

IN THE INDIANA SUPREME COURT
Case No. 26S-EX-293

In re: Election Recount:

Senator Spencer R. Deery,
Appellant/Respondent/
Cross-Appellee,

v.

Paula K. Copenhaver,
Appellee/Petitioner/
Cross-Appellant,

and

Secretary of State Diego Morales, Paul
Mullin, and Michael Claytor, as
Members of the Indiana Recount
Commission,
Appellees.

Court of Appeals Case No.
26A-EX-2271

Appeal from the
Indiana Recount Commission

**Brief of Club for Growth As *Amicus Curiae* in Support of
Appellee/Cross-Appellant Paula K. Copenhaver**

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Interests of *Amicus Curiae*¹

Club for Growth is a national membership organization dedicated to economic freedom and limited government. It participates regularly in state and federal elections and has a continuing interest in rules that are announced in advance, administered uniformly, and made final early enough for the next stage of the electoral process to proceed on equal terms.

David McIntosh has served as President of Club for Growth since 2014. McIntosh was raised in Kendallville, Indiana, served as Indiana's 2nd District Congressman from 1995 to 2001, and was the Republican nominee for Governor in 2000. McIntosh is Chair of *Amicus*'s affiliated independent-expenditure organization, School Freedom Fund, which supported Paula K. Copenhaver in the May 5, 2026 primary and supports her here. Because amicus expects to participate in Indiana elections again, amicus and the public will benefit from a rule that treats enacted deadlines as law rather than as invitations to case-specific calendar adjustments and that enforces the plain meaning of statutes to protect voters from disenfranchisement and to secure election integrity

Summary of Argument

"Elections must end sometime, a single deadline supplies clear notice, and ... puts all voters on the same footing." *Democratic National Committee v. Wisconsin*

¹ No party's counsel authored any part of this brief, nor did any party's counsel or any other person contribute any money intended to file this brief.

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State Legislature, 592 U.S. 1039, 1040 (2020) (Gorsuch, J., concurring in denial of application to vacate stay). This brief argues that the Appellant’s case is moot because the legislature’s carefully balanced calendar forecloses effective relief and that Indiana’s layered election-integrity procedures indicate that the ballots not counted by the Recount Commission should not have been counted.

The separation of powers articulated in Article 3 of the Indiana Constitution forecloses the alternative and the free and equal elections guarantee ensured by the Court’s adhering to the General Assembly’s “carefully calibrated scheme for candidate and election challenges.” *Thomas v. Foyst*, 260 N.E.3d 887, 892 (Ind. 2025).

Uniform rules fixed in advance put voters on equal footing; a calendar that varies with the duration of each recount and appeal does not. Although I.C. § 3-12-10-18 authorizes review of Commission errors of law, it does not stay certification, displace the correction timetable, or hold the ballot open pending appeal, and thus does not suspend the Election Code. *Morales v. Rust*, 228 N.E.3d 1025, 1048 (Ind. 2024).

Indiana’s layered election-integrity provisions protect the election process from nefarious intervention. Upholding the plain meaning of the General Assembly’s requirement of a clerk’s signature and seal for a piece of paper to be a bona fide ballot is essential to prevent voter disenfranchisement and to secure election integrity.

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For these reasons, the Court should dismiss Appellant’s challenge as moot or affirm the Commission.

Argument

I. Federal and state courts treat legislative deadlines as essential to orderly and equal elections.

A. The case is moot because no effective relief can be ordered.

A case is moot when no effective relief can be rendered to the parties. *Thomas*, 260 N.E.3d at 895-96; *In re Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991). The United States Supreme Court dismissed an election challenge after intervening events made it impossible to grant “any effectual relief whatever.” *Mills v. Green*, 159 U.S. 651, 653 (1895).

The question here is whether an order entered now could still lawfully and practically place Senator Deery on the general-election ballot given the completed recount, the missed certification deadline, and the ballot-administration obligations that follow certification and are now underway. It could not. An order substituting a different nominee after the certification and correction deadlines have passed would not simply correct a certificate; it would require the election process to operate on a radically different schedule that the General Assembly did not enact.

B. Effective relief is measured by the statutory and practical consequences of altering an election after the process has advanced.

Purcell v. Gonzalez, 549 U.S. 1 (2006), supplies an election-specific lesson that should inform the Court here: relief cannot be assessed without regard to the

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election process already underway. In *Purcell*, the Supreme Court vacated an injunction entered shortly before Arizona’s general election reasoning that the risk of causing voter confusion from court orders increases as the election approaches. *Id.* at 4–6. In *Republican National Committee v. Democratic National Committee*, the Court stayed an order entered shortly before Wisconsin’s 2020 primary, reiterating that courts ordinarily should not alter election rules near an election because doing so risks “fundamentally alter[ing] the nature of the election.” 589 U.S. 423, 424-26 (2020) (per curiam). Justice Kavanaugh explained that settled rules allow thousands of officials and volunteers to coordinate their work and communicate accurately with voters, while late judicial alterations can disrupt administration and cause unanticipated consequences. *Democratic Nat’l Comm.*, 592 U.S. at 1044 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay). Substantial regulation is necessary if elections are to be fair and honest and if “order, rather than chaos” is to accompany the democratic process. *Storer v. Brown*, 415 U.S. 724, 730 (1974).

Although *Purcell* addresses federal equitable intervention, the practical consequences it identifies do not depend on which court signs the order. No order can eliminate the interdependent administrative tasks that certification triggers, or the confusion that follows when settled inputs change after ballot preparation has begun. Justice Alito described *Purcell* as a “principle of restraint” addressing late judicial action that disrupts legitimate voter expectations. *Malliotakis v. Williams*,

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607 U.S. ___, slip op. at 4 (Mar. 2, 2026) (Alito, J., concurring in grant of stay). State courts have likewise measured available relief against statutory milestones. *Moore v. Lee*, 644 S.W.3d 59, 64–67 (Tenn. 2022) (vacating an order that extended a candidate-filing deadline in light of the burden on election officials, the public interest in an orderly election, and the risk of voter confusion and disenfranchisement); *Burbank v. Evnen*, 321 Neb. 65, 74–75, 82–83 (2026) (allowing recertification before the statutory deadline because no deadline had passed that would create a legal or practical barrier to granting the relief). But that is not the case here.

C. The enacted calendar provides no mechanism for holding the general-election ballot open pending recount appellate review.

While Indiana law permits judicial review of Commission decisions, judicial review and suspension of the election calendar are different things. Nothing in I.C. § 3-12-10-18 stays the Indiana Election Division’s certification duty, displaces I.C. § 3-8-7-3’s correction timetable, postpones the State’s ballot-production requirements or the federal deadline for transmitting ballots to military and overseas voters, or authorizes an unresolved candidate field or other judicial placeholder that holds the general-election ballot open while appellate review proceeds.

The issue is not whether courts may identify an error of law in a Commission decision. They may. It is whether the ballot-changing remedy Senator Deery seeks remains available within the election process the General Assembly enacted. It does

not. That leaves the institutional question: whether the Court may create the suspension mechanism or substitute calendar needed to make unavailable relief possible.

II. Article 3 requires the Court to interpret the election code as enacted, not to create a new election calendar for this contest.

The Court’s authority to interpret Title 3 is not questioned. The narrower issue is whether interpretation may supply a suspension mechanism, substitute deadline, or ballot-administration device the enacted scheme does not contain.

A. The General Assembly—not the judiciary—sets the policy balance among accuracy, finality, and election administration.

The Indiana Constitution separates governmental powers and vests legislative authority in the General Assembly. Ind. Const. art. 3, § 1; art. 4, § 1. In an election case, this Court accordingly declined to “reinvent the constitutional wheel . . . based on our preferences about the fairness of primary elections in Indiana.” *Morales*, 228 N.E.3d at 1048.

How much time should separate a primary recount from certification, ballot preparation, ballot delivery, and overseas transmission is a policy judgment balancing accuracy, finality, administrative capacity, and voters’ opportunity to receive a correct ballot. Courts enforce the balance the General Assembly struck; they do not strike a new one for a particular contest.

Thomas is particularly relevant here. The Court explained that Indiana courts protect the constitutional guarantee of free and equal elections by honoring

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not only the General Assembly’s candidacy requirements but also its “carefully calibrated scheme for candidate and election challenges”—its chosen deadlines, forums, procedural requirements, and remedies. 260 N.E.3d at 892.

The recount provisions, judicial-review mechanism, certification requirements, and ballot-administration deadlines are therefore parts of a single statutory system, not independent components that may be rearranged case by case. That principle also answers Senator Deery’s free-and-equal-elections argument. Uniform rules established before an election protect voters as well as administrators, and a timetable that varies with the pace or procedural posture of each recount would sacrifice the uniformity the Election Code is designed to provide.

B. Judicial review of a recount decision does not suspend the remainder of the Election Code.

I.C. § 3-12-10-18 authorizes judicial review of Commission errors of law, as Senator Deery observes. But review does not answer the remedial question. Nothing in I.C. § 3-12-10-18 suspends the duties and deadlines catalogued above. I.C. § 3-12-5-14 is no broader: it exempts recount corrections made under I.C. § 3-12-11-23 from its own correction deadline; it does not exempt a recount appeal from every other date the General Assembly established.

C. *Peterson*, the Open Courts Clause, and the public-interest exception do not authorize a judicial substitute for the enacted calendar.

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Peterson v. Borst confirms rather than undermines the distinction between interpreting the enacted scheme and supplying a substitute for it. There, the General Assembly had expressly assigned the judiciary a role in resolving a redistricting deadlock. 786 N.E.2d 668, 675–76 (Ind. 2003). When the court-supervised map made existing dates impracticable, the Marion County Election Board requested limited, unopposed adjustments necessary to administer it, which the Court characterized as a “ministerial act, necessary to avoid frustrating legislative intent.” *Peterson v. Borst*, 785 N.E.2d 1096, 1097 (Ind. 2003).

This case is different. The Commission completed its assigned task. No election official asks the Court to alter the calendar. And replacing a certified nominee is substantive relief, not a ministerial adjustment incident to administering a map the judiciary was charged with producing.

Article 1, Section 12 does not supply the missing mechanism either. The Open Courts Clause guarantees access to courts but “does not specify any particular remedy for any particular wrong.” *Cantrell v. Morris*, 849 N.E.2d 488, 499 (Ind. 2006). Senator Deery received a recount, a Commission decision, and judicial review. Indiana Appellate Rule 66(C)(10) authorizes “appropriate” relief; it does not make a remedy appropriate after the statutory election process and intervening events have made that remedy unavailable.

The public-interest exception preserves the same distinction. Invoking it results, “for all practical purposes,” in an advisory opinion. *I.J. v. State*, 178 N.E.3d

798, 799 (Ind. 2022). If the Court concludes that the recount statutes require guidance for future elections, it may provide that guidance without creating ballot-changing relief that no longer exists here.

If the Court nevertheless reaches Senator Deery’s challenge to the disputed absentee ballots, the same respect for legislative design applies to the General Assembly’s prescribed authentication requirements.

III. Election-integrity safeguards preserve public confidence in the electoral process.

A. Election-integrity safeguards make election integrity objectively demonstrable.

Election-integrity safeguards serve a purpose beyond detecting individual misconduct. They establish a process by which the public can determine that ballots were properly handled and election officials followed the rules governing the count. The American Law Institute explains that election procedures should promote “a sense of legitimacy and integrity of the vote-counting and election process.” Am. Law Inst., *Principles of the Law, Election Administration: Non-Precinct Voting and Resolution of Ballot-Counting Disputes* § 103 cmt. (2019) (“**ALI Principles**”). For absentee voting, the ALI Principles call for alternative safeguards because voting occurs outside election-official supervision and warn that inconsistent processing invites “controversy and suspicion concerning election outcomes.” *Id.* § 110 cmt. a.

B. Public confidence in election administration protects meaningful participation.

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The National Academies recognize that representative democracy depends not only on accurately counting ballots but also on citizens' confidence that the count is accurate. Eligible citizens must be able to participate, have their ballots accurately counted, "and be confident that their ballots have been accurately cast, counted, and tabulated." Nat'l Acads. of Scis., Eng'g, & Med., *Securing the Vote: Protecting American Democracy* 12 (2018).

The ALI's *Ethical Standards for Election Administration* likewise provide that "the public should not have to rely solely on trust to conclude that an election was correctly conducted" and that "[t]he legitimacy of elections rests on them being conducted according to the law." Bipartisan Working Grp. convened by the Am. Law Inst., *Ethical Standards for Election Administration* 6 (2024). The U.S. Election Assistance Commission explains that post-election audits "promote voter confidence in the election administration process" and that "[t]ransparency is key to building confidence in election outcomes." U.S. Election Assistance Comm'n, *Election Management Guidelines* ch. 17 (2d ed. 2023).

Election safeguards thus protect the franchise in two complementary ways: they help ensure that ballots are properly handled and counted, and they preserve confidence that the electoral process is lawful, reliable, and worthy of participation. When prescribed procedures are disregarded, voters and the public lose an objective basis for concluding that the election was conducted as the law requires. As the ALI Principles recognize, inconsistent absentee-ballot processing invites suspicion. ALI

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Principles § 110 cmt a. That objective basis is especially important where voters cannot directly observe ballot processing themselves.

IV. Indiana protects election integrity through ballot authentication.

A. Layered controls provide distinct assurances throughout absentee voting.

Election integrity rarely rests on a single verification. Several distinct questions must be answered: whether an eligible voter returned the ballot, whether the ballot was officially issued, whether custody was documented, and whether the ballot submitted is the ballot the eligible voter cast.

National election-administration guidance reflects that structure. The U.S. Election Assistance Commission separately recommends written chain-of-custody procedures, documented transfers, security seals, witness signatures, and ballot reconciliation. U.S. Election Assistance Comm’n, *Chain of Custody Best Practices* 2–3, 7, 11–12 (July 12, 2021); U.S. Election Assistance Comm’n, *Ballot Reconciliation: Mailed Ballots* 1 (May 1, 2022); see also Nat’l Acads. of Scis., Eng’g, & Med., *Securing the Vote: Protecting American Democracy* 6 (2018). A custody record therefore does not perform the same function as ballot authentication; voter authentication does not establish official issuance of the ballot; and bipartisan processing does not itself establish that the ballot is authentic.

State election laws commonly separate initial authentication from secondary verification or cure. See Nat’l Conf. of State Legislatures, *Table 14: How States*

Verify Voted Absentee/Mail Ballots (May 20, 2026) (surveying state absentee- and mail-ballot verification requirements). This illustrates the point: when election systems prescribe multiple validation requirement, successfully meeting one requirement does not establish that another was complied with. The bipartisan Commission on Federal Election Reform reflected the same understanding, treating signature verification, ballot accounting, absentee-ballot handling, and post-receipt security as distinct safeguards. Comm’n on Fed. Election Reform, *Building Confidence in U.S. Elections* 35, 46–47 (Sept. 2005). The general principle is that authentication, accounting, custody, and handling are distinct election-integrity functions. And none of this depends on an allegation of fraud. Authentication safeguards are preventive; they protect voters from disenfranchisement and secure election integrity.

B. Indiana assigns separate required safeguards to separate statutory acts.

Indiana’s statutes implement that layered structure directly. A mailed absentee ballot “must bear” or “be marked” with the clerk’s signature and seal, as well as the initials of two designated election officials. I.C. § 3-11-4-19(a). The same safeguards apply to in-person balloting, where the ballot must bear the prescribed “seal, signature, and initials.” I.C. §§ 3-11-4-19(b), 3-11-10-27(c). The Division likewise describes the clerk’s signature, seal, and bipartisan initials as three separate requirements placed on a absentee ballot before issuance. Ind. Election

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Div., *2026 Indiana Election Administrator's Manual* 186–87 (rev. Apr. 16, 2026).

These separate requirements matter. The seal and signature are clerk-specific; the initials reflect acts assigned to separately designated officials. Requiring both sets of markings would serve little purpose if one automatically established the other. Nor does in-person absentee voting erase those distinctions. *Horseman v. Keller* recognized that absentee voting involves procedures for “receiving, verifying, storing, transporting, and counting” ballots that differ from Election Day voting, and rejected the premise that walk-in absentee voting “eradicate[s]” those differences. 841 N.E.2d 164, 172–73 (Ind. 2006). Indiana’s statutes confirm that conclusion by requiring clerk authentication even when the voter appears in person.²

C. No prescribed verification may be treated as surplusage.

Ind. Code §§ 3-11-4-19, -10-27 separately prescribe official authentication requirements, which both *Werber* and *Brown* address. *Werber v. Hughes*, 148 N.E. 149, 151 (Ind. 1925); *Brown v. Grzeskowiak*, 101 N.E.2d 639, 647, 654 (Ind. 1951). *Werber* explains why that matters: the clerk’s prescribed authentication supplied official identification, and other officials’ initials did not perform that function. 148 N.E. at 151; *see also* Indiana Sec’y of State, *2026 Indiana Election Administrator’s*

² *See also* Christopher B. Mann, *Mail Ballots in the United States: Policy Choice and Administrative Challenges*, in *The Measure of American Elections* 113, 113–40 (Barry C. Burden & Charles Stewart III eds., 2014); Barry C. Burden & Brian J. Gaines, *Presidential Commission on Election Administration: Absentee and Early Voting: Weighing the Costs of Convenience*, 14 Election L.J. 32, 32–37 (2015) (examining administrative differences associated with absentee and early voting).

Manual 186-87 (2026) (recognizing that these are three separate authentication requirements).

D. The disputed absentee ballots do not comply with the required authentication requirements.

None of the disputed ballots contains both the clerk's signature and seal. Appellant's App. Vol. II pp. 64, 67, 69, 72, 76, 79. While two of the absentee ballots were voted in person during early voting, Appellant's App. Vol. II pp. 63, 66; Appellant's Br. at 7, I.C. § 3-11-4-19(b) requires such a ballot to bear the clerk's signature and seal, and *Horseman* forecloses treating the voter's physical presence as making those requirements inapplicable. 841 N.E.2d at 172–73. Physical presence may eliminate risks associated with postal transmission, but it does not dispense with the need for clerk authentication of the ballot.

Senator Deery's entire argument, however, is based on a myth for which there is no evidence. Deery claims that the "[s]ix qualified *voters cast absentee ballots*," which "were rejected for one reason alone: *election officials failed to perform their statutory duty to affix the clerk's seal and/or signature*," Appellant's Br. at 8 (emphasis added), and, therefore, I.C. § 3-12-1-12(b), the saving clause, applies.

First, there is no evidence here that the ballots actually cast were the ballots the voters submitted, either by mail or in person in early voting. Both voting by mail and early voting necessarily involve an interval during which the submitted absentee ballots are outside the voters' control and accessible to others, sometimes

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for long periods of time. This is why the General Assembly has applied absentee-ballot rules to early voting. This period allows nefarious persons time to substitute a fraudulent ballot for the one submitted by the voter, disenfranchising the voter. The authentication of the ballot by the clerk's signature and seal stands in the way of this voter disenfranchisement by discouraging this fraudulent activity. And the presence of the initials of the members of the absentee voter board does not serve the function of authentication of the ballot, only the clerk can do that. And relying on the initials alone is not adequate, since ballots and initials can be forged and election officials can collude to favor certain candidates regardless of party.

Second, there is no evidence here that the absence of the clerk's signature and seal resulted from a failure of election officials to affix them, rather than from the ballots being fraudulent ballots created by persons who lacked access to the clerk's signature and seal. As a result, I.C. § 3-12-1-12(b), the saving clause, is not applicable since it cannot be presumed, as Senator Deery presumes, that there is "a ballot . . . [that] has been marked and cast by a voter" or that the lack of the clerk's signature and seal was "solely as a result of the act or failure to act of an election officer." Appellant's Br. at 13.

Third, as explained below, none of the disputed absentee ballots was a bona fide ballot in the first place.

Ironically, Senator Deery wants this Court to disregard the very authentication safeguard that serves to assure that an absentee ballot is authentic

and was the one submitted by the absentee voter to be cast, i.e., that it contains the clerk's signature and seal.

E. The Commission and this Court should enforce the plain meaning of this statutory requirement.

Indiana law is unequivocal: an absentee ballot “must bear” or “be marked” with the clerk's signature and seal. I.C. §§ 3-11-4-19(a), (b), 3-11-10-27(c). This is a “[n]ecessity,” I.C. § 3-11-4-19, which must “appear on a ballot for authentication or other purposes.” I.C. § 3-5-4-9(c). And, of course, “necessity” means something that is “indispensable,” *Necessity*, Dictionary.com, and “something that you must have or do,” *Necessity*, The Britannica Dictionary. And it serves “to prevent [voter] disfranchisement,” *Brown*, 101 N.E.2d at 647, by preventing nefarious election officials from substituting fraudulent ballots for real ones and, thus, is vital to election integrity.

The plain meaning of this statutory requirement is that a ballot that fails to comply with this requirement is not a bona fide official ballot at all and should not be counted. In looking for the plain meaning of a statute, a court reads the words of a law using their ordinary, everyday, and common-sense meanings without looking for hidden or outside intentions. Thus, since having the clerk's signature and seal on the ballot is a “necessity,” which it “must bear,” failure to comply means that the “ballot” is just a scrap of paper, or at worst a fraudulent ballot. Thus, the Commission and the Court need not look to I.C. § 3-11.5-4-13 for authority for

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“rejection of absentee ballots,” since failure to have the clerk’s signature and seal means it is not an official ballot at all. Indeed, this Court in *Werber* described the clerk’s signature and seal as “double identification” serving the “purity of the ballot,” 148 N.E. at 151, and, in *Schoffstall v. Kaperak* recognized that prescribed official endorsements help ensure that only official ballots enter the count and thereby protect “the integrity of the voting system.” 457 N.E.2d 550, 554 (Ind. 1984).

The plain meaning rule is a fundamental pillar of statutory interpretation. While the rule itself is an old common-law doctrine used by judges of all political stripes, its rigorous, modern application has become the defining characteristic of conservative legal thought over the last several decades and the rule has gained wide acceptance among judges of all judicial philosophies. Tara Leigh Grove, *The Misunderstood History of Textualism*, 117 Nw. U. L. Rev. 1033 (2023).

Judges embrace the plain meaning rule for three core reasons:

1. Limiting the power of judges.

By mandating that a judge must stop interpreting once the text is clear, the plain meaning rule acts to prevent a judges from injecting their own personal, social, or political beliefs into a statute.

2. Enforcing democratic accountability and separation of powers.

The General Assembly is the only branch authorized to make policy choices. Under the plain meaning rule, if the written text of a law creates a harsh, politically unpopular, or awkward result, the court’s job is not to “fix” it. The court must enforce the plain text and force the elected legislature to amend it. Frank H. Easterbrook, *Statutes’ Domains*, 50 U. Chi. L. Rev. 533 (1983).

3. Promoting fair notice.

Laws are written for the public, not just lawyers and judges. Ordinary citizens must be able to read the plain text of a law and understand exactly what is legal or illegal. If judges change the meaning of a law as written, citizens cannot reliably know how to follow it.

All of these interests will be served by this Court’s effectuating the plain meaning of the legal requirements for an official ballot.

Conclusion

The Court should dismiss the appeal as moot. If it reaches the legal issue under the public-interest exception, it should nevertheless decline to order any change to the certified nominee or to the legislatively established ballot calendar and should affirm that the ballots that do not contain both the clerk’s signature and seal as required by law should not be counted.

Brief of *Amicus Curiae*
Club for Growth

Dated: August 31, 2026

Respectfully submitted,

/s/ James Bopp, Jr.

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