IN THE INDIANA COURT OF APPEALS
CAUSE NO. _____

IN RE: ELECTION RECOUNT	)	
	)	
	)	
Senator Spencer R. Deery,	)	
	)	
Appellant/Respondent Below,	)	Appeal from the Indiana Recount Commission
	)	
	)	
v.	)	
	)	
Paula K. Copenhaver,	)	
	)	
Appellee/Petitioner Below,	)	
	)	
and	)	
	)	
Secretary of State Diego Morales,	)	
Paul Mullin, and	)	
Michael Claytor, as Members of	)	
The Indiana Recount Commission,	)	
	)	
Appellees	)	
	)	

APPELLANT'S VERIFIED EMERGENCY MOTION TO STAY AND FOR PRELIMINARY INJUNCTIVE RELIEF PENDING APPEAL

Appellant/Respondent State Senator Spencer R. Deery, by counsel, pursuant to Indiana Appellate Rule 39 and the inherent authority of this Court to preserve its jurisdiction and the status quo pending appellate review, respectfully moves this Court for an immediate stay and the grant of preliminary injunctive relief preventing implementation of the Indiana Recount Commission's August 10, 2026, Certificate of Recount for

purposes of preparing, approving, transmitting, or printing the November 3, 2026 general-election ballots that identify a specific candidate for the precincts contained in Indiana State Senate District 23 general election in the counties of Montgomery, Vermillion, Warren, Tippecanoe, Parke, and Fountain. In support, Senator Deery states as follows:

BACKGROUND

1. As this "appeal involves a substantial question of law of great public importance and . . . an emergency exists requiring a speedy determination", pursuant to Ind. App. Rule 56, Senator Deery has filed this date a motion to transfer this appeal to the Indiana Supreme Court. Senator Deery adopts and incorporates the Emergency Verified Motion to Transfer Jurisdiction of Appeal to the Indiana Supreme Court before Consideration by the Indiana Court of Appeals to the extent it provides additional information regarding the single issue being addressed by the appeal. A copy of the motion is attached hereto as Exhibit A for the Court's convenience.

2. This appeal concerns the Republican Party nomination for Indiana State Senate District 23 arising from the May 5, 2026, Primary Election.

3. Following the Primary Election, the county certified election results established Senator Deery with 6,337 votes and Paula K. Copenhaver with 6,334 votes. Senator Deery was the prevailing candidate for the Republican nomination for Indiana State Senate District 23.

4. Petitioner Paula K. Copenhaver subsequently initiated recount and election-contest proceedings before the Indiana Recount Commission ("Commission").

5. On August 10, 2026, the Commission unanimously dismissed the election contest request and issued a Certificate of Recount that certified Copenhaver as receiving 6,332 votes and Senator Deery as receiving 6,329 votes, a difference of only three votes.

6. Senator Deery is requesting a stay of the Certificate of Recount for the precincts contained within Senate District 23 which are located within the counties of Tippecanoe, Vermillion, Parke, Montgomery, Warren and Fountain. Montgomery, Vermillion and Warren counties each had two absentee ballots that lacked the seal and signature of the clerk. These six absentee ballots present the same issue and are the only ballots Senator Deery is seeking to appeal. A copy of the Certificate of Recount is attached hereto as Exhibit B and the report of the State Board of Accounts is attached hereto as Exhibit C.

7. Appellate Rule 39 provides "a motion for stay pending appeal may not be filed in the Court on Appeal unless a motion for stay was filed and denied by the trial court or by the Administrative Agency if it has authority to grant a stay." For purposes of App. R. 39, the Recount Commission is neither a trial court nor is it an administrative agency. App. R. 2(A) ("An Administrative Agency is the Worker's Compensation Board, Indiana Civil Rights Commission, Indiana Election Commission, Indiana Utility Regulatory Commission, or Review Board of the Department of Workforce Development"). Further, there is

no Indiana law that expressly grants the Commission the authority to stay its own decisions.

I EMERGENCY RELIEF IS NECESSARY TO MAINTAIN THE STATUS QUO PENDING APPEAL

8. Appellate Rule 39 provides authority for this Court to grant a stay pending appeal. To obtain a preliminary injunction, "the moving party has the burden of showing by a preponderance of the evidence that: (1) the movant's remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (2) the movant has at least a reasonable likelihood of success at trial by establishing a prima facie case; (3) threatened injury to the movant outweighs the potential harm to the nonmoving party resulting from the granting of an injunction; and (4) the public interest would not be disserved." *Apple Glenn Crossing, LLC v. Trademark Retail, Inc.*, 784 N.E.2d 484, 487 (Ind. 2003).

9. Immediate relief is required because election officials must soon undertake statutory duties associated with preparation, approval, printing, distribution, and transmission of ballots for the November 3, 2026 General Election. While the clerks of the impacted counties can prepare the ballots in all other ways, they should make no permanent change that Paula Copenhaver as the State Senate District 23 Republican candidate until after review by this Court.

10. Once ballots identifying the certified candidate are printed and transmitted to voters, appellate review risks becoming ineffectual as a practical

matter. No award of damages can sufficiently restore improperly excluded votes, incorrect ballots already transmitted to voters, or meaningfully protect the right to appellate review before the election occurs.

11. Once ballots identifying a Republican nominee for Senate District 23 are approved, printed, distributed, or transmitted to absentee and military and overseas voters, meaningful appellate relief becomes substantially more difficult and potentially impossible.

12. Further, the deadline for production, distribution and voting of the ballots is quickly approaching:

09/04/2026	60 days before the election, the clerk must estimate number of absentee ballots required. After the estimate, the county election board must begin the printing of absentee ballots. I.C. § 3-11-4-10; I.C. § 3-11-4-14
09/14/2026	Absentee ballots must be delivered by the printer to the circuit court clerk no later than 50 days before the election. I.C. § 3-11-4-15
09/19/2026	Absolute 45-day deadline to transmit absentee ballots to voters whose applications have already been approved, including military and overseas voters. I.C. § 3-11-4-18; Military and Overseas Voter Empowerment Act, 52 U.S.C. § 20302(a)(8)(A); Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20302(a)(8)(A). However, the State can make application for a hardship waiver

request when there is a delay due to a legal contest. It must be approved by a presidential designee. 52 U.S.C. § 20302(g)(2)(B)(ii).

10/6/2026 Early voting begins.

11/3/2026 General Election Day

13. The extraordinary time-sensitive circumstances of an election dispute warrant immediate intervention to preserve this Court's ability to afford effective appellate relief. These are extraordinary requirements because of the exceptionally compressed election calendar, the imminent preparation, printing and transmittal of general-election ballots. The necessity of obtaining relief before implementation of the challenged certification makes effective appellate review impracticable. Without staying of the certification or enjoining the clerks from preparing ballots identifying the candidate for Senate District 23, Senator Deery will suffer irreparable harm and without meaningful review, he will have an inadequate remedy at law.

II SENATOR DEERY HAS A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS

14. As is discussed in the Motion to Transfer attached hereto as Exhibit A, there is no statute that supports the decision of the Commission to refuse to count the six absentee ballots at issue. Indiana has a longstanding policy against disenfranchising voters simply because of an election-official-error. *See, Brown v. Grzeskowiak, 230 Ind. 110, 130, 101 N.E.2d 639, 647 (1951)*. Indiana Code § 3-12-1-12 provides a savings clause intended to provide

for the counting of absentee ballots lacking the seal and signature of the clerk, unlike the express exclusion from the savings clause of ballots lacking bipartisan initials from election workers.

III IMMEDIATE AND IRREPARABLE HARM WILL OCCUR WITHOUT A STAY

15. This case presents the quintessential circumstances requiring preservation of the status quo. The controversy concerns which candidate is legally entitled to appear on the November 3, 2026 General Election ballot as the Republican nominee for Indiana State Senate District 23.

16. The Commission's challenged determination changed the outcome of the nomination, showing Ms. Copenhaver the victor by six votes.

17. Senator Deery contends that the Commission committed reversible legal error by refusing to count six absentee ballots that should have lawfully been counted.

18. Those issues are presently subject to appellate review.

19. Allowing ballots to be printed and transmitted to voters in the precincts of Senate District 23 before appellate review is completed is not a mere administrative step, but rather an implementation of the very determination being challenged on appeal.

20. Once ballots are printed, transmitted, mailed, or cast, the practical ability of this Court to restore the parties to their pre-appeal positions diminishes substantially.

21. No monetary remedy can compensate Senator Deery for the loss of the opportunity to appear on the general-election ballot if this Court ultimately determines that he was legally entitled to the Republican nomination.

22. The voters of Senate District 23 likewise possess a substantial interest in having the general-election ballot identify the candidate who is legally entitled to the Republican nomination after final judicial review.

23. Accordingly, immediate and irreparable injury will occur absent emergency relief.

IV THE BALANCE OF HARDSHIPS STRONGLY FAVORS PRESERVING THE STATUS QUO

24. The threatened injury to Senator Deery outweighs the potential harm to the nonmoving parties resulting from the granting of a preliminary injunction and stay.

25. A short stay will preserve the existing controversy long enough for this Court to determine the merits of the appeal.

26. By contrast, permitting ballots to be finalized and printed while the identity of the lawful Republican nominee remains subject to judicial review, risks creating unnecessary confusion, duplication of election-administration expenses, reprinting costs, and potentially irreversible consequences.

27. The requested relief is narrowly tailored and limited to only the precincts with Senate District 23. Senator Deery does not seek to enjoin preparation of ballots for all other races. He is simply seeking to enjoin the preparation, printing, finalization, distribution or transmission of ballots

identifying the candidate for Indiana Senate District 23 until further order of the Court. The clerks can continue working in all other aspects pertaining to the ballots while this Court does an expedited review of the case.

28. The public interest favors both orderly election administration and the accurate determination of the candidate legally entitled to appear on the ballot.

29. A brief stay and a preliminary injunction, accommodating expedited appellate review, protects both interests.

V THE COURT SHOULD PRESERVE ITS ABILITY TO PROVIDE EFFECTIVE RELIEF SO AS TO PROTECT THE PUBLIC INTEREST

30. The voters in Senate District 23 have the right to free and fair elections. The exercise of the fundamental right to vote is meaningless if there is a failure to count legitimate and lawful votes. The voters in Senate District 23 supported Senator Deery and have a public interest in seeing that the voice of the voters is followed and their votes counted.

31. The public also has an interest in having this case judicially resolved. This is a case of first impression and the issue presented may arise in the counting of ballots cast in the November 3, 2026 general election. Courts possess authority to preserve the subject matter of an appeal so that appellate jurisdiction does not become meaningless through intervening events.

32. That principle has particular force in election cases because statutory election deadlines can cause a controversy to become practically irreversible before ordinary appellate procedures are completed.

33. Without immediate relief, the election calendar—not judicial review—could effectively determine the outcome of this appeal.

34. The Court should therefore maintain the status quo while resolving the substantial legal questions presented.

VI REQUEST FOR EMERGENCY RELIEF

36. Because ballot preparation and printing deadlines are imminent, Senator Deery requests immediate temporary relief pending the Court's consideration of this Motion.

37. Pursuant to Appellate Rule 39(D),

38. Senator Deery submits contemporaneously herewith an affidavit establishing the specific facts demonstrating the immediate and irreparable injury that will result if election officials proceed with ballot preparation or printing before the parties can fully litigate this request.

39. Counsel further submits the certification required by Appellate Rule 39 concerning notice to the opposing parties and the necessity, if applicable, for temporary emergency relief before those parties can be heard.

CONCLUSION

Appellant/Respondent Senator Spencer R. Deery respectfully requests that this Court:

A. Immediately stay implementation and enforcement of the Indiana Recount Commission's August 10, 2026 Certificate of Recount pending further order of this Court;

B. Preliminarily enjoin county clerks and election boards, and all other county election officials with election jurisdiction over the precincts within Indiana State Senate District 23 from finalizing, issuing and/or transmitting ballots that identify the Republican candidate for Senate District 23 for the November 3, 2026 General Election;

C. Clarify to these same county clerks, election boards and election officials that they can continue all other ballot-preparation activities except identifying the Senate District 23 Republican nominee, including the preparation of the ballots containing only federal offices;

D. Establish an expedited briefing schedule sufficient to permit resolution before applicable federal and state absentee-ballot transmission deadlines and as set forth in Appellant's Motion to Transfer;

E. Grant temporary relief immediately pending an opportunity for Appellees and other interested parties to respond;

F. Waive or, if necessary, set a nominal bond because the requested relief seeks preservation of the electoral status quo and does not present compensable monetary injury to the opposing party; and

G. Grant all other just and appropriate relief.

ATTORNEY CERTIFICATION UNDER APPELLATE RULE 39

We, Samantha E. DeWester and Karen-Celestino-Horseman, hereby certify that immediate temporary relief is necessary because election officials are proceeding toward statutory ballot-preparation, printing, and transmission deadlines and that, absent temporary relief, ballots identifying the Republican

nominee for Indiana State Senate District 23 may be finalized, printed, transmitted, mailed, or otherwise distributed before this Court can consider the merits of the appeal. Such action would substantially impair the Court's ability to afford effective appellate relief. For these reasons, we believe this stay should be granted immediately or, at least, temporarily pending receipt of responses from the Appellees and a decision by this Court.

/s/ Samantha E. DeWester

/s/ Karen Celestino-Horseman

Respectfully submitted,

/s/ Karen Celestino-Horseman
Indiana Attorney # 15764-49
Of Counsel, Austin & Jones, P.C.
7626 Vintage Circle
Lawrence, IN 46226
Tel. No.: (317) 632-5633 x 2
E-Mail: karen@kchorseman.com

/s/ William R. Groth
Indiana Attorney #: 7325-49
Of Counsel, Bowman Legal Services, LLC
9292 N. Meridian St.
Suite 311
Indianapolis, IN 46260
Tel. No. (317) 502-4803
E-Mail: wgroth@fdgtlaborlaw.com

/s/ Samantha E. DeWester
Indiana Attorney #: 26806-49
DeWester Law, LLC
609 E. 23rd St.
Indianapolis, IN 46205
Tel. No.: (317) 435-0696
E-Mail: Samantha@DeWesterLaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August 2026, the foregoing was filed and served via the Indiana E-Filing System upon Indiana Attorney General Todd Rokita, Paul Mullin, Michael Claytor, Indiana Secretary of State Diego Morales, Matthew R. Kochevar, Kegan Prentice, and Evan Norris, William, William Bock, III, Ted W. Nolting, Sarah R. Pfister, and Mark Colucci the time of service being that when electronically served by the Indiana E-Filing System pursuant to App. R. 24(B). Additionally courtesy copies were sent via the E-Filing System to the clerks of the following counties:

Fountain County: Hon. Patty Smith, psmith@fountaincounty.in.gov

Montgomery County: Hon. Sondra Sixberry, sondra.sixberry@montgomerycounty.in.gov

Warren County: Hon. Debbie Hiatt, dhiatt@warrencounty.in.gov

Vermillion County: Tami Corado Lowry, tami.lowry@vermillioncounty.in.gov

Parke County: Hon. Nicole Collings pcclerk@parkecounty.in.gov

Tippecanoe County: Hon. Julie Roush jroush@tippecanoe.in.gov

/s/Karen Celestino-Horseman