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.	)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON PETITION FOR JUDICIAL REVIEW

This matter came before the Court on Petitioner's Verified Petition for Judicial Review filed on March 4, 2022.[1] Myra Kinser, the petitioner herein, appeared in person and with counsel, Daniel M. Cyr. Respondents State of Indiana, Indiana Secretary of State, and Indiana Election Commission appeared by counsel, Courtney L. Abshire. Respondent, Amanda L. Lowery, appeared in person and pro se. The Court, having reviewed the Petition, agency record, and briefs submitted by the parties, and having heard oral argument on March 29, 2022, now enters the following findings of fact and conclusions of law.

I. Findings of Fact

Petitioner Myra Kinser (hereinafter "Kinser") is a native of Monroe County, Indiana, and a graduate of Indiana University. [R. at 32.] Kinser purchased her family's home in 1998 and claimed a homestead exemption on the property in 2013. [R. at 32, 35.] She has voted in several

[1] The Honorable Nathan G. Nikirk of the Lawrence Circuit Court was appointed special judge in this matter on March 15, 2022.

primary and general elections in Indiana between 1992 and 2020. [R. at 37–38.] She had an Indiana driver's license from January 28, 2016, to July 21, 2021, and then from November 16, 2021, until now. [R. at 33.] She also had an Indiana vehicle registration from January 1, 2020, to June 28, 2020, and then another registration issued on June 13, 2021, which is still active.

On April 15, 2021, Kinser testified before the Woodland Park City Council that she and her husband "still reside here in Woodland Park" [R. at 7.] and that she and her husband "had been in Colorado for quite a few years" and chose to live in Woodland Park because "she wanted to be involved in this community." [R. at 9.] During her testimony before the Woodland Park City Council, Kinser clarified that her home in Indiana was a family home passed down among generations. [R. at 8.] In addition, Kinser stated that she and her husband only closed their business due to COVID, because she and her husband "had every full intention of making sure that this business was gonna be a vital business in this community." [*Id.*] Kinser's husband also told the Woodland Park City Council on December 4, 2020, that he and Kinser just happened to be in Indiana temporarily for a medical issue and explained that they have a house in Indiana that they have "never gotten rid of" which their niece lives in. [R. at 29.]

On January 26, 2022, Kinser filed her Form CAN-2, declaring her candidacy for State Representative, District 62. [Ex. 1 to Petition.] On February 7, 2022, Respondent Amanda L. Lowery, (hereinafter "Lowery") Republican County Chair for Jackson County, filed a challenge to Kinser's candidacy. [R. at 4.] There is no dispute that Kinser will be a U.S. citizen at the time of the November 8, 2022, General Election, that she will have resided in District 62 for at least one year before the November 8, 2022, General Election, and that she will be at least 21 years old at the time of taking office. Lowery asserted in her challenge that Kinser had not satisfied

the two-year residency requirement to run for the office of state representative because she had recently defended her residency in Colorado. [R. at 6.]

The Indiana Election Commission held a hearing on February 18, 2022, to hear Lowery's challenge to Kinser's candidacy for state representative. [R. at 338–55.] Following the testimony by both Lowery and Kinser, the Commission voted 3-1 to uphold the challenge to Kinser's candidacy and directed the Indiana Election Division to not include her name on the certified list of primary candidates sent to county election boards and to indicate that her name was not to be printed on the ballot. [R. at 355 (Tr. 314:1-11).]

On March 4, 2022, Kinser filed a Verified Petition for Judicial Review seeking review of the Commission's decision under the Indiana Administrative Orders and Procedures Act.

II. Conclusions of law

Kinser timely filed her Verified Petition for Judicial Review and timely filed the certified agency record. *See* I.C. 4-21.5-5-5; I.C. 4-21.5-5-13(a). Accordingly, this Court has jurisdiction to hear this case under the Indiana Administrative Orders and Procedures Act.

A. Legal standard under the Administrative Orders and Procedures Act

This Court's review of a petition for judicial review is a form of limited appellate review, as all disputed issues of fact are confined to the agency record, and the Court "*may not try the cause de novo or substitute its judgment for that of the agency.*" I.C. 4-21.5-5-11 (emphasis added). "[O]nly evidence supporting the agency's stated reasons can be considered, as those are the grounds on which the decision was made." *May v. Dep't of Natural Res.*, 565 N.E.2d 367, 373 (Ind. Ct. App. 1991). The Court "must accept the facts as found by the administrative body . . . Additionally, a court may not overturn an administrative determination merely because the reviewing court would have reached a different result." *Ind. State Bd. of Educ. v.*

Brownsburg Cmty. Sch. Corp., 865 N.E.2d 660, 665-66 (Ind. Ct. App. 2007) (citing *Ind. Alcoholic Beverages Comm'n v. River Rd. Lounge, Inc.*, 590 N.E.2d 656, 658 (Ind. Ct. App. 1992); I.C. 4-21.5-5-11; *Ind. Dep't of Natural Res. v. Krantz Bros. Constr. Corp.*, 581 N.E.2d 935, 940–41 (Ind. Ct. App. 1991).

In a judicial review of an agency determination under the Indiana Administrative Orders and Procedures Act (AOPA), "the burden of demonstrating the invalidity of an agency action is on the party to the judicial review proceeding asserting invalidity." I.C. 4-21.5-5-14. "[W]hile the legislature has granted courts the power to review the action of state government agencies taken pursuant to [AOPA], this power of judicial review is limited." *Ind. State Bd. of Educ.*, 865 N.E.2d at 665. The Court may grant relief on judicial review only if the party petitioning for review demonstrates it was prejudiced by agency action that was:

> (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 limitation, or short of statutory right; (4) Without observance of procedure required by law; or (5) Unsupported by substantial evidence.
>
> I.C. 4-21.5-5-14.

"If the court finds that a person has been prejudiced under section 14 of [AOPA], the court may set aside an agency action and:

> (1) remand the case to the agency for further proceedings; or
>
> (2) compel agency action that has been unreasonably delayed or unlawfully withheld."
>
> I.C. 4-21.5-5-15.

The relief of compelling agency action that has been unreasonably delayed or unlawfully withheld is only available after remanding the case to the agency for further proceedings. *See Ind. Alcoholic Beverage Comm'n v. Edwards*, 659 N.E.2d 631, 636 (Ind. Ct. App. 1995); *see also Shoot v. FSSA*, 691 N.E.2d 1290 (Ind. Ct. App. 1998).

Thus, the Court will give "considerable weight" to agency decisions. *Taylor v. Indiana Family and Social Servs. Admin.*, 699 N.E.2d 1186, 1191 (Ind. Ct. App. 1998). The Court will also pay "due deference" to the agency's decisions because it has "expertise in its given area." *Ballard v. Book Heating & Cooling, Inc.*, 696 N.E.2d 55, 56 (Ind. Ct. App. 1998). Furthermore, "the court must review the record of proceedings in the light most favorable to the administrative proceeding." *Brennan v. Bd. of Zoning Appeals of Evansville and Vanderburgh Cty.*, 695 N.E.2d 983, 985 (Ind. Ct. App. 1998); *see also Zeller Elevator Co. v. Slygh*, 796 N.E.2d 1198, 1206 (Ind. Ct. App. 2003)

While this Court is "not bound by the [agency's] conclusions of law, ... '[a]n interpretation of a statute by an administrative agency charged with the duty of enforcing the statute is entitled to great weight, unless this interpretation would be inconsistent with the statute itself.'" *Moriarity v. Ind. Dep't of Nat. Res.*, 113 N.E.3d 614, 619 (Ind. 2019) (quoting *Chrysler Grp., LLC v. Review Bd. of Ind. Dep't of Workforce Dev.*, 960 N.E.2d 118, 123 (Ind. 2012)); "In fact, 'if the agency's interpretation is reasonable, we stop our analysis and need not move forward with any other proposed interpretation.'" *Moriarity*, 113 N.E.3d at 619 (quoting *Jay Classroom Teachers Ass'n v. Jay Sch. Corp.*, 55 N.E.3d 813, 816 (Ind. 2016).

B. The Court denies judicial review as to Respondents State of Indiana and Office of the Indiana Secretary of State because they are improper parties to this judicial review proceeding

AOPA provides that "[e]ach person who was a party to the proceeding before the agency is a party to the petition for review." I.C. 4-21.5-5-6(d). In turn, "party" is defined as either "a

person to whom the agency action is specifically directed" or "a person expressly designated in the record of the proceeding as a party to the proceeding." I.C. 4-21.5-1-10.

Kinser has not raised any allegations against the State of Indiana or the Office of the Indiana Secretary of State. She has not provided any indication as to why the State of Indiana or the Office of the Indiana Secretary of State are named as Respondents. Nothing in the certified agency record suggests that the State of Indiana or the Office of the Indiana Secretary of State was a party to the administrative proceeding.

Accordingly, the Court finds that denying the Verified Petition for Judicial Review is warranted for Respondent State of Indiana and Respondent Office of the Indiana Secretary of State.

C. Kinser has not satisfied her burden to show that the Commission's decision should be vacated on judicial review for any of the reasons identified in Indiana Code section 4-21.5-5-14.

Substantial evidence is not a high bar to meet. "Substantial evidence" is evidence that is "more than a scintilla, but something less than a preponderance of the evidence." *Ind. Dep't of Natural Res. v. Prosser*, 132 N.E.3d 397, 401 (Ind. Ct. App. 2019). Substantial evidence has also been defined as "that relevant evidence which a reasonable mind might accept as adequate to support a conclusion." *Winters v. City of Evansville*, 29 N.E.3d 773, 778 (Ind. Ct. App. 2015). A reviewing Court may only vacate an agency decision if the evidence, when viewed as a whole, demonstrates that the conclusions reached by the agency are clearly erroneous. *U.S. Outdoor Adver. Co. v. Ind. Dep't of Transp.*, 714 N.E.2d 1244, 1251 (Ind. Ct. App. 1999).

The Court finds that Kinser has not met her burden to show that the Indiana Election Commission's decision was clearly erroneous. In support of her challenge, Lowery provided a statement made by Kinser's husband on December 4, 2020, where he told the Woodland Park

City Council that "we just happen to be here (Indiana) temporarily" for a medical issue, and included that they have a house in Indiana and that "we've never got rid of" which their niece lives in. [R. at 29.] She provided two statements by Petitioner's husband that they had moved to Woodland Park to start a business, [R. at 16; R. at 30,] and a news article about Kinser running the business. [R. at 11.]

Lowery also provided testimony made under oath[2] by Kinser at a Woodland Park City Council meeting that she and her husband "still reside here in Woodland Park" [R. at 7], that she and her husband "had been in Colorado for quite a few years" and chose to live in Woodland Park because "she wanted to be involved in this community." [R. at 9.] In this testimony to the Woodland Park City Council, Kinser clarified that her home in Indiana was a family home passed down among generations and that they only closed their business due to COVID because she and her husband "had every full intention of making sure that this business was gonna be a vital business in this community." [R. at 9.] And Kinser testified at the Commission hearing that her husband was "at one point" a Colorado resident [R. at 352 (Tr. 311:4–6)] and had filed his taxes "in Colorado at times." [R. at 353 (Tr. 312:9–13)].

Kinser argues that her testimony at the Commission about her Indiana residency created a rebuttable presumption that she is an Indiana resident and that the burden then shifted to Lowery to then rebut that presumption. However, the Court finds that Kinser had not established a rebuttable presumption of Indiana residency for the two years leading up to the November 8, 2022, General Election. The applicable statute provides that an "individual who makes a statement regarding the residence of the individual, under the penalties for perjury, is presumed

[2] Chairman Okeson: "My presumption is when you provided testimony in Colorado you were sworn in under oath as well." Ms. Kinser: (Nods head.) [R. at 354 (Tr. 313:16–19).]

to reside at the location specified by the individual, ***as of the date of making the statement***." I.C. 3-5-5-6 (emphasis added). Accordingly, Kinser established a rebuttable presumption that, on February 18, 2022, she was an Indiana resident on that date. She did not establish a rebuttable presumption that she was an Indiana resident since at least November 8, 2020.

But, even if Kinser had established this rebuttable presumption Lowery provided enough to the Commission that a reasonable mind would accept as adequate to rebut any presumption that Kinser was an Indiana resident since at least November 8, 2020, and conclude that she had been physically present in Colorado with the intention of remaining in Colorado for an indefinite time as a place of residence.

The Court also finds the fact that Kinser voted in Indiana in the past several elections is not particularly salient. While Kinser is correct that the residency standards set forth in I.C. 3-5-5 *et. seq*. applies to both voters and candidates, there is no evidence in the record that anyone ever challenged her as a voter and did not succeed. Conceivably, Kinser has never received a challenge when voting and thus, her voting record is not dispositive regarding the issue of residency.

Because substantial evidence supported the Commission's decision to uphold the challenge to Kinser's candidacy, the Court finds that setting aside the agency action is unwarranted and that affirming the Commission's decision to uphold the challenge is proper.

III. Order

Having reviewed the Verified Petition for Judicial Review, agency record, the parties' briefs, and after receiving oral argument, this Court finds that Kinser has not met her burden under AOPA to show that Respondent Indiana Election Commission's decision to affirm Lowery's challenge to Kinser's candidacy was either (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 limitation, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence.

Accordingly, this Court **DENIES** the Verified Petition for Judicial Review and **AFFIRMS** the decision of the Indiana Election Commission.

Date: April 5, 2022

The Honorable Nathan G. Nikirk, Special Judge
Monroe Circuit Court 6

Distribution:

All electronically registered counsel of record.

Amanda L. Lowery
2308 Saint Louis Street
Vallonia, IN 47281