

**BEFORE THE
INDIANA RECOUNT COMMISSION**

IN THE MATTER OF THE RECOUNT AND
CONTEST FOR THE REPUBLICAN PARTY
NOMINATION FOR ELECTION OF INDIANA
STATE SENATE, DISTRICT 15

DARREN VOGT,
Petitioner,

v.

LIZ BROWN,
Respondent.

RESPONDENT’S MOTION TO DISMISS CONTEST CLAIMS

Respondent Liz Brown, by counsel, moves the Indiana Recount Commission to dismiss the contest portion of the Verified Petition for Recount and Contest filed by Petitioner Darren Vogt on May 19, 2026. The recount portion of the Petition is not the subject of this Motion and may proceed.

INTRODUCTION

Petitioner Darren Vogt’s Verified Petition seeks two distinct forms of relief: a recount and a contest. Both arise under Indiana Code chapter 3-12-11, but they serve different purposes and carry different pleading requirements. A recount petition asks the Commission to re-tally votes in specified precincts based on the petitioner’s good-faith belief that the votes were not correctly counted and returned. Ind. Code § 3-12-11-3(a). A contest asks the Commission to determine whether an election irregularity makes it impossible to determine which candidate received the highest number of votes. Ind. Code § 3-12-11-3(b).

This Motion does not challenge Petitioner’s request for a recount. Respondent seeks dismissal only of the contest claim. That claim appears in a single conclusory paragraph—

Paragraph 9—which recites three statutory grounds in the alternative: a mistake in the printing or distribution of ballots, a mistake in programming an electronic voting system, or a malfunction of an electronic voting system. See Ind. Code § 3-12-11-3(b)(4)(B)–(D). But Indiana law requires more than a bare statutory recital. A contest petition asserting those grounds must identify each precinct in which the alleged printing mistake, distribution mistake, programming mistake, or equipment malfunction occurred. Ind. Code § 3-12-11-3(c).

Paragraph 9 does none of that. It identifies no precinct, machine, ballot, batch, event, or witness. It pleads three theories in the alternative, as if any one of them might later prove true. That is a placeholder, not a contest pleading.

Nor may Petitioner cure that defect now by amendment. Indiana Code § 3-12-11-7(b) bars the Commission from allowing a petition to be amended after the filing deadline when the petition as originally filed failed to comply with section. Indiana courts the same rule to election-contest petitions generally. *State ex rel. Hodges v. Kosciusko Circuit Court*, 402 N.E.2d 1231, 1233 (Ind. 1980); *Kraft v. King*, 585 N.E.2d 308, 309-10 (Ind. Ct. App. 1992).

A contest is a serious proceeding. It opens an evidentiary record and requires the petitioner to prove an irregularity that prevents determination of the candidate who received the highest number of votes. Indiana law does not permit a petitioner to start that proceeding with a conclusory recitation of statutory categories and then search for supporting facts during the hearing. Because Paragraph 9 fails to plead a legally sufficient contest claim, the Commission should dismiss the contest portion of the Petition and allow the recount to proceed.

BACKGROUND

1. On May 5, 2026, the Republican primary election for Indiana Senate District 15 was conducted in Allen County. District 15 is located entirely within Allen County.

2. Respondent Liz Brown received the highest number of votes on the face of the certified returns, leading Petitioner Darren Vogt by 15 votes.

3. Under Indiana Code § 3-12-11-2(a), a candidate seeking a recount or contest under chapter 3-12-11 had to file a verified petition with the Election Division no later than noon fourteen days after election day. On May 19, 2026, Petitioner filed a Verified Petition for Recount and Contest with the Indiana Election Division at 10:39 a.m.

4. The Petition seeks two forms of relief: a manual recount and a contest. In Paragraph 1, Petitioner states that he “seeks a manual recount and contest of all votes cast in all precincts” in the May 5, 2026, Republican Primary Election for Indiana Senate District 15.

5. In Paragraph 2, Petitioner lists the ninety-nine precincts in which he seeks a recount. The Petition identifies those precincts for recount purposes, as required by Indiana Code § 3-12-11-3(a)(2), but it does not identify any precinct in which an alleged contest irregularity occurred.

6. The Petition’s recount allegation appears in Paragraph 7, which states Petitioner’s “good faith” belief that the votes cast in the May 5, 2026, Republican Primary Election “were not correctly counted and returned.” See Ind. Code § 3-12-11-3(a)(5)

7. Paragraph 8 requests “a recount of all of the votes cast” for the nomination “in the precincts specified herein.”

8. The Petition’s contest allegation appears in Paragraph 9, which states in full: “Petitioner in good faith believes a mistake was made in the printing or distribution of ballots used in the election, a mistake occurred in the programming of an electronic voting system, or an electronic voting system malfunctioned making it impossible to determine the candidate who received the highest number of votes.”

9. Paragraph 9 is the entirety of Petitioner’s contest pleading. It does not identify the precinct in which any alleged ballot-printing mistake, ballot-distribution mistake, programming mistake, or voting-system malfunction occurred. It identifies no ballot, no machine, no programming error, no election worker, no witness, no event, and no fact supporting any of the three contest theories it recites.

LEGAL STANDARD

Indiana Code chapter 3-12-11 governs recounts and contests for nominations and elections to federal, state, and legislative offices, including the state legislative office at issue here. A candidate for nomination to a federal, state, or legislative office may seek either a recount or a contest under that chapter. Ind. Code § 3-12-11-1(a).

A recount petition and a contest petition have different statutory requirements. A recount petition must identify, among other things, the office, the precincts in which the petitioner seeks a recount, the candidates as shown on the ballot, the petitioner's good-faith belief that the votes were not correctly counted and returned, and the petitioner's desire for a recount of all votes cast in the specified precincts. Ind. Code § 3-12-11-3(a).

A contest petition must identify the nomination or election contested, state that the petitioner is entitled to contest the nomination or election, identify the candidates as shown on the ballot, and state the petitioner's good-faith belief that one or more statutory contest grounds occurred. Ind. Code § 3-12-11-3(b). Those grounds include, among others, a mistake in the printing or distribution of ballots, a mistake in the programming of an electronic voting system, or a malfunction of an electronic voting system that makes it impossible to determine which candidate received the highest number of votes. Ind. Code § 3-12-11-3(b)(4)(B)–(D).

When a contest petition relies on one of those grounds, the petition "must identify each precinct" in which the alleged mistake or malfunction occurred. Ind. Code § 3-12-11-3(c).

The Commission must rule on a motion to dismiss a recount or contest petition before ordering or continuing with a recount or contest. Ind. Code § 3-12-11-12(d). A motion to dismiss must state that the petitioner failed to comply with chapter 3-12-11 and must specifically identify the requirement the petitioner failed to satisfy. *Id.*

Indiana courts require strict compliance with statutory election-contest requirements. The language of a contest petition need not parrot the statute, but the petition "must strictly comply with the requirements of the statute" to invoke the tribunal's authority, and "[f]ailure

to comply with the requirements of the statutes will result in dismissal.” *Kraft*, 585 N.E.2d at 309-10; see also *Pabey v. Pastrick*, 816 N.E.2d 1138 (Ind. 2004) (noting that failure to comply with election-contest statutory requirements generally requires dismissal and citing *Kraft*).

Pabey and *Kraft* arose under Indiana Code chapter 3-12-8, which governs contests of nominations and elections to local offices. The pleading provisions of chapter 3-12-8 and chapter 3-12-11 are materially identical on every point relevant here. Each chapter lists the same printing, distribution, programming, and malfunction grounds in the same statutory language. Compare Ind. Code § 3-12-8-6(a)(3)(B)–(D) with Ind. Code § 3-12-11-3(b)(4)(B)–(D). Each requires precinct identification when those grounds are pleaded. Compare Ind. Code § 3-12-8-6(b) with Ind. Code § 3-12-11-3(c). And each forbids post-deadline amendment to cure a non-compliant original petition. Compare Ind. Code § 3-12-8-6.5(b) with Ind. Code § 3-12-11-7(b). The strict-compliance and no-cure-after-deadline principles announced in *Pabey* and *Kraft* therefore apply.

Although election-contest statutes are construed to protect the electorate’s will and avoid defeat by merely formal or technical objections, that rule does not erase statutory content requirements. Indiana courts give effect to every word and clause and treat no part of a statute as meaningless if it can be reconciled with the rest. *Hall Drive-Ins, Inc. v. City of Fort Wayne*, 773 N.E.2d 255, 257 (Ind. 2002).

Nor may a petitioner cure a non-compliant contest petition by amendment after the deadline. Ind. Code § 3-12-11-7(b); *State ex rel. Hodges*, 402 N.E.2d at 1233; *Kraft*, 585 N.E.2d at 310. Section 3-12-11-7(b) forbids the Commission from allowing amendment of a petition that “failed to comply with section 3” of the chapter or “was not filed before the deadline specified in section 2.” *Hodges* and *Kraft* reach the same result on the same reasoning, and neither holding turned on the particular chapter at issue. The rule rests on the compressed timetable and the jurisdictional character of election-contest pleading — features that apply with full force to chapter 3-12-11 proceedings before this Commission.

ARGUMENT

I. The contest claim should be dismissed because the Petition does not identify any precinct in which the alleged mistake or malfunction occurred.

This Motion presents a straightforward statutory defect. Petitioner invokes three contest grounds: a mistake in the printing or distribution of ballots, a mistake in the programming of an electronic voting system, or a malfunction of an electronic voting system. Those grounds appear in Indiana Code § 3-12-11-3(b)(4)(B)–(D). But the next subsection supplies the pleading requirement for those exact allegations: a petition relying on those grounds “must identify each precinct” in which the alleged mistake or malfunction occurred. Ind. Code § 3-12-11-3(c).

The Petition does not satisfy that requirement. It identifies ninety-nine precincts for purposes of the recount, but it does not identify any precinct in which any contest-related mistake or malfunction allegedly occurred. It does not allege that a ballot-printing mistake occurred in Precinct 151, or that a programming error affected Precinct 200, or that a tabulator malfunctioned in Perry B, or that any alleged defect occurred in all ninety-nine precincts. It simply pleads statutory grounds in the abstract.

That is not enough. The precinct list attached to the recount request cannot substitute for the precinct identification required for the contest claim. Indiana Code § 3-12-11-3(a) requires a recount petitioner to identify the precincts where a recount is sought. Indiana Code § 3-12-11-3(c) separately requires a contest petitioner to identify each precinct where the alleged mistake or malfunction occurred. Treating the recount precinct list as enough would read subsection (c) out of the statute. Indiana law does not permit that result. *Hall Drive-Ins*, 773 N.E.2d at 257.

This is not a merely formal or technical objection. The omitted information is the specific statutory content the General Assembly required for this kind of contest claim. It defines the location of the alleged irregularity, the scope of the evidence, the respondent’s

defense, and the Commission's inquiry. Without it, there is no pleaded contest issue for the Commission to hear.

The Commission need not weigh evidence or decide credibility to resolve this issue. It needs only compare Paragraph 9 to Indiana Code § 3-12-11-3(c). Paragraph 9 pleads the statutory grounds, but it omits the precinct identification the statute requires. The contest claim therefore fails to comply with Indiana Code chapter 3-12-11 and should be dismissed under Indiana Code § 3-12-11-12(d).

II. Petitioner cannot cure the defect by amending the Petition after the statutory filing deadline.

Indiana law forecloses any amendment of the contest portion of the Petition. Indiana Code § 3-12-11-7(b) provides: "The commission may not allow a petition or cross-petition to be amended following the deadline for filing a petition or cross-petition under this chapter if the petition or cross-petition as originally filed: (1) failed to comply with section 3 or section 6 of this chapter; or (2) was not filed before the deadline specified in section 2 or section 4 of this chapter."

Both prongs apply. Section 3 sets out the required content of a contest petition. Section 3(c) requires that a petition pleading the printing, distribution, programming, or malfunction grounds set out in section 3(b)(4)(B), (C), and (D) "must identify each precinct" in which the alleged mistake or malfunction occurred. The Petition pleads those three grounds in Paragraph 9 and identifies no precinct. The original Petition therefore failed to comply with section 3. And the deadline under section 2 expired at noon on May 19, 2026, less than ninety minutes after Petitioner filed at 10:39 a.m. that day. Indiana Code § 3-12-11-7(b) bars any amendment that would now supply the missing precinct identification or any other missing element of section 3 compliance.

Indiana appellate decisions reach the same result on the same reasoning. In *State ex rel. Hodges*, the Supreme Court held that a petition to contest an election may not be amended after the original filing deadline to conform to the jurisdictional requirements of the election

statutes. 402 N.E.2d at 1233. *Kraft* applied *Hodges* and affirmed denial of a proposed amendment filed after the contest deadline. 585 N.E.2d at 310. Indiana Code § 3-12-11-7(b) codifies that rule and applies it directly to proceedings before this Commission.¹

The rule is practical and necessary: election contests move on compressed statutory timelines, and the petition filed before the deadline fixes the contest the respondent must answer and the tribunal must hear.

An amendment here would not merely clarify an existing contest claim. It would supply the missing statutory element for the first time. The present Petition does not identify any precinct in which any alleged printing mistake, distribution mistake, programming mistake, or voting-system malfunction occurred. A later amendment naming one precinct, several precincts, or all ninety-nine precincts as the supposed location of a contest irregularity would add the required statutory content after the deadline. *Hodges* and *Kraft* do not allow that.

Allowing amendment would also defeat Indiana Code § 3-12-11-12(d). That provision requires the Commission to rule on a motion to dismiss before ordering or continuing with a contest. If a petitioner could file a placeholder contest paragraph, wait for a motion to dismiss, and then amend after the deadline to identify the precincts and theory for the first time, the statutory content requirements and filing deadline would lose force. The Commission should reject that approach and dismiss the contest portion of the Petition now.

III. Paragraph 9's disjunctive pleading confirms that Petitioner has not identified a contest irregularity.

Paragraph 9 does not allege a specific election defect. It pleads three different possibilities in the alternative: ballot printing or distribution error, programming error, or

¹ Although the leading appellate decisions on these principles arose in court, the General Assembly assigned both the motion-to-dismiss determination and the amendment determination directly to the Commission. Ind. Code §§ 3-12-11-12(d), 3-12-11-7. The Commission therefore applies these statutory requirements as a matter of its own statutory authority.

voting-system malfunction. Those theories are not interchangeable. Each would involve different facts, different witnesses, different records, and different precinct-specific proof.

A ballot-printing or distribution mistake concerns the ballots themselves: what was printed, what was delivered, and where. A programming mistake concerns election-system configuration: ballot definitions, candidate rotation, tabulator settings, or related system files. A voting-system malfunction concerns the operation of equipment during voting or tabulation. Each theory requires the petitioner to say where the alleged event occurred. That is why Indiana Code § 3-12-11-3(c) requires precinct identification.

Pabey reinforces that distinction. The Indiana Supreme Court distinguished deliberate misconduct from the mistake-and-malfunction grounds because printing mistakes, distribution mistakes, programming mistakes, and voting-system malfunctions are generally ascertainable with relative objectivity. *Pabey*, 816 N.E.2d at 1149-50. That objective character is precisely why the statute requires the petitioner to identify the precinct where the alleged mistake or malfunction occurred. Petitioner did not do so.

The Petition does not choose among these theories, connect any theory to any precinct, or allege any event that would allow Respondent or the Commission to know what contest issue is being presented. Instead, Paragraph 9 pleads that one of several things may have happened somewhere. That is not a statutory contest claim. It is a request to open a contest hearing so Petitioner can search for one.

Indiana's contest procedure does not permit that approach. A contest hearing is not a discovery device. It is an evidentiary proceeding on a pleaded statutory ground. Because Petitioner has not identified where any alleged mistake or malfunction occurred, the contest claim should be dismissed.

IV. The contest claim adds nothing independent of the recount.

This petition seeks both a recount and a contest, two distinct forms of relief. A recount tests whether the votes were correctly counted and returned. A contest addresses whether a statutory irregularity occurred that makes it impossible to determine the candidate who

received the highest number of votes. Indiana Code § 3-12-11-3 treats those remedies separately and assigns each its own pleading requirements.

Here, the Petition pleads a recount in Paragraphs 7 and 8. It alleges Petitioner's good-faith belief that the votes "were not correctly counted and returned" and requests a recount of all votes in the specified precincts. That is the recount remedy.

The contest claim does not add a pleaded event beyond that. Paragraph 9 alleges no actual ballot-printing mistake, no ballot-distribution mistake, no programming mistake, and no equipment malfunction tied to any precinct. If Petitioner's concern is that votes were not correctly counted, the recount will address that concern. If Petitioner seeks a contest, he must plead the statutory facts required for a contest. He has not done so.

Allowing the contest claim to proceed on this pleading would collapse the statutory difference between recounts and contests. Any petitioner could request a recount, add a boilerplate contest paragraph tracking Indiana Code § 3-12-11-3(b)(4)(B)-(D), omit the precinct identification required by subsection (c), and still obtain an evidentiary contest hearing. The statute does not allow that result.

Respondent does not seek dismissal of the recount. The recount may proceed under Indiana Code chapter 3-12-11, and the Commission may resolve any ballot-counting issues through that process. Respondent seeks only dismissal of the separate contest claim because it does not satisfy the statutory requirements for a contest petition.

CONCLUSION

The Petition seeks to open an evidentiary contest hearing on the strength of a single paragraph that pleads the statutory categories without a single fact attached. Indiana law requires more. The Petition omits the precinct identification required by Indiana Code § 3-12-11-3(c), and that omission cannot be cured by amendment after the filing deadline. The Commission should dismiss Paragraph 9 and the contest claim it purports to assert, and permit the recount to proceed on the merits.

WHEREFORE, Respondent Liz Brown respectfully requests that the Commission (a) dismiss the contest portion of the Verified Petition; (b) confirm that the recount portion of the Petition may proceed; and (c) grant such further relief as the Commission deems just and proper.

Respectfully submitted,

/s/ Joshua Claybourn _____

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CERTIFICATE OF SERVICE

I certify that on May 26, 2026, a true and correct copy of the foregoing Respondent's Motion to Dismiss Contest Claims was served by email on:

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