

STATE OF INDIANA ) IN THE MONROE CIRCUIT COURT 6  
 ) SS:  
COUNTY OF MONROE ) CAUSE NO. 53C06-2203-PL-000420

MYRA KINSER, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
STATE OF INDIANA; INDIANA OFFICE )  
OF THE SECRETARY OF STATE; )  
INDIANA ELECTION COMMISSION; )  
and AMANDA L. LOWERY, )  
 )  
 Respondents. )

**RESPONSE TO PETITION FOR JUDICIAL REVIEW**

Respondents, by counsel, respectfully respond to Petitioner’s Verified Petition for Judicial Review and state the following:

1. Petitioner Myra Kinser filed the Petition on March 4, 2022, seeking to set aside a final administrative hearing decision of the Indiana Election Commission. In addition to naming the Indiana Election Commission as a Respondent, Petitioner also named the Office of the Indiana Secretary of State and the State of Indiana as Respondents.

2. Petitioner filed the Petition in accordance with Indiana Code § 4-21.5-5, otherwise known as the Administrative Orders and Procedure Act (AOPA); therefore, Petitioner has not filed a “complaint” to which an answer is required. *See generally* Ind. Code § 4-21.5-5 et seq.

3. Judicial review under AOPA is a form of limited appellate review, as all disputed issues of fact are confined to the agency record and the reviewing court shall “not try the cause de novo or substitute its judgment for that of the agency.” Ind. Code § 4-21.5-

5-11. Consequently, parties may not rely on testimony, affidavits, or other evidence not part of the agency record. *See id.*

4. Under AOPA, a court may grant relief from an administrative determination only if the determination is: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence. Ind. Code § 4-21.5-5-14. This standard is exceedingly deferential to the agency decision and in this matter warrants upholding the Commission’s decision.

5. The burden, under AOPA, to show the invalidity of the agency determination is “on the party . . . asserting invalidity.” Ind. Code § 4-21.5-5-14(a); see *Brown v. Ind. Dep’t of Env’tl. Mgmt.*, 149 N.E3d 658, 667 (Ind. Ct. App. 2020).

6. The only remedy available on judicial review is to remand to the agency or, in very limited circumstances when agency action has been unreasonably delayed or unlawfully withheld, the court may compel agency action. Ind. Code § 4-21.5-5-15.

7. Although a response is not required, Respondents assert that the petition for judicial review is not meritorious and expressly reserve all rights and defenses under AOPA and all applicable law. This Response should not be construed in any manner as an admission of any facts alleged in the Petition or a waiver of Respondents’ rights and defenses under AOPA or other applicable law. Respondents deny all allegations in the Petition to the extent an answer is required.

8. Petitioner bears the burden to timely file the certified agency record within 30 days of filing the petition for judicial review. *See* Ind. Code § 4-21.5-5-13(a).

WHEREFORE, Respondents respectfully request that the Court deny all relief requested in the Petition, affirm the decision of the Indiana Election Commission in all respects, and grant all other just and proper relief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on March 28, 2022, I served the foregoing upon the following person(s) via IEFS, if Registered Users, and by depositing the foregoing in the U.S. mail, first class postage prepaid, if exempt or non-registered users:

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