

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

IN THE MONROE CIRCUIT COURT
CAUSE NO. 53C06-2203-PL-000420

MYRA KINSER,
 Petitioner,
vs.

STATE OF INDIANA,
INDIANA OFFICE OF THE SECRETARY OF STATE
INDIANA ELECTION COMMISSION, and
AMANDA L. LOWERY,
 Respondents.

VERIFIED PETITION FOR JUDICIAL REVIEW

COMES NOW Petitioner, Myra Kinser (“Kinser”), by counsel, CARMINPARKER, PC, and
for her petition, now alleges and states:

The Parties

1. Kinser resides at 3600 E. Cleve Butcher Road, Bloomington, Indiana 47401 (“Home”). Kinser’s mailing address is at her Home.
2. Respondent State of Indiana has its principal office in Marion County, Indiana. The Secretary of State’s mailing address is 200 West Washington Street, Room 201, Indianapolis, IN 46204.
3. Respondent Indiana Office of the Secretary of State has its principal office in Marion County, Indiana, and a mailing address of 200 West Washington Street, Room 201, Indianapolis, IN 46204.
4. Respondent Indiana Election Commission (“Commission”) is an agency of the Indiana Office of the Secretary of State, Election Division, and has its principal office in Marion County, Indiana.

5. The Commission’s mailing address is 302 West Washington Street, Indiana Government Center South, Room E-204, Indianapolis, IN 46204-2743.

6. Respondent Amanda L. Lowery (“Lowery”) is a resident of Jackson County, Indiana.

Jurisdiction and Venue

7. This Court has jurisdiction over this action.

8. Venue is proper in this Court because the Petitioner resides in Monroe County, Indiana. See Indiana Code section 4-21.5-5-6

Introduction

9. Pursuant to Indiana Code 3-8-1-14, a candidate for the office of representative in the general assembly must have resided in the state for at least two (2) years and in the house district for at least one (1) year before the election.

10. Kinser contends that she satisfied the above residency requirements and that the Commission abused its discretion when it removed her candidacy from the May 3, 2022 primary election candidate list.

11. County election boards in Indiana House of Representatives District 62 will need time to re-print and/or re-issue ballots in the coming weeks if the Court reverses the Commission’s decision.

12. Kinser requests the Court to adjudicate this case in an expedited manner.

Agency Procedure

13. Pursuant to Indiana Code section 3-6-4.1-25, the Commission has the power to hold hearings under Indiana Code 4-21.5, the Administrative Orders and Procedures Act (“AOPA”), to administer Indiana election law.

14. Pursuant to Indiana Code section 3-5-2-42.5, “residence” means the place: (1) where a person has the person’s true, fixed, and permanent home and principal establishment; and (2) to which the person has, whenever absent, the intention of returning.

15. The phrase “all relevant times” shall refer to the timeframes in the preceding rhetorical paragraph.

16. Pursuant to Indiana Code section 3-5-5-2, a person’s residence may be established by: (1) origin or birth; (2) intent and conduct taken to implement the intent; or (3) operation of law.

17. “A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.” *State Election Bd. v. Bayh*, 521 N.E.2d 1313, 1317 (Ind. 1988) (citing *Yonkey v. State*, 27 Ind. 236. (Ind. 1866)).

18. Kinser did not intend to abandon her Indiana domicile and establish a new, permanent residence elsewhere.

19. Kinser’s intention was evidenced by acts consistent with retaining domicile in Indiana.

20. The record does not support the Commission’s conclusion that Kinser’s residence was not Indiana at all relevant times.

21. At all relevant times, Kinser never left Indiana without the intention of returning.

22. On or about January 26, 2022, Kinser submitted her Declaration of Candidacy seeking the Republican party nomination in the primary election for the office of State Representative District 62. A copy of the Declaration is attached hereto as **Exhibit 1**.

23. On or about January 31, 2022, the Commission added Kinser to the Candidate List as a Republican for State Representative, District 62. A copy of the Candidate List is attached hereto as **Exhibit 2**.

24. On or about February 7, 2022, Lowery submitted a Candidate Filing Challenge to the Commission, asserting that Kinser was not eligible for the office. A copy of the Candidate Filing Challenge is attached hereto as **Exhibit 3**.

25. On or about February 7, 2022, the Commission issued a Notice of Hearing “to determine the merits of the candidate challenge pursuant to Indiana code 3-8-1-2.” A copy of the Candidate Filing Challenge is attached hereto as **Exhibit 4**.

26. On or about February 18, 2022, Kinser submitted her response letter and supporting documents to the Commission, including a driver’s license (Exhibit A), vehicle registration (Exhibit B), claim for homestead property tax exemption (Exhibit C), Indiana voting history (Exhibit D), and the affidavit of James R. Pfaff. A copy of the letter and supporting documents is attached hereto as **Exhibit 5**.

27. On or about February 18, 2022, the Commission held an administrative law judge hearing and upheld the challenge (“Agency Decision”).

28. The hearing was approximately twenty-four (24) minutes long.

29. The Commission announced its decision at the conclusion of the hearing.

30. The hearing was broadcasted live on YouTube, as follows:
<https://www.youtube.com/watch?app=desktop&v=yK3sqzBGTQ8>

31. The hearing commenced at 6:13:20 and concluded at 6:39:50.

32. The hearing is being transcribed by a court reporter.

33. The Commission directed the Election Division of the Indiana Office of the Secretary of State not to include Kinser on the certified list of primary candidates sent to the county election boards.

34. Upon information and belief, Kinser was removed from the certified list of primary candidates sent to the county election boards.

35. The Agency Decision was specifically directed to Kinser.

36. Indiana Code section 4-21.5-5-1 establishes the exclusive means for judicial review of an agency action.

Facts in the Agency Record that establish Kinser's Residency in Indiana

37. Kinser submitted her written introduction to the Commission, as follows:

I grew up in a small Lake community in Smithville, Indiana eight miles south of Bloomington. Monroe County has been my residence my entire life. I am a native of Monroe County and graduate of Indiana University. I have lived, voted, done business and maintained my residency there my entire life. I purchased my family homestead in 1998 which is located at 3600 E. Cleve Butcher Road in Bloomington, Indiana.

38. In December of 2014, Kinser married James R. Pfaff ("Pfaff").

39. Pfaff parked a recreational vehicle at 510 N Hwy 57, Woodland Park, Colorado.

40. Pfaff intended to maintain his home in Colorado.

41. Kinser intended to visit Colorado as often as she could.

42. Kinser never went to Pfaff's residence in Colorado without the intention of returning to her primary residence in Indiana.

43. In 2021, Pfaff changed plans and moved his residency back to Indiana.

44. At all relevant times, Kinser has maintained a driver's license, car registration, homestead property deduction, and voting record using the address of her Home.

45. At all relevant times, Kinser has never been a resident of any state other than Indiana.

46. At all relevant times, Kinser has been a resident of Indiana.

47. Pursuant to Indiana Code section 4-21.5-5-11, judicial review of disputed issues of fact must be confined to the agency record for the agency action supplemented by additional evidence taken under Indiana Code section 4-21.5-5-12. The Court may not try the cause de novo or substitute its judgment for that of the agency.

48. Pursuant to Indiana Code section 4-21.5-5-14, the Court shall grant relief under Indiana Code section 4-21.5-5-15 only if it determines that a person seeking judicial relief has been prejudiced by an agency action that is:

- (1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with 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.

49. Kinser was prejudiced by the Commission's decision for the following reasons.

50. The Commission's decision violated Indiana Code section 3-8-1-2

51. The Commission's decision did not take into account Kinser's testimony, letter, or supporting documentation.

52. The Commission's decision was contrary to the Indiana Constitution, Article 4, Section 7.

53. The evidence did not support a finding that Kinser was not an Indiana resident.

54. The Commission was without evidence to determine that Kinser was not an Indiana resident.

55. The Commission's decision has prejudiced Kinser by unlawfully withholding the opportunity to be a candidate for office.

WHEREFORE, Petitioner Myra Kinser, respectfully requests that the Court:

- a. Compel the Indiana Election Commission to place Myra Kinser on the Candidate List as a Republican for State Representative, District 62;
- b. Issue all orders necessary to compel the Commission's action that has been unreasonably delayed or unlawfully withheld.
- c. Remand this case to the Commission for further proceedings if necessary; and
- d. For all other relief deemed proper.

Respectfully submitted,

CARMINPARKER, PC

/s/ Daniel M. Cyr

Daniel M. Cyr, #32555-53

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I swear or affirm under the penalties of perjury that the foregoing representations are true.

Date: 3/4/2022

Myra Kinser
Myra Kinser