladies and gentlemen,
4 I'm going to make a ruling and let me just preface my
5 remarks with these comments: We attempted to give,
6 because of the timing of this action, TRO, as attorneys
7 are aware, are classified as emergency proceedings.
8 You can give them quote-unquote according to our
9 procedures Trial Rule 65 without notice. We tried to
10 do our very best to make sure that the defendants had
11 representation from yesterday.

12 Mr. Sendak indicated he had made telephonic
13 calls. He came in with his pleadings. Before we would
14 take any arguments, testimony, what have you, I ordered
15 that he make some additional contacts. We put off the
16 hearing in terms of timing about an hour, a little less
17 than an hour. Fortunately, Mr. Work came in. That was

18 gratifying because of the nature of these types of
19 proceedings to have someone here on the other side.

20 Mr. Work requested a continuance, and, again,
21 given the gravity of this type of an action, we
22 extended him time to do that.

23 This morning we commenced the proceedings.
24 Defendants filed a notice of removal. Let me just
25 state categorically I don't think that that was a

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1 tactic to be dilatory or to delay this action. They're
2 issues involved in these types of proceedings.

3 I made a ruling in regard to whether or not to
4 stop, give it all to the Federal Courts. I am aware of
5 the statute. I've been involved in cases where they
6 started here, we got them out of here, and got them
7 into Federal Court. But because of the emergency
8 aspect -- I know this is going to be in Federal Court.
9 I wanted to hear the quote-unquote emergency nature of
10 this proceeding and make a ruling one way or the other.

11 I want to commend the witnesses. By and
12 large, when you sit up here, or even if you're out
13 there, because most of my life was on the other side of

14 this bench, you have perceptions. Somebody ain't
15 telling the truth. By and large, I would say my
16 perception of each witness that came up here today
17 probably told 99.9 tenths of the truth. And one
18 witness who is sitting at the other side of the table
19 testified to something that corroborated the testimony
20 of a person who was being represented on the other
21 side. I found that quite fascinating.

22 And one thing that I learned today as a voter
23 that there are a lot of loose procedures in the office
24 of the Lake County Board of Elections.

25 Then I am presented with statutes. That's

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1 what judges have to deal with: Statutes. And then you
2 see these statutes and they told us way back in law
3 school -- been out of law school now, what? Gosh, Mr.
4 Work. Almost -- close to 40 years.

5 But one of the things that resonates about law
6 school is that the verb shall, s-h-a-l-l, is mandatory.
7 That's in every jurisdiction not just the State of
8 Indiana, shall.

9 And some of the shalls did not seem to mean
10 too much in this case. And it just didn't happen this
11 year, obviously, because stuff has been going on.

12 The question is -- I think it's a logical
13 question -- why did you have these procedures in the
14 primary but now, you know, you want to follow something
15 different in the general election? That's a legitimate
16 question.

17 And my middle name is not Ms. Cleo. I can't
18 say, "Call me now and I got all of the answers," and
19 know what motivations are in the minds of folks. So I
20 can't function like Ms. Cleo. I can only function as
21 what I was sworn to be, a judge. I follow the law.

22 And whenever situations that are not kosher
23 and conceivably not legal -- I don't want to -- there
24 are connotations with illegal, there is a mens rea
25 attempt. And I don't think that that's it and we just

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1 -- it's just too loose. The operations and processes
2 were just too loose and are too loose, especially when
3 it comes to governance, governance of a city, town,
4 county, state, and a national government. You can't

5 have loose operations when it comes to voting because
6 that's the thing that separates us from the other
7 people, those folks over in Asia, those folks over in
8 Africa, some European countries. Vote is precious in
9 this country.

10 When I cast my ballot, pressing a button or
11 putting a paper in a box, I want that ballot to be
12 counted, and I want it to be done right by the persons
13 who are in charge.

14 And it's clear with a TRO you don't have to
15 prove it by -- beyond a reasonable doubt. That's
16 criminal standard or preponderance of the evidence.
17 That's a civil. Just prima facie. And prima facie,
18 there's a problem here.

19 So I'm duty bound to grant this temporary
20 restraining order. Got to do it. Got to do it.

21 Mr. Dooley, I'm going to set a date. It
22 probably won't be heard because we got a Federal, but
23 we got to put a date to this order. Set it sometime
24 next week.

25 THE BAILIFF: October 9th or October 10th.

1 THE COURT: Let's do it on the 8th. Put it in
2 on the 8th.

3 I don't think it's going to go, because
4 -- 8th what time?

5 THE BAILIFF: 9:00.

6 MR. SENDAK: Is that Wednesday, Judge?

7 THE COURT: That's Wednesday. Bond will be
8 \$10,000. So we're serious about this. That's the
9 order of the Court.

10 MR. SENDAK: Thank you, your Honor.

11 THE COURT: You will probably deal with all of
12 this in Federal Court, so...

13 (Proceedings adjourned.)

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1 STATE OF INDIANA)
)SS:
 2 COUNTY OF LAKE)
 3 CURLEY, et al)
) CAUSE NO. 45D02-0810-PL-190
 4 vs.)
)
 5 LAKE COUNTY BOARD OF)
 ELECTIONS AND)
 6 REGISTRATION)

7
8 REPORTER'S CERTIFICATE

9 I, JOYCE A. PANKOWSKI, Official Court Reporter of
 the Superior Court of Lake County, Civil Division,
 10 Room Two, East Chicago, Indiana, do hereby certify
 that I am the Official Court Reporter of said court,
 11 duly appointed and sworn to report the evidence of
 causes tried therein.

12 That upon the HEARING ON TEMPORARY RESTRAINING
 13 ORDER held on the 3rd day of October, 2008, I recorded
 and transcribed all statements by counsel, the
 14 evidence given during the trial of this cause, the
 objections of counsel thereto, and the rulings of the
 15 Court upon such objections, the introduction of
 exhibits, the objections thereto, and the Court's
 16 rulings thereon.

17 I further certify that the foregoing transcript as
 prepared, is full, true, correct and complete.

18 IN WITNESS THEREOF, I have hereunto set my hand
 19 and affixed my Official Seal, this 7th day of October,
 2008.

20
 21

22 JOYCE A. PANKOWSKI, CSR, RMR
23 Official Court Reporter
24 Superior Court of Lake County
25 Civil Division, Room Two
East Chicago, Indiana