

STATE OF INDIANA            )                    IN THE MARION SUPERIOR COURT  
                                  ) SS:  
COUNTY OF MARION         )                    CIVIL DIVISION, ROOM NO. 5

STATE OF INDIANA ex rel. INDIANA STATE    )  
REPUBLICAN CENTRAL COMMITTEE,            )  
                                                  ) CAUSE 49D05-0410-MI- 001912  
                                  Plaintiff        )  
                                                  )  
                                  vs.                )  
                                                  )  
MARY C. BROWN, HOLLY FRODERMAN,         )  
and GARY WOLFE, in their Official         )  
Capacities as Members of the Clay County   )  
Election Board; JIM FIELDER,                )  
STEVE HOGAN, and JACK DAVIS, in their    )  
Official Capacities as Members of the      )  
Monroe County Election Board;             )  
NICK ROBERTSON, MARGARET                 )  
STOCKWELL, and MARGARET TUCKER,         )  
in their Official Capacities as Members of   )  
the Owen County Election Board;            )  
PATRICIA MANSARD, DEAN MYERS, and        )  
TOM LOREY, in their Official Capacities    )  
as Members of the Vigo County Election     )  
Board; and KRISTI ROBERTSON, in her       )  
Official Capacity as Co-Director of the     )  
Indiana Election Division,                 )  
                                                  )  
                                  Defendants        )

**FINDINGS OF FACT, CONCLUSIONS OF LAW and ORDER OF MANDATE**

Comes now Gary L. Miller, Judge of the Marion Superior Court, Civil Division, Room 5 and having set this matter for hearing on October 19, 2004 on the complaint of the Plaintiff against the Defendants, and issues these Findings of Fact, Conclusions of Law and Order of Mandate. The Plaintiff appeared by counsel and the Defendants appeared in person and by counsel. Witnesses were sworn and evidence was heard. The Court being duly advised in the premises and after considering the testimony of the

witnesses and the exhibits introduced into evidence, now makes the following Findings of Fact, Conclusions of Law and Order of Mandate:

### **FINDINGS OF FACT**

1. All findings of fact are also deemed conclusions of law.
2. Pursuant to Indiana Code Section 3-10-2-1, a general election will be conducted in each Indiana county on November 2, 2004.
3. After the primary election in May 2004, Jeff Lee (hereinafter "Lee") was certified as the Republican candidate for House District 46.
4. On September 16, 2004, Lee filed a General Election Candidate Withdrawal with the Indiana Election Division.
5. On September 17, 2004, the Indiana Election Division sent a memorandum to the Circuit Court Clerks of Clay, Monroe, Owen, and Vigo Counties informing them of the withdrawal and directing that they remove Lee's name from the Ballot.
6. On September 24, 2004, the Indiana State Democratic Central Committee and Dora Mae Abel (hereinafter "Vigo Plaintiffs") filed a lawsuit in Vigo County asking the Court to grant an injunction against the removal of Lee's name from the ballot claiming that his withdrawal was invalid because he had not moved from the district. The Plaintiffs also requested a preliminary injunction and a temporary restraining order (hereinafter "TRO").
7. On September 27, 2004, Vigo Superior Court Judge Bolk held a hearing on the Vigo Plaintiffs Motion for TRO and issued a TRO, effective "for a period of ten (10) days," enjoining Defendants Election Divisions Co-Director King and

Robertson and from “certifying any replacement candidates of the Republican Party in House District 46 for the general election scheduled for November 2, 2004”, and the Defendant County Election Board Members from “printing, using or distributing any ballots that contain the name of any Republican Party candidate for House District 46 other than Defendant Lee for the general election scheduled for November 2, 2004.” The TRO expired, by its terms, on October 7, 2004.

8. The Republican Party held a caucus on September 27, 2004, and selected R. Brooks LaPlante (hereinafter “LaPlante”) as its replacement candidate for House District 46. The Republican Party then certified its choice to the Election Division on September 28, 2004.
9. On October 1, 2004, Lee filed another General Election Candidate Withdrawal with the Indiana Election Division because he said he had completed his move to Sullivan County which is outside the district. This was his second Candidate Withdrawal, and was not the subject of any proceedings in any Indiana Court on the date of the filing of this action.
10. Based on the October 1st withdrawal, the Indiana Republican Party scheduled and held a second caucus to fill the vacancy on October 11, 2004, which resulted in LaPlante being selected as the Republican candidate for House District 46. The Indiana Republican Party certified LaPlante as their candidate on October 12, 2004.
11. On October 12, 2004, the Election Division received a Certificate of Candidate Selection naming LaPlante as the Republican candidate for House District 46.

12. On October 12, 2004, the Election Division received a candidate filing challenge questioning the eligibility of LaPlante as the Republican candidate for House District 46.
13. On October 12th, after receiving the Certificate of Candidate Selection naming LaPlante as the Republican candidate for House District 46, J. Bradley King, Co-Director of the Indiana Election Division prepared, signed, and presented to fellow Co-Director Defendant Kristi Robertson a document entitled "Additional Certification to the Counties of Clay, Monroe, Owen and Vigo" certifying LaPlante as the Republican candidate for House District 46. Defendant Robertson refused to sign the Additional Certification presented to her by Co-Director King.
14. At the same time, Defendant Robertson presented Co-Director King with her own "Amended Certification" which noted that LaPlante was certified as the candidate, but directed the Defendant County Election Boards, "pursuant to Indiana Code 3-13-1-16 and 3-13-2-9," NOT to print his name on the ballot because "the candidacy of R. Brooks LaPlante has been challenged pursuant to Indiana Code 3-8-1-2." That code section reads:

The election division shall furnish the circuit court clerk with a certified list of the name and address of each candidate selected under section 15 of this chapter. If a certificate of candidate selection filed with the election division is questioned under IC 3-8-1-2, the election division shall indicate on the certified list that candidate's name is not to be printed on the ballot until the question is resolved by the commission or a court with jurisdiction in the matter.
15. Defendant Robertson's refusal to sign Co-Director King's Additional Certification and substitution of her own Amended Certification specifically directing the County Election Boards not to put LaPlante's name on the ballot was based on

Dora Mae Abel's October 12, 2004 filing of a "Candidate Filing Challenge" and Robertson's belief that IC 3-13-1-16 applied.

16. To date, Defendant Robertson has refused to sign a certification placing LaPlante on the ballot, despite the demand of Plaintiff to do so.
17. To date, the Election Commission has not acted on the Certificate of Candidate Selection naming LaPlante as the Republican candidate for House District 46, nor have they acted on the challenge questioning the eligibility of LaPlante, as the Republican candidate for House District 46.
18. The issues raised by the October 12, 2004 candidate filing challenge questioning the eligibility of LaPlante, as the Republican candidate for House District 46 are scheduled to be heard in the Vigo Superior Court on Tuesday October 26, 2004 *under the purported withdrawal of the candidacy of Lee filed on September 16.*  
As of the date of the hearing in this case, no judicial determination had been made on Lee's filing of October 1.
19. The Defendant County Election Boards have prepared absentee ballots for House District 46 with Lee as the Republican candidate for House District 46 and have been mailing those absentee ballots to absentee voters and using those same ballots for early voters from September 30th to date.
20. No final order has ever been entered by the Indiana Election Commission regarding the failure of LaPlante to file pre-election contributor reports before the 2002 election.

### **CONCLUSIONS OF LAW**

1. All conclusions of law are also deemed findings of fact.

2. This court has jurisdiction over the matter before it in Plaintiff's complaint.
3. The bipartisan Indiana Election Commission, which consists of four gubernatorial appointees, is charged with administering Indiana election laws and governing the fair, legal, and orderly conduct of elections. Ind. Code § 3-6-4.1-14(a).
4. The election division is established within the office of the secretary of state. The secretary of state is required to perform all ministerial duties related to the administration of elections by the state and the election division shall assist the commission and the secretary of state in the administration of elections. Ind. Code 3-6-4.2-2
5. The governor is required to appoint two (2) co-directors for the election division who are then required to also carry out the policies, decisions, and recommendations of the commission. Ind. Code 3-6-4.2-3
6. Included in the duties of the election Division are that they "shall do the following: (1) Prepare and distribute paper ballots for the election or retention of persons to federal and state offices and for public questions in compliance with this title..." Ind. Code 3-6-4.2-12
7. Each three-member county election board in Indiana consists of the circuit court clerk and persons nominated by the county chairmen of the two major political parties. Ind. Code §§ 3-6-5-2, -5. County election boards are responsible for conducting elections and administering election laws within the county, preparing all ballots except those prepared by the Election Division of the Secretary of State's Office, and distributing all ballots to all precincts in the county. Ind. Code § 3-6-5-14(a).

8. Both Co-Directors must act together in order for a candidate certification to be valid. *Sammons v. Conrad*, 740 N. E. 2d 114, 118 (Ind. 2000). The Co-Directors do not have the authority to resolve candidate challenges.
9. Indiana Code § 3-8-1-2(c) allows a registered voter of the election district that a candidate seeks to represent, to file a sworn statement with the election division or election board: (1) questioning the eligibility of a candidate to seek the office; and (2) setting forth the facts known to the voter concerning this question.
10. Indiana Code § 3-8-1-2(f) provides that upon the filing of a sworn statement under subsection (c), the commission or election board shall determine the validity of the questioned certificate of candidate selection issued under Ind.Code 3-13-1-15 and Ind.Code 3-13-2-8.
11. In a Presidential election year, county election boards shall have the absentee ballots printed and “delivered to the circuit court clerk . . . not later than thirty-eight (38) days before the election.” Ind. Code § 3-11-4-15. In 2004, September 25th is thirty-eighth day before the 2004 election.
12. Absentee ballots must be mailed “(1) on the day of the receipt of the voter’s application; or (2) not more than five (5) days after the date of delivery of the absentee ballots under section 15 of this chapter; whichever is later.” Ind. Code § 3-11-4-18. Thus, absentee ballots should be mailed on the day the application is received by the clerk’s office to those voters whose applications are received after September 30, 2004.
13. Further, a person who is otherwise qualified to vote in person, may vote by absentee ballot in the clerk’s office “not more than twenty-nine (29) days nor later

than noon on the day before election day.” Ind. Code § 3-11-4-1 and 3-11-10-26.  
The 29th day before the election was October 4, 2004.

14. In construing statutes, a court's goal is to seek out and give effect to the intent of the legislature. In attempting to determine legislative intent, the court gives deference to an interpretation of a statute by an administrative agency charged with administering the statute. An agency's interpretation of a statute is not binding upon the court when that interpretation is incorrect or if the legislative intent is apparent. *Ind. Civil Rights Comm'n v. Sutherland Lumber*, 182 Ind. App. 133, 140, 394 N.E.2d 949, 954 (Ind. App.1979), *trans. denied*; *Sadler v. State ex rel. Sanders*, 811 N.E.2d 936 (Ind. 2004); *Pabey v. Pastrick*, 2004 WL 1770562 (Ind. 2004).
15. A court ordinarily attempts to give words appearing in a statute their plain and ordinary meaning, absent a clearly manifested legislative purpose to do otherwise. In addition, statutory provisions covering the same general subject matter should be construed together to produce a harmonious statutory scheme. *Sadler v. State ex rel. Sanders*, 811 N.E.2d 936
16. A court must determine and then apply the legislative intent underlying statutes and construe them in such a way as to prevent absurdity and hardship and to favor public convenience. In so doing, the court considers the objects and purposes of the statutes, as well as the effects and consequences of such an interpretation. *Id.*
17. The court will not read into a statute that which is not the manifest intent of the legislature. The first, and often the last, step in interpreting a statute is to

examine the language of the statute. The court is guided by the principle that the best evidence of the legislature's intent is the language found in the statute itself.

*Id.*

18. IC 34-1-54-4 provides that “an action for mandate may be prosecuted against any inferior tribunal, corporation, public or corporate officer or person to compel the performance of any act which the law specifically enjoins, or any duty resulting from any office, trust or station.”
19. The public interest is served by the issuance of a court order that requires only that parties comply with the clear dictates of law. *Id.*
20. Any pre-election challenges to placement of a candidate on a ballot can only be heard by a court if it is “a party’s last and only resort.” *Id.*
21. Indiana law provides for post-election procedures to challenge the qualifications of a candidate to be placed on the ballot. Ind. Code § 3-12-11-1.
22. There are two situations under which a candidate may be replaced under Indiana law. The first is where there is an “early” vacancy which “applies to the filling of a candidate vacancy that arises for any reason if the vacancy leaves a major political party without a candidate for the office and occurs before the thirtieth day before a general, special, or municipal election.” IC 3-13-1-1 et seq
23. The second “applies to the filling of a candidate vacancy that exists due to the... (2) (w)ithdrawal of a candidate who has moved from the election district”. IC 3-13-2-1 et seq.
24. Once a candidate is selected, under Ind. Code § 3-13-1-16, the Indiana Election Division is required to certify that candidate to the election boards to be placed

on the ballot.

25. Both Co-Directors must act together in order for a certification to be valid.  
*Sammons v. Conrad*, 740 N.E. 2d 114, 118 (Ind. 2000).
26. Indiana Code § 3-13-1 *et seq.* provides the procedures for handling “early candidate vacancies” that occur prior to the 30th day before a general election, while Indiana Code § 3-13-2 *et seq.* provides the procedures for handling “late candidate vacancies” that occur after the 31st day before the general election.  
The 30th day before the election fell on October 3, 2004.
27. The TRO issued on September 27, 2004, which expired on October 7, 2004, and prohibited Defendant Kristi Robertson from “certifying any replacement candidates of the Republican Party in House District 46 for the general election scheduled for November 2, 2004”, was directed at the September 16, 2004 withdrawal of Lee and did not encompass any actions based on Lee’s withdrawal on October 1, 2004.
28. Lee’s second withdrawal, filed October 1, 2004, was filed prior to October 3, 2004. Therefore, the provisions that apply to the issue before this Court are those regarding “early candidate withdrawals” under Indiana Code § 3-13-1 *et seq.* and not those governing “late candidate withdrawals” in Indiana Code § 3-13-2 *et seq.* Thus, Defendant Robertson’s refusal to certify LaPlante based on Indiana Code § 3-13-2-9 is contrary to law.
29. Further, Indiana Code § 3-13-1-16.5(a) deals with issues regarding the validity of the certificate and requires:

(a) All questions concerning the validity of a certificate of candidate selection filed with the election division shall be

determined by the commission. A statement questioning the validity of a certificate of candidate selection must be filed with the election division under IC 3-8-1-2(c) not later than noon seventy-four (74) days before the date on which the general or municipal election will be held for the office.

(b) All questions concerning the validity of a certificate of candidate selection filed with a circuit court clerk shall be referred to and determined by the county election board. A statement questioning the validity of a certificate of candidate selection must be filed with the county election board under IC 3-8-1-2(c) not later than noon seventy-four (74) days before the date on which the general or municipal election will be held for the office.

(c) The commission or a county election board shall rule on the validity of the certificate of candidate selection not later than noon sixty (60) days before the date on which the general or municipal election will be held for the office.

30. The date by which the statement questioning the validity of the certificate of Lee fell on August 20, 2004. No timely certificate was filed on or before that date.
31. The date that the Election Division was required to rule on the validity of the certificate of candidate selection fell on September 3, 2004. No timely ruling was made.
32. There is a gap in the law in that there is no statute that addresses the issue presented in this case.
33. Defendant Robertson's refusal based on Indiana Code § 3-13-1-16 is contrary to law because Abel's "Candidate Filing Challenge," filed October 12, 2004, is untimely and invalid and it was not filed before August 20, 2004, as prescribed by Indiana Code § 3-13-1-16.5(a). The Election Commission cannot, and could not, rule on the untimely filed challenge before September 3, 2004 as required by Indiana Code 3-13-1-16.5(c).

34. Defendant Robertson has failed to certify, without qualification, LaPlante as the Republican Candidate for House District 46 as required by law.
35. Defendant Robertson's failure to certify LaPlante as the Republican Candidate for House District 46 was ministerial as required by law and has resulted in defective absentee ballots being distributed since October 12, 2004.
36. This Court finds that all other procedural requirements for placement on the ballot by the Plaintiff and LaPlante have been met.
37. An action for mandate is an extraordinary remedy, but it is a proper remedy when an inferior court, corporation, public or corporate officer or person fails to perform a duty which is imposed by law. Ind. Code § 34-27-3-1
38. A party requesting mandate must have a clear and unquestioned legal right to the relief sought and must show that the respondent has an absolute duty to perform the act demanded. *Fulton County Advisory Plan Comm'n v. Groninger*, 790 N.E.2d 541 (Ind. App. 2003)
39. In this case, the Plaintiff has a clear and unquestioned legal right to the relief sought and Defendant Robertson's failure to certify R. Brooks LaPlante as the Republican Candidate for House District 46 is a ministerial act as required by law and is subject to mandate by this Court. Therefore, she should be ordered to perform her lawful duty and certify R. Brooks LaPlante as the Republican Candidate for House District 46.

#### **ORDER OF MANDATE**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. Defendant Robertson is hereby mandated and ordered to immediately certify

R. Brooks LaPlante as the Republican House District 46 candidate to the Clay, Monroe, Owen, and Vigo County Election Boards without any qualification.

2. The Defendant County Election Boards are hereby mandated to immediately remove Jeff Lee's name from the ballot, to place R. Brooks LaPlante on the ballot as the Republican candidate for House District 46, to henceforth provide ballots to voters with R. Brooks LaPlante on the ballot as the Republican candidate for House District 46
3. In addition, the Defendant County Election Boards are hereby mandated to immediately send notice and replacement ballots to all absentee voters who have been provided absentee ballots advising them that their previously completed ballots are void and will not be counted.
4. Defendants to pay costs pursuant to Indiana Code § 3-27-1-4.

All of which is ORDERED, ADJUDGED, and DECREED on this the 21st of October 2004.

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Gary L. Miller  
Judge

cc: Counsel of Record