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INDIANA
CIVIL RIGHTS COMMISSION

1 BEFORE THE STATE OF INDIANA
2 CIVIL RIGHTS COMMISSION
3 - - -
4

5 PUBLIC MEETING OF APRIL 25, 2014
6

7 ORIGINAL
8 - - -

9 PROCEEDINGS

10 in the above-captioned matter, before the Indiana
11 Civil Rights Commission, David C. Carter,
12 Chairman, taken before me, Lindy L. Meyer, Jr., a
13 Notary Public in and for the State of Indiana,
14 County of Shelby, at the Indiana Government
15 Center South, Conference Center, Room A, 402 West
16 Washington Street, Indianapolis, Indiana, on
17 Friday, April 25, 2014 at 10:28 o'clock a.m.
18 - - -
19
20

21 William F. Daniels, RPR/CP CM d/b/a
22 ACCURATE REPORTING OF INDIANA
23 12922 Brighton Avenue
Carmel, Indiana 46032
(317) 848-0088

1 APPEARANCES:

2 COMMISSION MEMBERS:

3 David C. Carter, Chairman
4 Barry Baynard
5 Charles D. Gidney
6 Tehiji G. Crenshaw

7 INDIANA CIVIL RIGHTS COMMISSION
8 By Akia Haynes, Deputy Director
9 Indiana Government Center North
10 100 North Senate Avenue, Room N103
11 Indianapolis, Indiana 46204
12 On behalf of the Commission.

13 OTHER COMMISSION STAFF PRESENT:

14 Noell Allen
15 Pamela Cook
16 Debbie Rincones-Chavez

17 ORAL ARGUMENTS:

18 Reginald Baker vs. Roman Marblene
19 Michael C. Healy, counsel for Complainant
20 Wayne E. Uhl, counsel for Respondent

21 Andrew Straw vs. Indiana Democratic Party
22 Andrew Straw, counsel for Complainant
23 A. Scott Chinn, counsel for Respondent

OTHERS PRESENT:

Reginald Baker
David Hunter
Jim Triantos
Stuart Showalter
John Zody

23 - - -

1 10:28 o'clock a.m.
2 April 25, 2014
3 - - -

4 CHAIRMAN CARTER: Okay. I'll call
5 our monthly meeting to order, even though we
6 don't have a quorum and can't vote on anything,
7 so we can get the meeting out of the way, and
8 hopefully by then -- oh, that's bad English. We
9 hope that by 11:00 that we will have a quorum for
10 the oral arguments to follow.

11 So, Item A on the agenda is "Chair
12 Convenes Meeting," which I've just done, "&
13 Establishes a Quorum," which I cannot do, and
14 therefore we can't approve, or vote to approve,
15 on the Meeting Minutes. So, we will move to the
16 Financial Report.

17 Ms. Cook.

18 MS. COOK: Good morning.

19 CHAIRMAN CARTER: Good morning.

20 COMM. BAYNARD: Good morning.

21 MS. COOK: You've had an opportunity
22 to review the March Financial Report. At this
23 point we are still on target to meet our goal for
fiscal year end. If you have any questions

1 regarding the report, I'd like to entertain those
2 at this time.

3 (No response.)

4 MS. COOK: Okay. Hearing none, thank
5 you.

6 CHAIRMAN CARTER: Thank you.

7 Well, we could report on the Complainant
8 Appeals, but since we can't have a vote to
9 approve the recommendations, I think we can skip
10 that. We might have a discussion later as to the
11 legality of, if other Commissioners should show
12 up, doing the voting part in the gap between the
13 two -- two oral arguments, and whether that
14 violates the Open Door Law or not, so that we can
15 get some business done.

16 And assigning the New Appeals, there are
17 five, and I don't know if -- do we want -- do we
18 want to redistribute them? Let's put that off.
19 That's not really so much a matter of -- on the
20 record. So, on Findings of Fact, we can't vote
21 on. There are no Consent Agreements, and for the
22 moment, we'll skip the Oral Arguments, because
23 it's not 11:00 yet, and we'll have an

1 Administrative Update.

2 Ms. Haynes.

3 MS. HAYNES: Good morning.

4 COMM. BAYNARD: Good morning. I
5 think there were two dismissals in here, and it
6 seems as though they actually agreed on one of
7 the dismissals. Does that mean that -- are we
8 involved in that particular Complaint being
9 dismissed or is it -- I think it's the case of
10 Brooks versus Republic Airways Holdings.

11 MS. HAYNES: Yes, a settlement was
12 reached in those matters, and that did involve
13 our agency.

14 COMM. BAYNARD: And you all resolved
15 it? And there was another one as well, Matthews
16 versus Genuine Parks, NAPA Auto Parts. That was
17 a settlement that didn't involve us as well?

18 MS. HAYNES: That's correct.

19 COMM. BAYNARD: Okay. I just wanted
20 to be clear. Thank you.

21 MS. HAYNES: Thank you. So, good
22 morning.

23 COMM. BAYNARD: Good morning.

1 MS. HAYNES: And we've been quite
2 busy as of late. As of last week, we had five
3 PC's issued, the majority of which were on the
4 basis of disability, but there were also some on
5 the basis of race and gender.

6 And summing up our events, we have
7 recently completed the Indiana Fair Housing
8 Summit. That contained the CLE as well as CE
9 credit, in the amount of eight credits. We had
10 in excess of 150 individuals who attended. It
11 was a very good turnout. People were very
12 interested in what occurred, and we also debuted
13 our preliminary testing results from Region 7.

14 So, in that case, we, amongst the peer
15 tests that were conducted, found that
16 approximately 29 percent showed differential
17 treatment, and so now we are preparing to conduct
18 testing in Regions 1 and Regions 8 for this
19 quarter.

20 On April 5th, there was the Black
21 Barbershop Statewide Health Initiative, and that
22 occurred in 13 cities as well as, too, a great
23 turnout.

1 And then this coming Wednesday, on the
2 30th, is Holocaust Memorial Day of Remembrance
3 event, and that will be from 12:00 until noon --
4 or 2:00, excuse me -- in the Statehouse rotunda.

5 Following that, in our CLE series on
6 May 23rd, we will have a CLE entitled "Title VII:
7 Bankruptcy, Credit [and] Corporations." That
8 will be for three credit hours and will occur in
9 Hammond.

10 And in June, the 2nd through the 6th, we
11 invite you to attend the NFHTA Week Two Regional
12 Training. This training will be on-site here in
13 Government Center South, in Conference Room 14,
14 and as mentioned, it will take place during the
15 entire week from 8:00 until 5:00 p.m.

16 Do you have any questions?

17 CHAIRMAN CARTER: (Shook head no.)

18 MS. HAYNES: Thank you.

19 CHAIRMAN CARTER: Thank you.

20 All right. So, that brings us to
21 Announcements. Do you have any announcements?

22 COMM. BAYNARD: No, I do not.

23 CHAIRMAN CARTER: Anyone else have

1 any announcements?

2 (No response.)

3 CHAIRMAN CARTER: I would just
4 mention that I spent Wednesday at a training
5 for -- largely intended for building inspectors
6 and architects on the -- Chapter 11 of the
7 Indiana Building Code, which has to do with
8 accessibility matters, that do not very closely
9 follow the ADA, unfortunately, although it
10 should.

11 So, I spent from 8:00 in the morning until
12 4:00 in the afternoon hearing all about Building
13 Code details, which was not as thrilling as it
14 sounds.

15 (Laughter.)

16 CHAIRMAN CARTER: But I think I
17 learned something. I learned that that guy, the
18 guy doing it, who used to be a professional
19 building inspector, didn't like the way that the
20 Building Commission is now under the blanket of
21 Homeland Security, and he didn't like the way
22 they approached accessibility issues at all, and
23 made that very clear. But what -- what is there,

1 we learned about.

2 If that is it, unless anyone has anything
3 else, we will then adjourn, making note of the
4 meeting dates for the rest of the year, although
5 since we're here, we seem to have already made
6 note of what our responsibilities are. And I
7 will then declare adjournment for the business
8 meeting.

9 (Recess taken.)

10 (Comm. Gidney arrived.)

11 CHAIRMAN CARTER: Okay. I'll call us
12 back to order, and the Indiana Civil Rights
13 Commission is here to hear oral arguments as a
14 result of Complainant's objections to proposed
15 findings of fact, conclusions of law and order,
16 Reginald Baker versus Roman Marblene, is that how
17 that's pronounced? If the appearances could be
18 identified, please. Oh, I'm -- well, I've got --
19 well, I believe the order is here.

20 MR. UHL: Your Honor, my name is
21 Wayne Uhl. I'm attorney for Roman Marblene. I'm
22 here with my client, Jim Triantos, who's the
23 President and co-owner of the company.

1 CHAIRMAN CARTER: Okay.

2 MR. HEALY: For Complainant, Your
3 Honor, my name is Michael Healy, staff counsel to
4 the Civil Rights Commission for the public
5 interest, on behalf of Reginald Baker, who is
6 standing to the left of me, and also is David
7 Hunter, who is also -- was an employee of Roman
8 Marblene Company.

9 CHAIRMAN CARTER: Okay. All right.
10 So, the way we'll do this is that you each will
11 have 20 minutes, Complainant beginning, to make
12 your case, and then the Respondent will have 20
13 minutes to respond to that, and then you will
14 each have five minutes for rebuttal, after which
15 there will be five or ten minutes for questions
16 from the Commissioners, and we hope --

17 MR. HEALY: Yeah, I have a
18 preliminary procedural matter, Your Honor.
19 Mr. Uhl and I and some of the persons here were
20 concerned about the absence of a quorum. Is that
21 a -- not an issue now?

22 CHAIRMAN CARTER: As long we don't
23 vote on anything, and there will be a transcript

1 available, so I think -- a written transcript of
2 the proceeding of the argument. We already have
3 your submitted arguments or briefs anyway, so
4 we -- I -- in the 20-some years that I've been
5 doing this, that hasn't been an issue when we
6 have oral arguments.

7 MR. HEALY: I think, Your Honor,
8 that -- a similar situation happened in years
9 past when there were -- was less than a quorum,
10 but we'd oral argument anyway, and eventually
11 four Commissioners signed off --

12 CHAIRMAN CARTER: Right.

13 MR. HEALY: -- so, that's perfectly
14 fine --

15 CHAIRMAN CARTER: We haven't had
16 quorums before.

17 MR. HEALY: That's perfectly fine
18 with Complainant.

19 MR. UHL: That's fine, Chairman. I
20 don't have a problem with that. I think probably
21 under the rules we don't even have to have an
22 oral argument; the Commission could decide on the
23 briefs that we've already submitted.

1 CHAIRMAN CARTER: Yeah.

2 MR. UHL: So, if the oral arguments
3 help those of you sitting here today, and then
4 the Commissioners who look at it later, that's
5 perfectly fine with me.

6 CHAIRMAN CARTER: That's often a
7 little less onerous than reading what lawyers
8 laughingly call a brief.

9 (Laughter.)

10 MR. UHL: I would like to ask this:
11 When you refer to the papers, Chairman, we have
12 filed a lot of papers with the ALJ.

13 CHAIRMAN CARTER: Uh-huh.

14 MR. UHL: And then we filed some
15 paperwork respecting the objections, and would
16 the Commission also be reviewing the papers that
17 we had originally filed with the ALJ? Because we
18 incorporated our arguments.

19 (Ms. Cook left.)

20 MR. UHL: I tried to be brief in the
21 things we filed, and tried to incorporate the
22 arguments on the assumption that the Commission
23 would have available to it --

1 CHAIRMAN CARTER: Yeah.

2 MR. UHL: -- the briefing that we had
3 done.

4 CHAIRMAN CARTER: They are available,
5 yes.

6 MR. UHL: Okay.

7 CHAIRMAN CARTER: So, if the
8 Complainant would begin, please.

9 MR. HEALY: Good morning.

10 CHAIRMAN CARTER: Good morning.

11 MR. HEALY: At the outset, I think it
12 is important that we discuss just what the issues
13 are before you. The issue here is not whether
14 the Complainant has proved his case by a
15 preponderance of the evidence at a hearing.
16 There was no hearing. Complainant has not yet
17 had his opportunity for a hearing on the merits
18 of the claim, because the Respondent has filed a
19 motion for summary judgment. This is a summary
20 judgment proceeding only. Therefore, ultimately
21 the burdens of proof are technically different.

22 In order for the Complainant to overcome a
23 motion for summary judgment, he has to show that

1 there is, and only that there is, in existence a
2 genuine issue of material fact which is in
3 dispute.

4 We believe that the Complainant has not
5 only done this, but has overwhelmingly done so,
6 has shown to the Administrative Law Judge that
7 adverse employment actions were taken against him
8 on a number of occasions, first by wrongfully
9 placing him on unpaid medical leave, which is, we
10 believe, an adverse employment action. He didn't
11 work another day after that day in question.

12 And then on top of that, being refused
13 repeatedly the opportunity to come back to work,
14 despite showing medical evidence that he was able
15 to perform the work throughout. And it's not
16 just the word of the employer versus the
17 employee, it is the word of some long-term
18 employees who worked closely with the Respondent
19 in this very, very small company.

20 Baker is the only -- was the only
21 African-American employee working at the
22 Respondent, Roman Marblene Company. All other
23 employees were Caucasian. Baker was able to

1 perform all of the essential functions of the job
2 throughout the time he was there, with or without
3 reasonable accommodation, at the standard set by
4 the employer.

5 For the record, Baker did not request any
6 accommodations for any injuries. He didn't
7 receive any. He was, however, placed on
8 involuntary unpaid medical leave by Respondent,
9 and similarly situated employees with similar or
10 more severe injuries or disabilities or
11 impairments were not placed on involuntary unpaid
12 medical leave, and also, Respondent's proffered
13 reasons for its actions were pretextual.

14 This is a very small company. There are
15 less than 15 employees; therefore, the EEOC
16 doesn't -- did not issue a charge number. As a
17 small company, different employees would be
18 involved in cross-working, cross-training,
19 helping one another out.

20 During his employment with this company,
21 Baker was in charge of maintenance, and he
22 performed spraying and setup work. It required
23 him to operate a spray gun, occasionally lift

1 heavy material such as marble vanity tops and
2 buckets of pigment.

3 According to the testimony that was
4 presented by way of affidavits, many company
5 employees help each other out. More importantly,
6 and this is one of the issues that has been
7 raised by the Respondent, these employees are
8 similarly situated, not because they held the
9 identical job as Mr. Baker, but because they were
10 subject to the same rules and regulations of the
11 employer.

12 There is no evidence that anyone other
13 than the employer, the Respondent owner,
14 Mr. Triantos, or the co-owner had the authority
15 to hire and fire employees or place them on
16 medical leave. The legal requirement has been
17 met that these employees be similarly situated,
18 not identically situated.

19 The issue or the question is whether the
20 employer subjected these employees to different
21 policies. Well, we know that the Respondent had
22 a form for employees to submit if they were
23 absent or had to see a doctor, but employees, as

1 a matter of custom and usage, also notified the
2 Respondent by phone without penalty when they
3 needed to see a doctor.

4 Now Baker called off work one day in
5 January of 2014 -- or rather 2010. He was docked
6 pay for failing for submit a required form, the
7 first employee ever to be so treated. Others
8 were not docked pay for doing this, so the
9 Respondent had changed, at the outset, its rules
10 from the day that Baker called off work.

11 Now, in order to understand what has been
12 going on here, we have to look at the chronology
13 of events that took place. Mr. Uhl has very
14 skillfully, I think, tried to start us off on the
15 last page of the last chapter of the book, that
16 being the termination. In fact, it must be said
17 that Mr. Baker was employed there since 1999.

18 Mr. Triantos did not hire him. Baker
19 worked for at least six years before Mr. Triantos
20 took over in 2005. During Triantos' tenure,
21 unfortunately Mr. Baker claimed that he was
22 subjected to viewing unrequested interracial
23 pornography.

1 Baker, according to his deposition
2 testimony, said -- claimed Mr. Triantos said,
3 "This is why white people have problems with
4 black people." Baker was also subjected to
5 racial slurs during this time uttered by the
6 co-owner, Mr. Triantos' own brother, Frank.

7 Critically, in December of 2009, the plant
8 was shut down. During the same week, the
9 Complainant, Baker, was involved in an automobile
10 accident. He came to work -- excuse me. On
11 January 4th, he had a doctor's appointment, and
12 that was the day he was off work. In fact, that
13 was the only day he was off work. But he came
14 back one day later, January 5th.

15 Between January 5th and January 22nd,
16 there was no evidence of any substandard
17 performance, but January 22nd is the critical
18 date, because that was the date Baker was placed
19 on unpaid medical leave. Respondent has its
20 version as to why the Complainant was placed on
21 medical leave on that day and, Complainant has
22 his version as to why it took place.

23 We have -- the Complainant has, I think, a

1 substantiated version as to the events that took
2 place, thus creating a genuine issue of material
3 fact. According to the Lacey Gleitz affidavit,
4 who was the office manager, she was present at
5 work and she personally witnessed Mr. Triantos
6 ask Baker to change the head on a spray gun.

7 Baker replied that he could not work on
8 the gun solely because a co-worker, Mr. Brown,
9 was presently in the process of using the only
10 spray gun there, spraying granite with the gun.
11 This was the same day -- this was just after
12 Mr. Baker had complained to Mr. Triantos that he
13 shouldn't have been docked his pay.

14 Mr. Triantos thereafter placed him on
15 unpaid medical leave. According to Gleitz's
16 eyewitness affidavit, Baker was not
17 insubordinate, but Triantos was hostile. At no
18 time did Gleitz ever hear Baker say to Triantos
19 or anyone else that he could not use a spray gun
20 because of physical limitations. In fact,
21 there's no evidence than anyone, anyone here,
22 other than Mr. Triantos, ever saw Mr. Baker not
23 perform his job at the standard required.

1 So, Mr. Baker tried to get his job back
2 between February and October. He was not allowed
3 to get his job back despite presenting medical
4 release forms. March 18th of 2010, he filed his
5 Civil Rights Commission complaint.

6 As late as five months later, more than
7 that, seven months later, Mr. Baker kept
8 continuing to try to come back to work. He was
9 given a full, clean bill of health in October of
10 2010, without any restrictions. Mind you, he had
11 no problems working anyway, doing any job to
12 begin with, but Mr. Triantos kept saying, "This
13 isn't enough, this isn't enough, this isn't
14 enough."

15 Finally, he had a statement from
16 Triantos -- or rather Baker's doctor -- which
17 said that there was absolutely nothing the matter
18 with Baker that he could not perform this job at
19 the stand -- at any standard, no restrictions
20 whatsoever, and Mr. Triantos' response was to
21 this, "Well, now I'm going to have to see the --
22 your entire medical history."

23 It could be surmised that one of the

1 reasons why Triantos terminated Baker was because
2 of Triantos' animus due to Baker filing his
3 complaint. Triantos already decided, we believe,
4 that he was not going to allow Baker to come back
5 to work because of his animosity.

6 Other employees attribute dishonest
7 motives to Mr. Triantos. The Hunter affidavit,
8 the Gleitz affidavit. They worked closely with
9 both Baker and Triantos. The ALJ chose to
10 believe the employer's story in its entirety
11 without considering Complainant's own version of
12 the events. Each of these facts reveals that
13 there are genuine issues of material fact.

14 Some of the comparators I've mentioned in
15 my brief are Larry Bauer, a truck driver who
16 delivered products to customers, had a
17 defibrillating device used to shock a patient's
18 heart. He also performed heavy lifting, though
19 he wasn't supposed to do this. He was not placed
20 on involuntary medical leave.

21 Shawn Belty was a grinder. He had a
22 blood-clotting disease affecting heart and lungs.
23 He would have to leave work to undergo heart

1 therapy. Respondent did not give him any
2 problems concerning returning to work, although
3 he wasn't at 100 percent.

4 Finally, Lacey Gleitz, the office manager,
5 had a serious back injury. She had to ask some
6 co-workers for assistance in performing her
7 lifting tasks, unlike Complainant.

8 Now, Mr. Uhl is making much of the fact
9 that these employees did different jobs. Well,
10 in a small company such as this, we're not
11 talking about the Detroit GM Allison plant, where
12 everyone's on an assembly line. This is a very
13 small plant, where everyone has to pitch in and
14 help one another out in different assigned tasks.

15 And the rule is not that they have the
16 same job, but are they subject to the same rules?
17 Here, there is in fact an absence of rules,
18 except for the one rule here, which was that
19 employees needed to call in ahead of time or
20 submit a note. As a matter of custom and usage,
21 nobody else did.

22 So, these are legitimate comparators.

23 There's no evidence that anyone other than

1 Mr. Triantos could or had authority to place
2 anyone on leave, and that's significant, with the
3 Seventh Circuit decision of Coleman versus
4 Donahue.

5 David Hunter was Respondent's production
6 manager. Mr. Hunter was also a supervisor during
7 the entire time that Mr. Baker worked for
8 Respondent. In this company, Hunter was in a
9 clear position to see what Baker was able to do
10 and not do. He said that he saw Mr. Baker use a
11 spray gun. He said that he could -- that Baker
12 helped him, not the reverse, Baker helped him in
13 his job in carrying weights of over 100 pounds,
14 even after Baker suffered his Jan -- his injury
15 in December of 2009.

16 Now, the entire case that Respondent has
17 for placing him on medical leave rests on one
18 incident, that Baker was unable to change the
19 head on a spray gun because it would take more
20 than ten pounds of force. This has been
21 completely contradicted by the testimony of the
22 employees, all of whom were Caucasian, present on
23 work on the day in question.

1 Triantos asked Baker to change the head of
2 the spray gun, believed to be the only one on the
3 premises. Baker said that Mr. Brown was using
4 it, and this has been corroborated. It's not
5 that he couldn't use it because it took ten
6 pounds of force. This is highly suspect, and we
7 believe it is clear evidence of pretext.

8 Pretext means that the legitimate reasons
9 proffered by the Respondent are unworthy of
10 credence. Respondent has tried to put on
11 evidence, legitimate evidence, that Baker was
12 unable to put on -- to perform this work, and
13 therefore, because of his injury, he couldn't
14 work there. He was placed on medical leave. We
15 say that that's pretext.

16 There's more pretext. On the last day
17 that Complainant went in to work, in October
18 of 2010, having presented time after time
19 different medical release forms saying that --
20 each one having less and less restrictions, and
21 finally no restrictions, Mr. Triantos failed to
22 hire him, and we believe there was a deliberate
23 provocation to Mr. Baker.

1 The Administrative Law Judge got it
2 correct when she stated in her proposed decision,
3 if I may quote from her, "Such language, absent
4 provocation, is unprofessional conduct and should
5 be grounds for termination." She hit it on the
6 head, "absent provocation."

7 There was sufficient provocation given to
8 the Complainant because of the way that
9 Mr. Triantos had been treating Mr. Baker and not
10 allowing him to come back, dis -- being
11 dismissive of him, being hostile to him, brushing
12 him off entirely, and acting this way. There
13 wasn't going to be any chance that Baker was
14 going to have a chance to get his job back. We
15 feel that this was not just racially
16 discriminatory, but we also believe that that was
17 retaliatory conduct at once.

18 Both Mr. Uhl and the ALJ make much of
19 Mr. Baker's deposition testimony, which says that
20 after his injury, he couldn't lift a can of soda
21 pop. Well, that is simply not the case. An
22 actual reading of the testimony was that Baker
23 could not open a can of soda pop with his left

1 hand on the day after his injury. "I couldn't
2 pick up a 12-ounce can with that hand," he said.

3 Question: "So, did you do all of the
4 other things with the other hand?"

5 "Yes, sir.

6 "Was there any work that was done on that
7 day?"

8 Answer: "I put the gun together, sprayed
9 all of the way up until it was time for the
10 party, carried tops, double bowl tops, single
11 bowl tops, cleaned up my booth, took all of the
12 paper out, lifted up the pot, pressure pots,
13 cleaned it out.

14 "So, you went back to work --" Question:
15 "You went back to work the next day, January 5th?"

16 "Yes, sir. I worked for two weeks doing
17 everything, carrying tops, spraying, putting the
18 gun together, taking the gun apart."

19 Question: "So, you were doing that with
20 your right hand?"

21 Answer: "Yes."

22 Question: "But did you do spraying with
23 the gun like any other day?"

1 Answer: "Just like any other day. I
2 could do everything with my right hand, and it
3 would be in working order."

4 This, of course, is consistent. It's not
5 one word against the other. It's the word of
6 several people against one. The eyewitness
7 testimony of Gleitz and Hunter, stating that they
8 were present, Mr. Hunter oversaw Baker's work
9 every day. Baker, without limitations, according
10 to Hunter, was able to and did operate the spray
11 gun.

12 Hunter testified, "I was present and I
13 oversaw Baker's work every day. Throughout, he
14 was able to and did operate a spray gun. Despite
15 his injury, he was able to perform all job
16 duties. He helped me carry and lift items
17 between 120 and 150 pounds. He never refused to
18 perform an assigned task."

19 We realize there are conflicting reports
20 regarding the date of the termination, one being
21 the belligerent behavior. We state that because
22 of Baker's presenting numerous medical release
23 forms over a period of several months and was

1 rejected, this made Mr. Baker very understandably
2 upset, but Triantos again refused to consider
3 allowing him to return to work.

4 This, we believe, was a setup. We believe
5 it was retaliatory. It was a desperate attempt
6 to prevent Baker from coming back to work. Or,
7 in the alternative, it was designed, we believe,
8 to provoke an outburst from Baker, which was
9 designed to permit Triantos -- to give him his
10 door to open, precisely what occurred.

11 We say that there was provocation. We say
12 that this was retaliatory conduct. The
13 Complainant had already filed a Civil Rights
14 complaint against the Respondent several months
15 before this. We believe that once the Respondent
16 got that Civil Rights complaint, they were not
17 going to have him return regardless.

18 We believe that the Complainant has
19 overwhelmingly made its -- entered into its --
20 met its burden of proof. We think that summary
21 judgment should never have been granted in this
22 case.

23 Again, the only thing that Complainant

1 wants to have here is his right to have a fair
2 trial and prove to the Administrative Law Judge
3 that, A, he was discriminated against, B, that
4 the assertions of the Respondent, assuming that
5 they proffer what they think is a legitimate
6 explanation, can be shown to be pretextual.

7 We think we've done that on summary
8 judgment, and this should not have been granted.
9 We think there was a miscarriage of justice here,
10 because Mr. Baker is not going to be able to, if
11 the decision stands, have his day in court, and
12 that's all we're asking for.

13 Thank you very much.

14 CHAIRMAN CARTER: Thank you,
15 Mr. Healy.

16 Mr. Uhl, 20 minutes.

17 MR. UHL: Thank you, Mr. Chairman and
18 members of the Commission. It's an honor to be
19 here before you today.

20 I remember many, many years ago as a
21 Deputy Attorney General, I actually had the
22 opportunity to represent this Commission in
23 Federal Court when a complainant sued after the

1 Commission found that she -- that the Commission
2 lacked jurisdiction over her case. So, it's nice
3 to be back before you in a different role now as
4 representing Mr. Triantos and the Roman Marblene
5 Company.

6 First, we think that the Administrative
7 Law Judge got it right on all counts, and I'll
8 explain to you why, and I also appreciate your
9 looking through the briefs and the papers that we
10 filed. But overall, you know, there's no doubt
11 that this is a very unfortunate situation. We
12 have a man who was injured off the job, which is
13 always a bad situation, because Workers'
14 Compensation doesn't cover it.

15 He's injured in a way that makes it very
16 difficult to perform his job, and, we think the
17 undisputed evidence is, unable to perform his
18 job.

19 (Comm. Crenshaw arrived.)

20 MR. UHL: Hi.

21 COMM. CRENSHAW: Sorry. I couldn't
22 find a parking space because of the NRA.

23 CHAIRMAN CARTER: No kidding.

1 COMM. CRENSHAW: Thank you.

2 MR. UHL: Oh, I'll wait until you get
3 seated.

4 COMM. CRENSHAW: Oh, no, you're fine.
5 Go ahead, go ahead. I'm running late because it
6 took me 20 minutes before I finally managed to
7 get me a parking space. Okay. Go ahead. Go
8 ahead.

9 MR. UHL: Okay. Fine. Commissioner,
10 just to let you know who I am, I'm Wayne Uhl,
11 attorney for the Company, Roman Marblene, that's
12 the Respondent in the Reginald Baker case, and
13 we're arguing now Mr. Baker's objections to the
14 Administrative Law Judge's findings of fact and
15 conclusions of law.

16 MR. HEALY: Excuse me. I apologize.
17 The -- as a matter of order and procedure,
18 Comm. Crenshaw has just arrived. She has not
19 been able to listen to any portion of the
20 Complainant's argument here, and I don't think
21 that she should be permitted to listen to
22 one-half of the argument. I will ask that she
23 please recuse herself from the remainder of this

1 hearing, and that she be able to read the
2 transcript later.

3 CHAIRMAN CARTER: That's --

4 MR. HEALY: Thank you.

5 COMM. CRENSHAW: That's fine. That's
6 fine.

7 MR. UHL: Well, Mr. Chairman, I think
8 I would take issue with that objection, for the
9 record. We've already said earlier in this case
10 that all of the Commissioners will have the
11 opportunity to read the transcript of the
12 argument and to know what the parties have argued
13 and to read the briefs and et cetera, and I don't
14 know that Comm. Crenshaw's presence here and
15 hearing our verbal oral arguments is all that
16 different from being able to read the briefs and
17 read the transcript.

18 CHAIRMAN CARTER: We did already
19 receive the briefs via e-mail, to read them the
20 past week. Did you?

21 COMM. CRENSHAW: Uh-huh, uh-huh.

22 CHAIRMAN CARTER: So, she has
23 heard -- heard your argument by reading it

1 already. That -- do you still object?

2 MR. HEALY: Well, yes. She didn't
3 listen to anything that I said today.

4 CHAIRMAN CARTER: Well, did you say
5 anything different from what you said in your
6 written argument?

7 MR. HEALY: Well, I think I
8 extemporized a little bit.

9 CHAIRMAN CARTER: Okay. So, the
10 vocabulary might not have been exactly the same,
11 but the argument was, wasn't it?

12 MR. HEALY: I'll defer to the
13 Commissioners' decision, sir.

14 CHAIRMAN CARTER: Okay.

15 What do you think?

16 COMM. BAYNARD: After reading all of
17 the briefs, it sound -- it still is the same.

18 COMM. GIDNEY: I agree.

19 CHAIRMAN CARTER: All right. I think
20 that Comm. Crenshaw can stay. That doesn't
21 raise -- of course, that would give you
22 ammunition later on perhaps to appeal.

23 MR. HEALY: I understand. Thank you

1 for listening.

2 MR. UHL: Thank you, Mr. Chairman.

3 For the record, that used up about three or four
4 minutes of my time.

5 CHAIRMAN CARTER: Sure.

6 MR. UHL: I don't know if anybody's
7 keeping time.

8 CHAIRMAN CARTER: I am.

9 MR. UHL: I certainly don't intend to
10 be here for 20 minutes, but just in case that
11 becomes an issue.

12 Again, members of the Commission, as I was
13 saying, this is no doubt an unfortunate
14 situation. Mr. Baker suffered an injury off the
15 job that was -- turned out to be an injury not
16 only that made it difficult for him to perform
17 his job when he came back in January, as
18 Mr. Healy has indicated, but ultimately required
19 him to have surgery on the hand, and doctors
20 saying that he couldn't work for long periods of
21 time during this stretch of 2010.

22 Now, Mr. Healy has tried to characterize
23 this as just being a situation about two weeks in

1 January, but there's a lot more history, and I'll
2 talk about that in a minute. But Mr. Baker was a
3 long-time and a valued employee. In fact, it's
4 undisputed in this case that when he was injured,
5 that Mr. Triantos said to him, "I want you to go
6 get medical attention because you're a valuable
7 asset to this company."

8 Unfortunately, the relationship
9 deteriorated when it became clear that Mr. Baker
10 was not going to be able to return to work for an
11 extended period of time because of this injury,
12 not going to be able to perform the essential
13 functions of the job.

14 And then, unfortunately, we have the
15 incident in October that I'll talk about, where
16 Mr. Baker engaged in what is indisputably
17 insubordinate, crude, insulting conduct with his
18 supervisor and the owner of the company that left
19 the supervisor really with no choice but to
20 terminate the employment, notwithstanding the
21 efforts of Mr. Baker to get better and come back.

22 You know, Mr. Healy talked about what the
23 issues are. What I'd like to remind you is: The

1 issue is not whether or not the situation was
2 handled correctly, not whether you might have
3 done something different if you had been the
4 owner of this business, not whether you agree or
5 disagree with either of these gentlemen about
6 exactly what happened.

7 The ultimate question in this case, and
8 the question that the Administrative Law Judge
9 addressed, is whether or not there's evidence
10 here that would support a finding that the reason
11 for the actions that the company took were
12 intentional race discrimination.

13 That's not here, and the Administrative
14 Law Judge correctly found that Mr. Baker had not
15 presented prima facie evidence of a racial
16 motivation behind what happened here. But I'd
17 like to ask you to divorce in your minds whether
18 you think you might have handled this
19 differently. The question is whether the
20 evidence shows that Mr. Triantos did these things
21 because of Mr. Baker's race, and we think the
22 answer is "no" to that question.

23 The case really divides into two different

1 parts, and I would ask the Commissioners to
2 consider each of those parts separately, not as
3 one whole, in terms of analyzing the case. And
4 Mr. Healy, I think, has already indicated that he
5 also believes this case falls into two different
6 parts.

7 Part one is this medical leave issue.
8 It's undisputed that Mr. Baker was injured in a
9 car accident off duty, and that he was seen at
10 the Christmas party to be holding his hand in a
11 funny way. Mr. Triantos asked him about it.
12 Mr. Baker said, "Well, I injured my wrist and my
13 hand in a car accident." And Mr. Triantos said
14 to him, "You're a valuing employ -- you're a
15 valued employee. Over our two-week Christmas
16 break, I want you to seek medical attention for
17 that, because I want you to be able to come
18 back."

19 Mr. Baker did not seek medical attention
20 over the Christmas break. He waited until the
21 first day back to work, then called in to work
22 and said, "Oh, I have a doctor's appointment
23 today. I won't be able to work today," even

1 though he didn't really have an appointment.
2 They had just told him that they would try to
3 work him in.

4 So, later in the day, Mr. Triantos asked
5 him, "Will you please come in and at least help
6 us put together these spray guns that we have?"
7 And Mr. Baker said, "No, I'm not going to come in
8 and even help you put together the spray guns."

9 Now, let me tell you about the job that
10 Mr. Baker did. His job required him to hold a
11 20-to-25-pound spray gun with one hand and be
12 able to manipulate the cords and the cables that
13 fed that spray gun with another hand, so it's a
14 two-handed job. And everyone in the plant is
15 required to be able to lift 60 pounds by
16 themselves, or 125 pounds with the help of
17 another employee.

18 When Mr. Baker came back the next day, he
19 had a doctor's excuse that said that he could not
20 lift any more than ten pounds or use ten pounds
21 of force with his left hand. Basically he was
22 completely without the use of his left hand. At
23 that point, we think Mr. Triantos could have

1 said, "Sorry. You'll need to come back when
2 you're able to lift 60 pounds by yourself and
3 able to lift this 20-to-25-pound spray gun and do
4 your job."

5 Instead, Mr. Triantos said, "Well, let's
6 see if you can still do the job with the help of
7 the other employees." And that was the way
8 things went for just this two-week period of
9 time. However, at the end of the two weeks, it
10 became clear that Mr. Baker was not going to be
11 able to do the job.

12 And the incident that came to a head was
13 when he refused to help somebody change the head
14 on a spray gun because he didn't have the ability
15 in his left hand to be able to do that. At that
16 point, Mr. Triantos said, "I'm sorry. We're just
17 going to have to have you go until you can come
18 back fully able to do the essential functions of
19 your job."

20 This sounds a lot like an ADA case,
21 doesn't it? But it's not an ADA case, it's a
22 race discrimination case. So -- and again,
23 what's been omitted here is the fact that after

1 Mr. Baker left with his ten-pound lifting
2 restriction, he then ultimately went to his
3 doctor and had to undergo physical therapy for
4 the hand, which did not work, and then he had to
5 have surgery on the hand in April of 2010.

6 So, we know that through April of 2010,
7 his hand was simply unable to be able to do the
8 job that he was hired to do. After April, his
9 physicians continued to issue statements
10 restricting his ability to do the job. There was
11 a six-week period where he couldn't do anything.
12 There was then another six-week period where he
13 could only lift very small amounts or have light
14 duty, which this factory doesn't have light duty.
15 It's a very small factory with a limited number
16 of employees.

17 And finally, we get to mid-October of 2012
18 [sic], when there's still confusion over whether
19 or not the doctor notes actually return him to
20 come back to work, and that's the termination,
21 which I'll get to in a minute.

22 But here's the first question that's been
23 asked: Was it race discrimination for

1 Mr. Triantos to insist that with -- that
2 Mr. Baker come back fully able to perform the
3 job, or face the prospect of having Mr. Baker
4 come back and risking that he reinjure the hand
5 while trying to do the job that he was clearly
6 not qualified to do?

7 And again, you might answer that question
8 differently, but Mr. Triantos answered it in the
9 way that he could not take that risk. He could
10 not have this employee with these medical
11 restrictions come back going this heavy-duty job
12 and risk him reinjuring it on the job, which then
13 implicates Workers' Compensation issues.

14 Now, we don't think there's any evidence
15 here that this was racially discriminatory. I do
16 want to point out that in fact Roman Marlene
17 ultimately ended up agreeing that Mr. Baker would
18 receive unemployment benefits during this period
19 of time, based on the fact that he had a medical
20 disability, and that was the basis on which the
21 Department of Workforce Development paid him his
22 unemployment benefits, because he was deemed and
23 agreed by everyone to be medically disabled from

1 being employed by Roman Marblene.

2 Mr. Baker has pointed to three Caucasian
3 employees in comparison -- in comparing his
4 situation to their situations and trying to argue
5 that these white employees were treated
6 differently, but in fact, if you go through the
7 record, based on the undisputed evidence here,
8 those white employees were not situated similarly
9 to Mr. Baker.

10 We had first a woman named Lacey Gleitz.
11 She did not work on the factory floor. She was
12 an office manager. She had back problems that
13 came and went, and came in with different
14 restrictions as -- in terms of her sitting,
15 standing and being able to do things.

16 But even by her affidavit, the only real
17 restriction in her job function was that she
18 couldn't push the vacuum cleaner. She could do
19 everything else in the office. So, during those
20 periods of time when she had her back problems,
21 another employee would vacuum the office. That
22 was it. This was not a situation like
23 Mr. Baker's, where she simply couldn't do the

1 major, essential functions of her job.

2 The second employee is Shawn Belty, who
3 did work on the factory floor. Mr. Belty was out
4 for medical reasons, and, as with Mr. Baker, he
5 was not allowed to come back until he could at
6 least lift the 60 pounds by himself or lift the
7 125 pounds with another worker. And he did come
8 back.

9 Now, he was allowed to go to therapy
10 appointments at the end of the day or during the
11 day for a period of time, but he was also allowed
12 to work because he could do the essential
13 functions of the job. He did not have a doctor's
14 note that said he could only lift ten pounds or
15 whatever. So, clearly he's not in the same
16 circumstance as Mr. Baker.

17 And the third Caucasian employee, who's
18 been referred to here as an employee name Larry
19 Bauer. He did return from a medical issue with
20 restrictions on lifting. The response of Roman
21 Marlene at that point was to say, "We will find
22 you another job that we have," which was a
23 part-time truck-driving job that would meet his

1 restrictions.

2 And here's what I think is important in
3 thinking about this case, is that with respect to
4 these three employees, Roman Marblene actually
5 did what it had to do under the ADA. It looked
6 for accommodations, it found accommodations, and
7 it applied them.

8 So, Roman Marlene here is trying to comply
9 with the ADA. But with respect to Mr. Baker as
10 someone who is completely unable to perform the
11 essential functions of his job, Roman Marblene
12 was unable to accommodate him. Roman Marblene
13 didn't have a light-duty job.

14 So, really what he's asking for in this
15 case is that Roman Marlene be punished for
16 complying with the ADA by giving accommodations
17 to these white employees and not accommodating
18 him. But for the reasons I've discussed, there
19 was really a big difference here, and that
20 difference in accommodating the white employees
21 and unable to accommodate Mr. Baker has nothing
22 to do with race. It has to do with what his
23 circumstances were.

1 Now, this brings us up to the termination.
2 As Mr. Healy's indicated, the restrictions that
3 the doctors were putting on Mr. Baker got better
4 and better, but the notes continued to make
5 references to, "Well, he can come back to work,
6 but he has numbness in his left hand," or "He can
7 come back to work, but he needs to improve the
8 strength."

9 And Mr. Triantos at that point was
10 dubious. At one point he called the doctor's
11 office and asked them to explain the doctor's
12 handwriting, which was illegible on the note, and
13 didn't get an answer to that question.

14 At this point, again, Mr. Triantos was
15 very concerned that if Mr. Baker came back, that
16 he might reinjure himself, and he would be
17 subject to a Workers' Compensation claim, and his
18 Workers' Comp premiums would go way up or he
19 would lose the carrier.

20 So, at that point, what Mr. Triantos asked
21 Mr. Baker to do was to sign a release of any
22 Workers' Comp injury that would be an
23 exacerbation of this injury that he originally

1 had, and this was the basis for the discussions
2 that they had.

3 Actually, Mr. Baker came back on October
4 5th, and he had a friend with him to sort of help
5 him plead his case that he should come back, and
6 that friend became very hostile and wouldn't
7 leave until Mr. Triantos threatened to call the
8 police.

9 Two weeks later, Mr. Baker showed up
10 without any new order of -- well, I'm sorry.
11 There was a new doctor's order on October 13th,
12 but this is the doctor's order that said he still
13 has maybe impaired strength. We can't tell from
14 reading it, because the doctor's handwriting is a
15 little bit difficult to see.

16 And again Mr. Triantos questions whether
17 or not he can really allow Mr. Baker to come back
18 at that point. This is where Mr. Baker makes the
19 comments that led to his termination, and I don't
20 want to offend anybody, but I think it's
21 important for us to have those in the record.

22 Mr. Baker said -- and this is his quote of
23 what he said, not what Mr. Triantos remembers --

1 "You keep screwing me and screwing me and coming
2 up short," and then he said, "You're trying to
3 put it up my ass." No employer should have to
4 put up with that kind of conduct. No employer
5 should have to say, "Oh, well, you're going to
6 come back and work for me when you get better."

7 At that point, this became a much
8 different case. It was no longer a case about
9 medical disability and whether or not this
10 employee could come back. This is now a case of
11 insubordination, and really "insubordination"
12 isn't a strong-enough word for what happened at
13 this point.

14 At that point, Mr. Triantos really had no
15 choice but to say, "I'm sorry, Mr. Baker, but
16 this employment relationship is over. There's no
17 hope of it being salvaged at this point." And
18 there has been no reference at all by Mr. Baker,
19 no evidence submitted, of any white employees who
20 engaged in that kind of conduct but were retained
21 by the company, because, frankly, there were no
22 other employees who engaged in that kind of
23 conduct.

1 So, certainly with respect to the
2 termination decision, there's no evidence here
3 that would support even holding a hearing on the
4 question of race discrimination. The
5 Administrative Law Judge got it right. She held
6 that, first of all, the denial of medical leave
7 was not an adverse consequence or an adverse
8 employment action, and that's correct.

9 But even if it weren't correct, there's no
10 sufficient evidence here to go to a hearing that
11 the actions that Roman Marlene took, the actions
12 that Mr. Triantos took, were discriminatory based
13 on race. Under the prima-facie-case test, the
14 Respondent has -- the Complainant has to come
15 forward with evidence that he was treated
16 differently from similarly situated white
17 employees. He's failed to do that, so the
18 Administrative Law Judge correctly held that
19 summary judgment should be granted on that score.

20 And as I've said, in October of 2010, on
21 the separate issue of determination, Mr. Baker
22 engaged in undisputably insubordinate conduct,
23 and for -- and has not shown any evidence that

1 would indicate that the termination for that
2 conduct was racially discriminatory, and for that
3 reason, too, the Administrative Law Judge
4 correctly found that summary judgment should be
5 granted.

6 I would like to address a couple of the
7 points that Mr. Healy made here. He made a
8 reference to some allegations that were made
9 about racial comments in the workplace. Because
10 Mr. Healy's made that comment, I need to respond
11 to that. First of all, there's never been a
12 claim in this case argued to the ALJ or anyone
13 else of a racially hostile atmosphere in this
14 workplace.

15 But second of all, if there had been such
16 a claim, we would have to also point out that
17 Mr. Baker engaged in racially inflammatory
18 conduct on his own. There's evidence here that
19 he would talk -- he would refer to his fellow
20 employees as "the Grand Dragon." We all know
21 what that means. Or that he would refer to his
22 fellow employees as "the Master." We know what
23 that means.

1 So, I don't want you to look at the
2 racially hostile atmosphere issue at all, because
3 I don't think it's been raised here, but if you
4 do, you've got to understand there's two sides to
5 that story.

6 Second, Mr. Healy has argued in the
7 objections and here today that there's a
8 retaliation claim in this case, that the company
9 was retaliating against Mr. Baker for having
10 filed the Civil Rights charge in the first place.

11 That's a new claim. I've looked through
12 the summary judgment papers that were submitted
13 to the Administrative Law Judge, and I haven't
14 seen -- I'm willing to be corrected, because
15 there's a lot of paper there. I have not seen
16 that Mr. Baker has ever taken the position in
17 this case, until his objections to this
18 Commission, that there's a separate claim of
19 retaliation here.

20 I think you should hold -- or not even
21 consider that, because it hasn't been briefed and
22 raised before the Administrative Law Judge;
23 therefore, it wasn't decided by the

1 Administrative Law Judge, and for that reason it
2 has been waived.

3 Mr. Healy said something about Mr. Baker
4 lifting weights over a hundred pounds. Well --
5 and having help to do that. As I've indicated to
6 you, the job requirement was that a single
7 person, a lone person -- he could be married or
8 not -- but a lone person had to be able to lift
9 something 60 pounds by himself, 125 pounds with
10 the help of someone else.

11 So, if Mr. Baker was lifting things that
12 were over a hundred pounds with the help of
13 others, that was perfectly acceptable and what
14 was expected in this workplace. The problem is
15 that by himself, he couldn't lift 60 pounds. He
16 was basically a one-armed paper hanger. He only
17 had the use of one hand, but was doing this very
18 heavy physi -- very heavy work, and for that
19 reason was simply unable to do -- do the job.

20 So, for those reasons, members of the
21 Commission, we would ask that you carefully
22 review the evidence, look at the briefs, and
23 review your Administrative Law Judge's

1 recommended findings, and find that those
2 recommended findings are correct and affirm them
3 in every respect.

4 Thank you.

5 CHAIRMAN CARTER: Thank you.

6 Mr. Healy, you have five minutes to reply.

7 MR. HEALY: Thank you.

8 Mr. Uhl has asked: Where is the element
9 of race discrimination in this case? Well, here
10 it is: According to the Gleitz affidavit,
11 Mr. Baker, the only African-American employed
12 there, called off work one day during January
13 of 2010.

14 Baker was docked pay that day for calling
15 off work, the first employee to be so treated.
16 Though other employees have done this as well,
17 Roman Marblene, Inc. had never docked the pay of
18 any other employee who called off work in this
19 manner. Roman Marblene, Inc. changed its rules
20 as of the day that Baker called off work.

21 After that, Mr. Baker, understandably,
22 sent a letter to his supervisors requesting pay
23 for the day he called off work. In response, the

1 owner, Mr. Triantos, removed Baker from work
2 because he was not a hundred percent. Therein
3 lies a pretextual reason.

4 Despite Mr. Baker's injury following the
5 accident, he was able to return to work and
6 perform his jobs, and Mr. Triantos would not let
7 Baker return to work, despite submitting numerous
8 medical releases. Therein lies discriminatory
9 animus, and it doesn't come just from Mr. Baker,
10 it comes from disinterested employees and
11 supervisors who have no stake in the outcome of
12 this case.

13 We have shown that the Complainant was
14 discriminated against. You don't have to believe
15 the Complainant necessarily. You can choose to
16 believe the Respondent if you want, but the point
17 is: There are disputed issues of material fact
18 here that need to be resolved by the
19 Administrative Law Judge when she listens to the
20 testimony of the individual Complainant and the
21 individual Respondent manager, so as to make a
22 fair determination.

23 There is no evidence, he says, Mr. Uhl

1 says, of any white employees acting this way
2 toward the employer. Unfortunately, that's a
3 little bit of sleight of hand. The reason for
4 that is because no other white employees were
5 ever treated this way, in a discriminatory
6 manner. No other white employees were docked pay
7 for being off work one day. No other white
8 employees in this record were denied the right to
9 come back to work.

10 Mr. Uhl is -- tries to make it plain that
11 "We go out of our way to try to accommodate
12 employees." Correction: The Respondent has gone
13 out of its way to accommodate its white or
14 Caucasian employees. It did not go out of its
15 way to accommodate the Complainant. The attitude
16 was, "Don't call us, we'll call you."

17 In truth, Mr. Triantos actually saw --
18 actually knew, or should have known, that Baker
19 was doing heavy lifting. Baker undoubtedly was
20 at work between January 5th and January 22nd.
21 There's no evidence that he couldn't do any work
22 then. Why was January 22nd critical? Why choose
23 that day to take the Complainant and put him onto

1 medical leave if he wasn't doing the job right?

2 That was the day that Triantos saw this
3 letter from Baker saying that he wanted to have
4 his pay back, his docked pay back. That was the
5 day that, according to him, he was to use a spray
6 gun and couldn't. But Lacey Gleitz knew better.
7 Lacey Gleitz saw through the pretext and the
8 sham, and knew that Complainant was not trying to
9 get out of doing work and was not unable to do
10 the work.

11 Mr. Triantos docked him his pay, wouldn't
12 pay him back. Mr. Triantos put him on medical
13 leave, and we believe he was not going to give
14 him a chance to come back to work. The proof
15 comes from this document here, the final medical
16 release form, and this was, I believe, the fifth
17 or the sixth one that Mr. Baker presented, says,
18 "Patient may return to regular duty
19 October 12th."

20 No restrictions. No restrictions
21 whatsoever. It doesn't matter that back in
22 January, Baker was able to do all of the work.
23 Now he gets a clean bill of health, and he still

1 is told, "Get out of here. Don't call us, we'll
2 call you. Show me your medical file." Therein
3 lies the provocations of the Complainant. I'm
4 not going to say that Mr. Baker didn't act --
5 react angrily. He did. But who wouldn't when
6 faced with this overwhelming evidence of unfair
7 treatment and, yes, race discrimination?

8 You don't have to necessarily believe the
9 Complainant's side, you don't have to believe the
10 Respondent's side, but there is the evidence that
11 needs to be determined at a public hearing, where
12 the credibility of the witnesses can be attested
13 to.

14 The Administrative Law Judge did not get
15 to hear the Complainant's side of this story
16 in -- up front, in person, nor the Respondent's
17 side. That is what needs to be done in order to
18 come to a -- the only fair evaluation of this
19 case.

20 Thank you.

21 CHAIRMAN CARTER: Thank you,
22 Mr. Healy.

23 Mr. Uhl, five minutes.

1 MR. UHL: I have very little further.
2 I think I've made all of the points that I wanted
3 to make, Mr. Chairman. The only thing that I
4 would say is that this issue with the docked pay
5 is really an eyedropper in a teacup. He did get
6 the docked pay back, so that's -- I just wanted
7 to let you know that. The record shows that that
8 one day of docked pay was -- there was a dispute
9 there, and he was given that pay back.

10 CHAIRMAN CARTER: Okay. Thank you.

11 Are there --

12 MR. HEALY: Is there evidence of
13 that? Is that in the record?

14 CHAIRMAN CARTER: I think so.

15 MR. HEALY: I didn't think it was in
16 the record.

17 CHAIRMAN CARTER: Do Commissioners
18 have questions?

19 COMM. BAYNARD: Yeah. Do we need to
20 swear them in?

21 CHAIRMAN CARTER: We do need -- if
22 you're going to ask him a direct question.

23 Okay. Would you, I guess, raise your --

1 whichever hand?

2 MR. HEALY: You mean -- who are you
3 referring to, sir?

4 CHAIRMAN CARTER: The --

5 MR. HEALY: The Complainant?

6 CHAIRMAN CARTER: -- Complainant. We
7 need -- you know, we need to swear him in if
8 Commissioners are going to ask him questions.

9 MR. UHL: May I make a point of order
10 on that, Your Honor?

11 CHAIRMAN CARTER: Yes.

12 MR. UHL: As a general rule, on
13 summary judgment, a court would be limited to the
14 briefing and the affidavits and the evidence that
15 have already been submitted by the parties, and
16 it would be my position that it would be
17 inappropriate for the Commission at this point to
18 take additional evidence from what we have
19 submitted. So, I thought the question period
20 would be questions directed to counsel --

21 CHAIRMAN CARTER: Okay.

22 MR. UHL: -- but not evidence, and I
23 would object to the presentation of evidence at

1 this time.

2 CHAIRMAN CARTER: I would tend to
3 agree with you.

4 Can you ask the question of --

5 COMM. BAYNARD: Well, the questions
6 that I want to ask basically are -- I just wanted
7 to hear from --

8 CHAIRMAN CARTER: Okay.

9 MR. UHL: To the counsel?

10 COMM. BAYNARD: To -- no, to the
11 Complainant.

12 CHAIRMAN CARTER: I'll -- do you
13 understand the argument against asking him
14 questions?

15 COMM. BAYNARD: So, I can ask -- I
16 can ask counsel, then. Now, during the time from
17 January 5th up to Mr. Baker coming back to work,
18 through the 22nd, did he perform all aspects of
19 the job?

20 MR. HEALY: Who -- excuse me. Who
21 are you directing the question to, sir? Is it --

22 CHAIRMAN CARTER: Mr. Uhl.

23 MR. HEALY: Oh, Mr. Uhl? Okay.

1 Sure.

2 MR. UHL: Commissioner, we would say
3 the evidence shows that he may have had some
4 assistance with some of the heavy lifting, but he
5 simply couldn't perform all of the aspects of the
6 job. He was under a medical restriction that
7 said he could not use more than ten pounds of
8 force with his left hand.

9 And in fact, we know that -- and on
10 January 22nd, the last day he worked, when he was
11 asked to put a spray gun back together, he said
12 he could not do that because it would take more
13 than ten pounds of force. Mr. Triantos tried to
14 let him come back, but it just wasn't working
15 out.

16 And in fact, we know he wasn't getting
17 better, because after that, he failed the
18 physical therapy, and they had to do surgery, a
19 time when he would have had to be out anyway.
20 So, he may have been able, with the work -- help
21 of some of the other workers, to try to get by,
22 but he was not able to perform the functions of
23 the job.

1 COMM. BAYNARD: In the briefs that I
2 read, I did not see where he needed help to
3 perform his duties --

4 MR. UHL: I believe --

5 COMM. BAYNARD: -- in either your
6 briefs or Mr. Healy's briefs.

7 MR. UHL: I believe -- and I'll let
8 Mr. Healy correct me. I believe that Mr. Baker
9 actually testified, and then some of these
10 affidavits that they've submitted specifically
11 say, that during that two-week period of time, he
12 was getting by with the help of other employees.

13 COMM. BAYNARD: What I saw was
14 that --

15 COMM. CRENSHAW: Uh-huh.

16 COMM. BAYNARD: -- he helped one
17 employed by lifting more than 100 pounds, and the
18 briefs that Mr. Healy presented showed that he
19 actually did work lifting, I guess, double bowl
20 sinks as well as single bowl sinks by himself,
21 and not needing help.

22 MR. UHL: If he was doing that, it
23 was beyond what his doctor had said he could

1 do.

2 COMM. BAYNARD: Well, what -- was he
3 able to do the functions of the job? That's what
4 I'm asking.

5 MR. UHL: It's our position that he
6 wasn't able to do any of the functions of the
7 job. I mean if he managed to lift a 60-pound
8 sink with one arm, great. But then he's
9 subjecting himself and the employer to all kinds
10 of adverse consequences if he injures himself, if
11 he drops it, if he drops it on the foot of
12 another employee. You just can't have someone
13 working in this industrial situation only able to
14 use one arm.

15 COMM. BAYNARD: Can he personally
16 lift a double-bowl sink with one arm?

17 MR. UHL: Could one person lift a --

18 COMM. BAYNARD: Yes.

19 MR. UHL: -- 60-pound sink with one
20 arm? Possibly so, but in this environment, you
21 have to be able to do it for eight hours, you
22 have to be able to move it from one part of the
23 shop to the other, you have to be able to do this

1 as part of the production process. So, just
2 being able to bench press 60 pounds with one arm
3 is not the answer to the question. The answer to
4 the question is: Could he perform --

5 COMM. BAYNARD: How many times a day
6 would a person -- would a person like Mr. Baker
7 have to move or lift 60 pounds?

8 MR. UHL: I don't know that the
9 record reflects that. I think it would be
10 probably dozens of times, because they're
11 processing these double-bowl sinks, spraying
12 them, and then moving on to the next one in the
13 production line.

14 MR. HEALY: And again -- excuse me --
15 Mr. Uhl is doing exactly what he said we
16 shouldn't be doing, which is putting evidence
17 into the record that's not there. His statement
18 just now is not in the briefs.

19 Is that correct?

20 MR. UHL: Absolutely. The record was
21 not --

22 CHAIRMAN CARTER: Right.

23 MR. HEALY: The rule has to go both

1 ways.

2 COMM. CRENSHAW: He should be allowed
3 to testify, then.

4 MR. UHL: No, I agree. I agree. I
5 absolutely agree with that, Comm. Crenshaw. So,
6 what I -- I was trying to answer the question,
7 though, and -- the question that was put to me.

8 And I guess the correct answer,
9 Commissioner, is the record does not reflect how
10 many times a day someone would have to lift those
11 things.

12 CHAIRMAN CARTER: Are there any other
13 questions?

14 (No response.)

15 CHAIRMAN CARTER: All right. We will
16 take this matter under advisement and let you
17 know our determination in due course. Everyone
18 present and absent has a chance to review the
19 written materials.

20 MR. UHL: Thank you, Mr. Chairman,
21 and thank you for your attention to our arguments
22 today.

23 CHAIRMAN CARTER: You are welcome.

1 MR. HEALY: One thing that is in the
2 record is that Complainant has stated, and it's
3 undisputed, that he was ambidextrous, he was able
4 to use both hands. It wasn't just that he was
5 left-handed or right-handed.

6 COMM. BAYNARD: I have one more
7 question before we go.

8 CHAIRMAN CARTER: Okay. Go ahead.

9 COMM. BAYNARD: In the workplace
10 here, normal conversation, would it include
11 obscenities?

12 MR. UHL: I think -- I think,
13 Mr. Commissioner, that yes, there was evidence
14 that there was lots of that kind of banter in
15 this workplace. Except for the office manager, I
16 think the evidence is that they were all men who
17 were working there in this shop, and yes, there
18 was some kind of -- there was bantering of that
19 kind.

20 COMM. BAYNARD: Obscenities worse
21 than what was presented in the briefs that caused
22 Mr. Baker to be fired?

23 MR. UHL: I don't -- here's my answer

1 to that: I don't remember whether the record
2 would show worse or not, but what the record
3 would show is that any obscenities in the
4 workplace were in the, let's say, relaxed
5 atmosphere of the workplace and not thrown to
6 actually insult somebody or be insubordinate to a
7 supervisor.

8 This is a very different situation. What
9 Mr. Baker was saying was angrily to his
10 supervisor the things that I've already quoted,
11 and that's different from workplace banter.

12 MR. HEALY: And that, of course, is
13 outside of the scope of the record. I don't
14 think there's anything in the record regarding
15 workplace banter.

16 MR. UHL: I thought there was in one
17 of the depositions. I could stand corrected, but
18 I thought there was.

19 MR. HEALY: Well, I think you should
20 be corrected.

21 COMM. CRENSHAW: I have a question.
22 If the employer or supervisors were aware of this
23 banter, so to speak, why didn't the people in

1 authority make an attempt to maybe have someone
2 come in professionally to sit down with the
3 employees to -- you know, "This is what you do on
4 the job, this is what you not do on the job," to
5 stop some of this banter back and forth, or to --
6 in my opinion, a responsible employer,
7 supervisor, would do that to prevent any more
8 conflict between employees -- an employee and
9 employer.

10 MR. UHL: I -- and if I had been
11 their lawyer at that time, I would have given
12 them exactly that advice, Commissioner, that an
13 employer needs to be proactive in kind of
14 prohibiting that sort of hostile environment
15 activity. The other thing I'll point out to you,
16 though, is that none of the employees, including
17 Mr. Baker, came to the employer and complained
18 about that workplace banter.

19 So, in terms of liability, the employer's
20 not liable unless there's a complaint and the
21 employer thinks that there's somebody there who's
22 not consenting to that kind of conduct. But you
23 are absolutely right about what employers should

1 do in those kinds of circumstances to discourage
2 that kind of thing.

3 And again, I'll remind you what I said at
4 the beginning: There's not a hostile environment
5 claimed in this case. There's been some talk
6 here about things that were said, but there's not
7 been a claim here that we were maintaining that
8 Mr. Baker was injured by a hostile environment.

9 CHAIRMAN CARTER: All right. Thank
10 you.

11 It seems we're veering somewhat off
12 course. So, I guess it's not official until I
13 hit this little piece of wood.

14 MR. UHL: Thank you again,
15 Commissioners.

16 CHAIRMAN CARTER: Thank you.

17 (Recess taken.)

18 CHAIRMAN CARTER: All right. I'm
19 reopening the public meeting of the Indiana Civil
20 Rights Commission for April. I misspoke earlier
21 when I used the word "adjourn," and I should have
22 said, as I indicated elsewhere, that we would
23 wait to see if we got a quorum eventually, and

1 then act on the matters that we had to leave
2 behind earlier because we did not have a quorum.

3 So, I will go back to the beginning of the
4 agenda, and the Chair convenes the meeting and
5 establishes a quorum. We have four
6 Commissioners, thus a forum.

7 Does anyone remember the minutes? I read
8 them.

9 COMM. CRENSHAW: Yes.

10 CHAIRMAN CARTER: May I have a motion
11 to approve the minutes?

12 COMM. CRENSHAW: So moved.

13 COMM. BAYNARD: Second.

14 CHAIRMAN CARTER: All in favor?

15 COMM. CRENSHAW: Aye.

16 COMM. BAYNARD: Aye.

17 COMM. GIDNEY: Aye.

18 CHAIRMAN CARTER: Aye.

19 And any opposed?

20 (No response.)

21 CHAIRMAN CARTER: Thank you.

22 And we had the Financial Report. Do we
23 have any news from Comm. Blackburn?

1 MS. RINCONES-CHAVEZ: No, we do not.

2 CHAIRMAN CARTER: So, that will be --
3 Lonnie -- the two cases of Lonnie Johnson, First
4 Cash Pawn and City of Indianapolis Fire
5 Department, will be continued. And my case of
6 Janice Taylor versus Securitas Security Services,
7 USA, Inc., I would recommend that we uphold the
8 no probable cause finding. May I have a motion
9 to accept that recommendation?

10 COMM. GIDNEY: So moved.

11 CHAIRMAN CARTER: And a second?

12 COMM. CRENSHAW: Second.

13 CHAIRMAN CARTER: All in favor?

14 COMM. CRENSHAW: Aye.

15 COMM. BAYNARD: Aye.

16 COMM. GIDNEY: Aye.

17 CHAIRMAN CARTER: Aye.

18 Any opposed?

19 (No response.)

20 CHAIRMAN CARTER: Thank you.

21 So, for the Assignment of New Appeals, I
22 will take the first two cases, Joseph Lewis
23 versus Lockhart Cadillac, Inc. and Lonnie L.

1 Johnson versus Advanced Auto Parts;
2 Comm. Baynard, if you would review Ingrid Shaw
3 versus Modern Door Corporation; and Comm. Gidney,
4 Patricia A. Sciarra, I think it is,
5 S c i a r r a, verses Indiana University Health;
6 and Comm. Crenshaw, if you would review Darla --
7 is it Darla or Daria? Daria, it looks like.

8 COMM. CRENSHAW: Uh-huh.

9 CHAIRMAN CARTER: My blurry old
10 eyes -- B. Scott versus Select Rehabilitation,
11 Inc. And were those -- let's see. Findings of
12 fact -- oh, yes. Okay. I remember now. There
13 are two Findings of Fact, Conclusions of Law and
14 Order, Christopher Brooks versus Republic Airways
15 Holdings, Inc. and Terrence Matthews versus
16 Genuine Parts Company doing business as NAPA Auto
17 Parts. May I have a motion to accept those two
18 findings?

19 COMM. GIDNEY: So moved.

20 COMM. CRENSHAW: Second.

21 CHAIRMAN CARTER: All in favor?

22 COMM. CRENSHAW: Aye.

23 COMM. BAYNARD: Aye.

1 COMM. GIDNEY: Aye.

2 CHAIRMAN CARTER: Aye.

3 Any opposed?

4 (No response.)

5 CHAIRMAN CARTER: Thank you.

6 No Consent Agreements, and we'd better not
7 vote on the oral argument we just heard, because
8 obviously there hasn't been time to review the
9 materials we said we would review.

10 That being done, I will say, are there --
11 does anyone have anything else, any announcements
12 from the Commissioners who've gotten here since
13 we had the last announcements?

14 MS. ALLEN: Sorry. May I?

15 CHAIRMAN CARTER: Yes.

16 MS. ALLEN: It just occurred to me
17 that since our last meeting, I don't think it was
18 mentioned, but there was a recent bill, House
19 Bill 1121, that was passed into law March 24th by
20 Governor Pence, and essentially it's about
21 administrative law judges and higher authority,
22 which would be you all, for purposes of this
23 Commission.

1 And there's language in that law -- and
2 I'll prepare an amendment of some sort to you all
3 for your records -- that will prohibit parties to
4 a case to have ex parte communications with
5 Commissioners if you are making the ultimate
6 decision on cases, among other things.

7 So, the part of the new law that will
8 affect you as a Commissioner directly would be
9 the prohibition of ex parte communication with
10 those individuals who are involved in civil
11 rights complaints. So, again, I will present a
12 memo to you all for your understanding and
13 knowledge in the coming months.

14 CHAIRMAN CARTER: Well, I have a
15 specific question. There was one of the staff
16 members from the Housing Group who came to this
17 training I was at Wednesday made reference to a
18 thing. Does adding one of us calling the
19 investigator and -- to clarify points in an
20 appeal that has been found no probable cause?

21 MS. ALLEN: No, so long as your
22 communications are limited to an investigator to
23 a case, that's fine, or even counsel, but you are

1 prohibited from speaking to the complainant
2 directly --

3 CHAIRMAN CARTER: Or the respondent.

4 MS. ALLEN: -- or the respondent, and
5 I think this will come -- come up in the event,
6 for example, there is an objection to a notice of
7 finding, and the individual seeks you out in
8 public. That has happened in the past.

9 COMM. CRENSHAW: I had that happen.

10 MS. ALLEN: That behavior or that
11 conduct will be prohibited. If that should
12 happen, you would have to think of ways to
13 resolve that issue, maybe a recusal or at least
14 disclosing on the record that you've had such
15 communication, so that all parties are made
16 aware.

17 The effective date of this law is not
18 until July 1st, so we have a little bit of time
19 to understand the nature of the new law and what
20 that means to you as a Commissioner.

21 COMM. BAYNARD: Now, are we affected
22 when, say, during a public meeting and there is
23 a -- one of the complainants shows up and we'll

1 speak. Are we affected then?

2 MS. ALLEN: You are not. Again, if
3 that is during a public meeting, everything is on
4 the record at that point, and all parties are at
5 least made aware of the appearance, at least they
6 have the opportunity to come and present and
7 appear before the Commission. But again, I can
8 think of a number of scenarios where ex parte
9 communication may occur, but it would be upon us
10 to be a bit more proactive to understand what
11 those scenarios are and then how to resolve them.

12 CHAIRMAN CARTER: Yeah, I -- there
13 was a case a number of months ago where a woman
14 addressed us from the audience, and I talked with
15 her afterwards about -- not about her case so
16 much as it had to do with disabilities, and I was
17 talking to her about other disability resources
18 and things like that. I -- it didn't seem to me
19 that that was specifically pertinent to the case,
20 although her case did have to do with disability,
21 but it wasn't -- we weren't discussing the merits
22 of it or anything.

23 MS. ALLEN: Right. And so, that goes

1 to the definition of what ex parte communication
2 is. It's communication that directly deals with
3 the nature of the case, the substantial facts
4 that you would consider in making a decision.

5 CHAIRMAN CARTER: It would be -- you
6 know, what's clearer is what wouldn't I think
7 because it was -- it would be the case of the kid
8 with food allergies and the --

9 MS. ALLEN: Fishers Adolescence?

10 CHAIRMAN CARTER: -- and these
11 parents who came who were homeschooled, and we
12 homeschooled our kid right through high school,
13 and so I had a brief conversation with them
14 afterwards about homeschooling, about the
15 experience of homeschooling, but really the case
16 had nothing to do with homeschooling
17 specifically.

18 MS. ALLEN: And to your point,
19 Comm. Carter, I think it would be in our best
20 interest to put on some sort of training or
21 inform you all of training of where -- ex parte
22 communication and many other issues, so that you
23 are aware of what it is and what it is not,

1 because it's one thing to say, "Do not
2 participate in ex parte communication," but if
3 you don't know what that is, then how can you --

4 CHAIRMAN CARTER: Right.

5 MS. ALLEN: -- be proactive in it?
6 Your conversations with the parents of the
7 homeschool case may have been very innocent -- I
8 was at a loss for words there -- but it could
9 have been very innocent, had nothing to do with
10 the merits of the case. So, again, we'll know
11 what that is, and you will know. I'll draft up a
12 memo, and if there are any trainings available,
13 I'll keep you apprised of them.

14 CHAIRMAN CARTER: Obviously it's
15 something that ALJ's elsewhere were doing,
16 because it wasn't us, that caused somebody to
17 come up with the law.

18 MS. ALLEN: I'm not sure, and I'll
19 just leave it at that, regarding the legislative
20 intent behind it. Again, the House Bill 1121
21 contains far more language than just that.

22 For example, it allows state agencies to
23 share ALJ's, to -- in the event, for example,

1 with our Commission, we only have one ALJ, so if
2 there's an issue of conflict of interest or in
3 the event that I have to recuse myself, where do
4 we go? Well, now we have the ability to seek
5 ALJ's from other agencies.

6 It also requires the agencies to create
7 some sort of code of conduct, and the Inspector
8 General for the state, Dave Thomas, among -- and
9 his staff is creating that code of conduct for
10 ALJ's.

11 CHAIRMAN CARTER: I don't remember,
12 in 20-plus years, there ever being another ALJ
13 associated with cases for us. Even back when we
14 had six attorneys, it was always Bob Lange. And
15 there -- it was sort of common knowledge that
16 other agencies didn't have any ALJ's, and so they
17 had to go with a pool. All right.

18 MS. ALLEN: Any other questions
19 regarding that?

20 COMM. GIDNEY: No.

21 MS. ALLEN: Thank you.

22 CHAIRMAN CARTER: Thank you.

23 Were we on the record with that -- that

1 whole thing?

2 THE REPORTER: Yes.

3 CHAIRMAN CARTER: So, now we can
4 prove that we were informed.

5 THE REPORTER: I keep writing until
6 you tell me to stop.

7 CHAIRMAN CARTER: Oh, okay. I think
8 we're in recess. I'll hit it again.

9 (Recess taken.)

10 CHAIRMAN CARTER: Good afternoon.
11 We -- the Indiana Civil Rights Commission is
12 reconvening. We had the rest of our meeting at
13 another hearing this morning. We're now
14 reconvening to hear Respondent's objections and
15 request -- excuse me -- for oral argument in the
16 case of Andrew Straw versus Indiana Democratic
17 Party.

18 If the people representing both sides
19 would identify themselves, please, we'll talk
20 about it. Let's see, it's the Respondent's
21 objection, so Respondent goes first.

22 MR. CHINN: Yes. Thank you,
23 Mr. Chairman. Scott -- for the record, Scott

1 Chinn, C h i n n. I'm from the Faegre Baker
2 Daniels law firm here in Indianapolis,
3 representing Respondent, Indiana Democratic
4 Party.

5 CHAIRMAN CARTER: Okay.

6 MR. STRAW: Good morning -- or
7 afternoon. My name is Andrew Straw, and I'm the
8 Complainant. I live in Cook County, Illinois.

9 CHAIRMAN CARTER: Okay. All right.
10 If it's agreeable to you, we will have first the
11 Respondent's presentation of his case for 20
12 minutes, and then the Complainant -- the
13 Complainant will have 20 minutes, and then five
14 minutes each for rebuttal, I guess it is, and
15 then about five minutes for Commissioners to ask
16 questions.

17 MR. CHINN: No objection from us.

18 CHAIRMAN CARTER: And so, Respondent,
19 if you would --

20 MR. CHINN: All right.

21 CHAIRMAN CARTER: -- Mr. Chinn.

22 MR. CHINN: Well, thank you,
23 Mr. Chairman and members of the Commission.

1 Again, my name is Scott Chinn, and I'm a lawyer
2 here in Indianapolis with Faegre Baker Daniels
3 law firm, and I represent the Indiana Democratic
4 Party, who's the Respondent in the matter now.

5 I might, if it's okay will you and the
6 court reporter, for shorthand today refer to the
7 Indiana Democratic Party as IDP. I'm going to
8 say it a lot, so it might make sense to
9 abbreviate that, and you'll know what I mean when
10 I say, "IDP."

11 Another real party in interest in this
12 case, as you'll hear more about, which is the
13 St. Joseph County Democratic Party, again, a
14 mouthful, so I might offhandedly refer to that
15 entity as the St. Joe County Party, just to be
16 short about it. That's a little bit easier to
17 say.

18 The Chairman of the Indiana Democratic
19 Party, my client, John Zody, is here today as
20 well, and we're here because of the Commission's
21 March 15th, 2014 issuance of the Notice of Intent
22 to Reverse the Deputy Director's Finding of No
23 Cause in this case. We -- you're right, we asked

1 for oral argument. We very much appreciate that
2 you granted that, an opportunity to address you
3 here today with respect to that Notice of Intent
4 to Reverse.

5 And with respect to that Notice that you
6 issued and that's pending before us,
7 respectfully, a decision to reverse the Deputy
8 Director's finding would not be supported by the
9 facts or the law or anything that's in the
10 Commission's file.

11 And the standard the Commission gave in
12 that Notice, that the Respondent should be,
13 quote, truly accessible for all, end quote, is
14 vague and completely unworkable in the context of
15 this case, and I want to make three points today
16 that I think demonstrates the proper context for
17 the Commission to judge the merits.

18 So, the first point is that this case is
19 in some dire need of perspective. Because of the
20 Commission's Notice of Intent to Reverse the
21 Deputy Director's No Cause finding, the IDP and
22 the St. Joe County Party are on the verge, I
23 would submit to you, of being punished for no

1 legitimate reason and, in some measure, for
2 having done a good deed.

3 What do I mean by that? This case is
4 primarily about the accessibility of the St. Joe
5 County Party headquarters in South Bend, Indiana.
6 Now, there is serious question, as you would note
7 from the assumptions made in the Deputy
8 Director's Notice of Finding of No Cause, about
9 whether that building's even a public
10 accommodation under the law.

11 But assuming it is, the Deputy Director
12 found that nonetheless, no cause existed, for
13 reasons that we'll talk about, but with respect
14 to that issue, while the public is welcome to
15 come and visit the County Party when it's open,
16 it doesn't have regular business hours, and, of
17 course, it mainly exists as an office to transact
18 internal business for the County Party
19 organization.

20 For example, during the year in which most
21 of the life of this case has occurred, 2013,
22 there aren't elections in Indiana, as you
23 probably know, and so there was just not much

1 business transacted at all at the County Party
2 headquarters in St. Joe County.

3 I say that only to underscore the notion
4 that this isn't Wal-Mart. This isn't even a
5 normal sort of office building where people come
6 in a need to transact business. This is
7 something different than that.

8 Moreover, the Deputy Director found that
9 there was no evidence that Mr. Straw ever tried
10 to enter that building, raising the question of
11 what harm would occur or accrue to him as the
12 charging party in any event, even assuming, as
13 the Deputy Director did, arguendo, that the
14 St. Joe County Party headquarters is a public
15 accommodation.

16 And of particular legal significance,
17 Mr. Straw didn't name the St. Joe County Party as
18 a Respondent. He named the IDP, the Indiana
19 Democratic Party, which does not own, which does
20 not control, which does not superintend in any
21 way the building in question in this case, the
22 St. Joe County Party headquarters.

23 The IDP and the St. Joe County Party,

1 while related, admittedly, in terms of overall
2 Democratic Party governance and relationships,
3 are separate legal entities. The county is not a
4 subsidiary, for example, or agent of the IDP for
5 this matter, and the IDP, quite simply, has no
6 legal interest in the building that's at issue.

7 So, with all of those legal problems --
8 and there are more, but hopefully that should
9 suffice -- that challenge Mr. Straw's charge, you
10 might imagine that the IDP and the St. Joe Party
11 in this case just folded their arms and said, "Go
12 fish, Mr. Straw. We're going to rest on our
13 legal arguments." But far from it, as the record
14 clearly discloses.

15 First, the IDP, while pointing out in its
16 papers in this case that it's the wrong
17 Respondent, nonetheless provided legal counsel,
18 even up to and including today, to try to
19 facilitate a resolution to Mr. Straw's charge,
20 under the theory that, while it could rest purely
21 on legal issues, as it not being the right
22 Respondent, this probably not being a public
23 accommodation, and a host of other things, an

1 agreed resolution is better than a contested one,
2 which I think conforms with the overall mission
3 of the Commission and of its rules and laws in
4 Indiana.

5 Second, and most significantly, the
6 St. Joe County Party reviewed the situation on
7 the merits. It procured a ramp. It installed an
8 assistance buzzer. It ensured that when the
9 building was open and staffed, its staff would in
10 fact be available to assist members of the public
11 needing assistance into the building. That
12 conforms with the Deputy Director's findings that
13 the Respondent did not delay in making the
14 building accessible.

15 What does that litany of facts underscore?
16 That the IDP and St. Joe County Party aren't some
17 sort of private company seeking to enhance a
18 bottom line somewhere, right, or resting just on
19 legal arguments in determining whether to make an
20 accommodation at all. They're a political
21 organization, themselves dedicated to diversity
22 and inclusion as guiding principles, and have
23 tried to be helpful, not strident, about this

1 case.

2 So, with all due respect to the
3 Complainant, it's at a minimum ironic, and
4 frankly, to some offensive, that the Complainant
5 argues that the very rule of the count -- of the
6 state party, designed to promote that diversity
7 and inclusion, is also in this case somehow
8 discriminatory.

9 And that takes me to the second point I
10 want to make today, which is about Rule 10 of the
11 State Party Rules, Rule 10 of the State Party
12 Rules, which is, again, of course, talked about
13 in the papers of the parties and is mentioned
14 specifically in the Deputy Director's Notice of
15 Finding of No Cause.

16 What does Rule 10 say? Let me quote it.
17 This, again, is the Indiana Democratic Party
18 Internal Rules. "All public Party meetings,"
19 capital p, party, meaning state party, "All
20 public Party meetings shall be open to Party
21 members regardless of their race, sex, age,
22 color, creed, national origin, religion, ethnic
23 identity, economic status, sexual orientation,

1 gender identity, physical condition, or
2 philosophical persuasion, end quote.

3 Now, Mr. Straw claims that language of
4 inclusion in Rule 10 demonstrates an intent to
5 discriminate against persons with mental
6 disabilities, and he's upset when we assert our
7 view, the Party's view, which I think we're
8 entitled to have about what's in our own rule,
9 that physical condition, for example, the term
10 physical condition, would certainly include a
11 mental disability or a mental condition, if that
12 somehow became a barrier to access at a State
13 Party function or a State Party meeting.

14 In fact, that's what the rule's about.
15 It's about access to a State Party meeting, not a
16 County Party headquarters in St. Joe County or
17 any of the other 91 counties. Rule 10 is an
18 attack on the State Party's internal rules.

19 So, the most important fact about that is
20 what the Deputy Director found in her Notice of
21 Probable -- of No Probable Cause, that Mr. Straw
22 hadn't been denied access to State Party
23 functions.

1 The most important legal fact is a
2 constitutional one, and that we talked about in
3 our objections, that no state government entity
4 can sit in judgment over the internal rules of a
5 political party. I mean I'm going to submit to
6 you that you should feel very squeamish about
7 being asked to do that.

8 And I submit to you that a Federal Court
9 would feel squeamish about -- about doing that,
10 given the constitutional rights of political
11 organizations to govern themselves, especially
12 when what we're talking about here is an internal
13 rule promoting inclusion and diversity.

14 And, again, let me be clear about
15 something that, with all due respect, I think
16 Mr. Straw is taking out of context in his
17 response to our objections. In making that point
18 about the constitutional significance regarding a
19 state actor like yourselves, like the Commission,
20 sitting in judgment over an internal party rule,
21 I'm not saying, as Mr. Straw argues, that a
22 political organization is above the law if it
23 engages in actual discrimination prohibited by

1 the law.

2 I'm simply stating that no state
3 government entity, or court, for that matter, can
4 undertake to evaluate an internal party rule
5 designed to promote inclusion without running
6 afoul of the First Amendment and Article 1,
7 Section 9 of the Indiana Constitution, the free
8 expression and free speech clause of the Indiana
9 Constitution.

10 And again, just to back up to where we
11 started on this argument on point -- point two,
12 Rule 10 is a rule designed to promote diversity
13 and inclusion, and Mr. Straw's aim is to convince
14 you to parse that rule in a way that it, in his
15 view, demonstrates discrimination on the basis of
16 mental condition. Simply not the case.

17 Point three and final point is about the
18 unfairness and incongruity of a Commission
19 decision to reverse the Deputy Director's No
20 Cause finding. I submit to you that it would
21 amount to the Commission kicking a can down the
22 road, if it were to in fact reverse that
23 decision, in a way that ignores the

1 accommodations that we've talked about made at
2 the St. Joe County Party headquarters, and
3 rewards, frankly, Mr. Straw's untoward conduct in
4 this case.

5 I am very conscious -- I want to
6 underscore this. I am very conscious that in
7 most cases, it's frankly just counterproductive
8 and, frankly, in my own personal view, wrong to
9 dwell on a charging party's behavior. The
10 charging party, under our system, gets their day
11 in court, if you will, whatever that court or
12 body looks like, gets to state their claim, gets
13 to state their charges. The respondent gets to
14 come back and say things, and ultimately the
15 tribunal makes a decision. So, I respect that
16 process, and we're not complaining about that.

17 But there's been something of an abuse of
18 that process that's clear. It's clear in the
19 record of this case, and it even persists.
20 Frankly, in the 20 years that I've been
21 representing state and local governments,
22 nonprofits and political organizations, I've
23 never quite seen anything like this.

1 I believe that it is clear to see in this
2 case that the charge is being used, that the
3 Commission is being used, and that the process is
4 being used by Mr. Straw to settle prior, past
5 political scores.

6 I direct you to Exhibit B, attached to our
7 objections that we filed with the Commission,
8 which is a packet of communications over a period
9 of time from Mr. Straw that I think amply makes
10 that point, and I won't recite all of those.

11 I will say, in summary, that his
12 correspondence indicates that he believes he
13 suffered a train of abuses from Democrats and
14 others, and continues to inundate, even now,
15 Party officials, legislators and the public with
16 diatribes against those persons.

17 Throughout the course of this case, by way
18 of a few examples, he has maligned former Chief
19 Justice Randall T. Shepard for an event that
20 preceded, certainly, this matter by years; any
21 number of elected officials and party officials;
22 not such a big deal, but me in my capacity as IDP
23 legal counsel for, quote-unquote, not having a

1 conscience.

2 Remember, these are statements directed
3 about this case and about this litigation and
4 dispute to elected officials and others in the
5 public. He has maligned, in my view, Deputy
6 Director Haynes when he asked her to resign after
7 rendering her No Cause Finding.

8 And just since the Commission issued its
9 notice of intent to reverse, he's been further
10 emboldened, frankly, and now has threatened a
11 retaliation claim against a party official named
12 Keith Clock, when, after receiving Mr. Straw's
13 missives directed to Mr. Clock and a bunch of
14 other political officials, when Mr. Clock simply
15 had the gall to say back to Mr. Straw in an
16 e-mail, "This is a matter in litigation. Please
17 address this matter with the party's legal
18 counsel," that statement has drawn Mr. Straw's
19 ire so much so that he's threatened a retaliation
20 claim in writing. I have all of that
21 documentation. I'm certainly happy to tender it
22 as a supplement to the record, but I think to say
23 it is to be concerned about it.

1 On a personal level, I'm sorry that
2 Mr. Straw is troubled by what he perceives as
3 having been wronged by anyone and any -- everyone
4 and anyone that disagrees with him. But the
5 condition, keeping this case alive, is -- frankly
6 just delays the inevitable and will cause
7 well-meaning political organizations unnecessary
8 burden in the meantime.

9 Why do I say that? Some of the best
10 evidence that Mr. Straw isn't trying to vindicate
11 some harm that he has under Indiana law related
12 to the accessibility of the St. Joe County Party
13 headquarters is the nature of his demands. For
14 some time he wanted the IDP to give him a job.
15 That's in the record before you. He wants a
16 claim against supposed insurance proceeds of the
17 Party.

18 As to money in that regard, we informed
19 the Commission in our objections filed that,
20 among other things, Mr. Straw had demanded
21 \$500,000 in damages -- by the way, related to a
22 building that he never tried to enter. I have to
23 confess, though, that that \$500,000 number is now

1 incorrect, it's just not right, because since
2 then, Mr. Straw has upped his demand to over one
3 million dollars.

4 In fact, Mr. Straw has now claimed
5 publicly, since the Commission's Notice of Intent
6 was filed, that he's asking for the following
7 relief from the Commission, and I'm quoting.
8 Quote, my proposed order is for \$1,259,295, plus
9 ownership of the building in South Bend, plus
10 injunctive relief, plus a show-cause order so
11 that all Democratic Party alcohol licenses are
12 removed until the HQ's across the state become
13 accessible, end quote.

14 With all due respect, and as against that
15 background, what am I supposed to tell my client?
16 What am I supposed to tell the St. Joe County
17 Party it should do to make itself, quote, truly
18 accessible for all, in light of that?

19 So, to wrap up in my principle argument,
20 having made those three points, I would ask you
21 to consider relief in this way: First, there's,
22 I hope, no way that you can find cause on
23 Rule 10, on the Rule 10 issue -- that is, the

1 internal party rule -- as both legal and factual
2 matters. You'd be doing nothing there but
3 sustaining the decision of the Deputy Director
4 and taking note of the serious legal concern
5 about getting into the business, internal
6 business, of a political party if you were to in
7 fact find cause there.

8 You also can't find cause, I should
9 respectfully submit, on the St. Joe County Party
10 headquarters building issue, since Mr. Straw, as
11 was found, never tried to enter the building, and
12 the County -- and maybe most materially, and the
13 County Party actually took steps to make it
14 accessible.

15 And since it isn't even clear that the
16 St. Joe County Party headquarters is a public
17 accommodation that's subject to the law, what
18 message would you be sending future respondents
19 in the position of the St. Joe County Party?
20 "Hey, just rest on your legal position if you've
21 got one, don't even try to make timely and
22 adequate accommodations, because even if the
23 staff, after a full investigation, finds no

1 probable cause, the Commission might not back you
2 up."

3 So, the right course is to rescind your
4 Notice of Intent to Reverse, and if, despite the
5 accommodations already made at the St. Joe County
6 Party headquarters, Mr. Straw wants to file a new
7 charge against the right entity, the right
8 respondent, and explain why those accommodations
9 are insufficient, legally and factually, and why
10 he's harmed by them, then let him do that.

11 That's fine. We'll deal with that case as it
12 comes. That's just not this case.

13 In short, please see this case for what it
14 is and let the Deputy Director's Notice of
15 Finding of No Probable Cause stand.

16 Thank you.

17 CHAIRMAN CARTER: Thank you,
18 Mr. Chinn.

19 Mr. Straw, 20 minutes.

20 MR. STRAW: Sure. Thank you very
21 much for the invitation.

22 I'd like to start out with a little piece
23 of the Democratic Party platform at the national

1 level, which was agreed to by the party in 2012,
2 and just said -- the first line said, "No one
3 should face discrimination based on disability
4 status," and I really can't see how his argument
5 is even living up to that standard that his own
6 party sets.

7 And the reason I want to say that is
8 because for 17 years, the party's entrances
9 looked like this (displaying photograph). There
10 was no ramp for 17 years. You may think that I'm
11 just going off or something like that, maybe
12 trying to play on my mental disability or
13 something, but if you look at the actual
14 entrance, this little doorbell right here,
15 ordinary doorbell above the second metal step,
16 all rusty like that, was donated by Brandon
17 Mullin. I'll explain who he is shortly.

18 The ramp was donated by Pete Buttigieg,
19 who's now the Mayor of South Bend, and if you
20 look carefully up here, you'll notice that this
21 was taken on March 23rd, along with the other
22 photos I've submitted. Mr. Joe Buck is running
23 for Congress, and his face appears above the

1 entrance.

2 Now, one of the stories in South Bend --
3 the ABC 57 cover is one of my exhibits -- noted
4 that Joe Donnelly said he would get this fixed
5 several years before all of this happened, and it
6 was never fixed.

7 Joe Donnelly's campaign manager in 2010
8 became the District Chair after Butch Morgan, who
9 was over all of this for 17 years, resigned. And
10 then Joe Donnelly's campaign manager approved the
11 solution that they had with the ramp. He became
12 Pete Buttigieg's chief of staff. Buttigieg
13 donated the ramp.

14 Really what I'm saying is, if you want to
15 be involved at the Congressional level in the
16 Second District, you have to support the lack of
17 access. You have to add something. It's all
18 sort of a precondition to even being involved
19 that you accept the discrimination.

20 Some of the photos that I have are of
21 their parking lot. There are still no handicap
22 parking spaces in their parking lot, and the
23 Democrats have a parking lot. They are -- they

1 have four spaces that are -- that have signs that
2 say, "Headquarters, South -- or St. Joseph County
3 Democratic Party." You'll be towed if you're not
4 there on party business.

5 So, I find it hard to believe that
6 they're -- that they're out there doing good
7 deeds by providing a ramp that has no handrails,
8 that's only five feet long, when this is 13
9 inches high. You know, if you look at the ADA
10 regulations, it's just very clear. This violates
11 the law, and putting it in there is no better
12 than like this. It's no better.

13 And there may be some indication that you
14 have to go up it in a wheelchair. There's more
15 than one way to enter a building. Not everyone
16 uses a wheelchair. What if you're in a walker?
17 What if you have a cane? What if you're blind?
18 What if you need handrails? It didn't have any.
19 That was neglected in the original No Probable
20 Cause finding.

21 In fact, I wonder how you could even come
22 to those conclusions about parking, about the
23 ramp, about the inadequate doorbell. This does

1 not open the door; it's just a regular doorbell.
2 The original solution from 2011 had a different
3 sign, which you can see in a Respondent's
4 photograph submitted to you, and below it, it
5 says, "Please ring doorbell for assistance."

6 Now, there's a handicap parking sign, and
7 there's no sign of what to do. The front door
8 has no indication that there's an accessible
9 entrance that I can find anywhere. So, if you go
10 along, if you accept the entrance, if you take
11 part in the entrance, you get rewarded, and I
12 think I've explained that in the -- my response.

13 You get party endorsements. Joe Buck got
14 a party endorsement last month, state level.
15 Brandon Mullin got endorsed at all levels eight
16 months before the election. And if -- if you
17 don't like it like that, you get punished, and
18 punishment includes, "We're going to yank your
19 voter access database -- voter database access."

20 And not only at the Democratic level, but
21 the co-director of the Indiana Election
22 Commission Division, Trent Deckard, also did
23 that. You know, I applied after they yanked my

1 party voter roll database access. They refused
2 to give me a restricted version, saying that I
3 was going to sell the data somehow. I don't know
4 where they got that information. They don't say.
5 I have a copy of that that I'll give to you, too,
6 if that's okay.

7 This was my campaign manager. This is
8 Reverend Greg Brown, and he offered this ramp for
9 free, with free labor, to weld it and take that
10 material to make this entrance accessible.

11 Now, why would he have done that? His
12 mother has been a Democratic Party activist for
13 her whole life in South Bend, and she's now in a
14 wheelchair, and she does not feel safe entering
15 this place. So, he's been trying to find a
16 solution, not throw something together so they
17 can say, "We don't have to be responsible."

18 But let's make a real solution. I donated
19 money during that summer to say, "Here's some
20 money that I gathered from people for this," and
21 they sent it back and said, "We already have a
22 ramp. We don't need your money," and sent it
23 back.

1 I -- for 17 years, this sort of thing,
2 offers to help, were rejected, and they were
3 rejected by this guy right here. His name's
4 Butch Morgan. He was the District Chair for 17
5 years, and it just so happens that today is the
6 one-year anniversary of his conviction for a
7 forgery ring in the 2008 Democratic Presidential
8 Election.

9 He was calling the shots. He was getting
10 Brandon Mullin to run so that could dump money,
11 dump endorsements, support him, and then his job
12 was to turn around and provide the little
13 doorbell to show that he supports the lack of
14 access.

15 I'm stunned. I've been a Democratic -- I
16 was a Democratic Party activist myself for 20
17 years. I founded the IU College Democrats in
18 Bloomington. Now it has over 500 members. I've
19 provided legal counsel to Democrats running for
20 office, local, state level. And, you know,
21 around this state I've just -- I've never run
22 into anything like this.

23 And when I decided to run for Congress, it

1 was -- I had been pushing a platform of
2 disability rights. When I worked at the Indiana
3 Supreme Court and provided trial court services
4 to all 400 Indiana trial courts, I was pushing to
5 get software for a judge who had a vision
6 impairment.

7 I went to the Indiana Deaf Community on
8 behalf of the Supreme Court to say, "We want to
9 help. When we get our transcription system ready
10 to --" I was the staff person for that "-- it
11 should help people with hearing impairments."
12 And, you know, it's just important to me. It's
13 important to me.

14 I worked in a mental hospital, Oak Lawn in
15 Goshen. I've worked with kids with disabilities,
16 tutoring. Somehow I get the feeling from the
17 Respondent that they don't really understand my
18 interests.

19 I -- they say I've never entered the
20 building. This isn't true. I have entered that
21 building. I entered that building before my hip
22 replacement in 2010, while I was helping Dwight
23 Fish, who was running for the state legislature

1 in District 21. Dwight said, "I need you to come
2 in here. We've got to meet Butch. We've got
3 things to do."

4 I said, "That entrance looks dangerous,"
5 and it took me twice as long to get in there as
6 it did Mr. Fish, because I went along the edge,
7 holding on and leaning onto the edge as I crawled
8 around to the door, because it was important to
9 me to support my candidate. Did I think that
10 that entrance was safe? Absolutely not.
11 Absolutely not.

12 And I protested it to Dwight at the time.
13 I said, "You know, Dwight, why is it like that?"
14 And he -- as many people in the Second District
15 used to say to me, "That's just Butch. That's
16 just like him. That's just Butch. That's what
17 he does."

18 So, as far as the Constitution, really
19 what I have to say is constitutional law says
20 there has to be a compelling state interest to
21 pass a law to protect civil rights, and in this
22 case, Indiana has such a horrible history of
23 disability rights.

1 There was definitely a state interest,
2 especially for people with mental disabilities,
3 because of the eugenics law of 1907, and that
4 allowed the state to spend money and sterilize
5 people with mental disabilities. Twenty-five
6 hundred were sterilized. Now, that started 19
7 years before the Nazi government in Germany, and
8 it continued over 20 years after -- wait, 19
9 years after.

10 So, to my mind, this state has an
11 obligation, not just an interest, but an
12 obligation, to make sure that people with mental
13 disabilities are not discriminated against.
14 They've already been attacked by the state. The
15 state legislature, on the 100th anniversary of
16 that, apologized. No one should face
17 discrimination based on disability status.

18 Compare that with Rule 10. Physical
19 disability is protected. Deadly silent about
20 mental disabilities. And the problem with that
21 is, later on in the rules, under the state
22 chair's duties, the State Chair has a duty to
23 prevent discrimination based on disability, no

1 qualification, just disability. They know what
2 they're doing when they write these rules.

3 The Democratic Party talks about pretexts.
4 They don't prove a pretext for discrimination,
5 political ones, when it comes to voting rights,
6 and Congress has said very clearly that "Census
7 data, national polls, and other studies have
8 documented that people with disabilities, as a
9 group, occupy an inferior status in our society,
10 and are severely disadvantaged socially,
11 vocationally, economically and educationally."
12 That's ADA, Section 12101(a)(6).

13 They're responsible under their rules for
14 what their County Party does, because they say
15 the County Party is part of the Party, and the
16 State Chair can enforce duties on lower levels.
17 The District Chair can enforce duties on lower
18 levels. There has to be responsibility.

19 I asked for compensation. It's hard for
20 me to gauge exactly what compensation should be.
21 What -- how did it injure me that I no longer,
22 forever, have access to the voter rolls in
23 Indiana, even though I'm a political activist,

1 I've run for Congress, may want to run for
2 something else again?

3 This was the State Chair that did this,
4 immediately after I ran against Butch for his
5 District Chair seat. I don't know. There's just
6 so much. A District Chair is also on the state
7 committee. A District Chair controls the
8 headquarters in the district, because they can.
9 And Butch was both. Mike Schmuhl was Joe
10 Donnelly's campaign manager, and then became
11 District Chair.

12 To me, it's just -- the reason it feels
13 sloppy is because there's just sort of a cloud of
14 discrimination and a bunch of people in it,
15 puffing away, contributing to it.

16 I hope that you'll continue with what
17 you're doing as far as reversing, and I -- I
18 trust that you're going to come to the right
19 decision on the types of relief that should be
20 given.

21 I have also a revised order for civil
22 rights relief, so that the injuries, the
23 retaliation, are crafted to meet the relief

1 sought, so if you'd like a copy of that, I can
2 give that to you, too.

3 Thank you.

4 CHAIRMAN CARTER: Thank you.

5 Mr. Chinn, five minutes.

6 MR. CHINN: Well, thank you,
7 Mr. Chairman.

8 Just briefly, then, on rebuttal, let me
9 clear the record that the IDP certainly has no
10 quibble with Mr. Straw's advocacy on behalf of
11 persons with disabilities, and in fact, you know,
12 applauds it.

13 And I hope it's clear and really just
14 self-evident, I'm part of a party that wants
15 diversity, that wants to be inclusive, that wants
16 its party to be accessible to persons with
17 disabilities, regardless of what those
18 disabilities are.

19 But that doesn't entitle -- Mr. Straw's
20 advocacy doesn't entitle him to just go around
21 the state and cherry-pick buildings that he may
22 have been in, I don't quibble that he may have
23 been in the building. The Deputy Director's

1 finding, though, is about the relevant period and
2 the relationship to his claim in this case.

3 At the end of the day, there's a charge
4 pending in front of the Commission about that,
5 and the finding on -- specifically on page 2 of
6 the Notice of Findings is that he admits that he
7 never tried to access the building using his
8 wheelchair.

9 So, because of that, I would also suggest,
10 while I'm thinking about the building and I'm
11 thinking about Mr. Straw's access to the
12 building, or anyone's access to the building,
13 point out, when you go back to where he started,
14 the fact that there's a disagreement, you know,
15 perhaps, about the efficacy of the specific
16 accessibility modifications at the site
17 underscores that within the relevant period after
18 Mr. Straw brought his charge, all right, there
19 were in fact not -- attempts to make the building
20 accessible by the St. Joe County Party that were
21 not unduly delayed in any way.

22 Again, I accept and appreciate that people
23 can disagree about what's the right thing to do,

1 and perhaps there's more to be done there. The
2 record, however, doesn't tell us, in any way,
3 that those accommodations are inadequate.

4 A couple more things real quick, then,
5 that Mr. Straw mentioned. His allegation that if
6 you -- that politically -- as I understand it,
7 that politically in St. Joe County, if you
8 support the entrance -- and I think -- what I
9 understood him to mean by that is the inadequate
10 entrance from his perspective -- if you support
11 the entrance as it's been modified and designed,
12 even United States Senate and United States
13 Congressional candidates are rewarded by their
14 support of, in his view, an inadequate entrance,
15 because that would mean they are actively
16 discriminating against making the entrance more
17 accessible, and they were rewarded with support
18 from the Party.

19 Now, there's not a scintilla of evidence
20 in the record about that, and I would
21 respectfully submit that to say that out loud is
22 to know that it is not true. What is true, a
23 fact that I think is not in the record, but I

1 Mr. Straw addressed it, I feel like I need to.
2 He suggested that he's been retaliated against
3 because of his access -- and he said to voter
4 rolls.

5 But let's be clear about what he really
6 means. He's talking about the Voter Access
7 Network. He's talking about the data that is
8 held by political parties and by the state that
9 is voter history information; all right? It
10 includes confidential information, or at least
11 includes information that, by law, is not to be
12 given out in certain ways.

13 So, the reason that Mr. Straw had his VAN
14 access, his access to that data which you can get
15 as a candidate as long as you sign a candidate
16 agreement that limits certain disclosure of it,
17 is because he was posting otherwise confidential
18 information about voters and their voter history
19 on Facebook, in violation both of the agreement
20 with the Party, and he mentioned the state.

21 Now, believe me, I think he means the
22 Indiana Election Division is what he's talking
23 about, and the co-director and the legal counsel

1 at the Indiana Election Division superintend, in
2 part, that access that people have to the SDRS
3 system or to the voter access systems as well,
4 and that violates state rule as well, and he was
5 cut off from the state. The Party had nothing to
6 do with that.

7 But in fact, it is true that his
8 transgressions got him in trouble in that case.
9 That's hardly retaliation. That's been true of
10 other people who violated that agreement as well.

11 So, just to sum up, then, again, what I
12 think is clear from the record of facts and from
13 the other discussions that both Mr. Straw and I
14 have had today, and in our papers reported to the
15 Commission, is that this amounts to a political
16 score-settling charge.

17 Not that accessibility issues aren't real,
18 not that accessibility issues in St. Joe County
19 aren't real. They are; all right? There is now
20 something that there wasn't before; right? A
21 ramp and a buzzer and staff instruction about how
22 to be assisted, how to assist people who need
23 accessibility into the building, and the parking

1 issue that has been addressed. That's all true.

2 That's the point of it; it's been addressed.

3 So, again, I would just reiterate that the
4 right thing to do is let stand the Deputy
5 Director's Notice of Finding of No Cause, both
6 with respect to the St. Joe County Party issue
7 and with respect to the Rule 10 issue.

8 Thanks again for your time.

9 CHAIRMAN CARTER: Thank you,
10 Mr. Chinn.

11 Mr. Straw, five minutes.

12 MR. STRAW: I don't have a lot to
13 respond to that, but political score settling, he
14 keeps coming back to this political score
15 settling. Does that mean if you're running for
16 office, you no longer have the right to complain
17 that there's discrimination going on?

18 I thought it was precisely the opposite.
19 When I go out and I spend my days meeting with
20 people who have disabilities, and they say,
21 "There's this discrimination. There's -- the
22 Democratic headquarters is like that. Why don't
23 you do something about it? You're running for

1 office. Why don't you do something about it?
2 Joe Donnelly wouldn't. The District Chair
3 won't." Is it political score settling to make
4 things accessible? It's not, I don't think so.
5 I think that's a really not accurate way to
6 portray it.

7 This -- I just have a few things, if I can
8 give them to you. I'm sure that you have this.
9 May I?

10 MS. RINCONES-CHAVEZ: To me.

11 MR. STRAW: It's just that in this
12 week we've been talking about -- well, first
13 I'll -- this week we've been talking about
14 settling scores and reminding people and all of
15 those sorts of things. I don't live in the
16 Second District anymore, but for some reason I
17 got these in the mail from Mr. Buck in South
18 Bend.

19 He's running for Congress there. It just
20 happens to be at the same time I'm coming here,
21 and his name is on the door, just -- I don't
22 know. And just a few weeks ago, the state
23 central committee endorsed him before the

1 primary. So, I don't know. I see it as a
2 pattern. It may have politics written on it, but
3 that's because it's a political party
4 discriminating, and just because it's a political
5 party, does it get to discriminate?

6 If -- and this Rule 10 issue, I see that
7 as no different from -- you have an employee who
8 comes here and says, "There's discrimination.
9 It's in the company's handbook and in their
10 policies. It's written right in there. It's
11 plain as day, black and white." That's what
12 Rule 10 is, black and white. It's not a
13 constitutional issue. It's an
14 intent-to-discriminate issue, and it blossoms
15 right out there in Rule 10.

16 So, I thank you very much, and I look
17 forward to your questions.

18 CHAIRMAN CARTER: All right. Well, I
19 have a question about your picture of the front
20 door, and that is: At what point in all of this
21 process was that picture taken?

22 MR. STRAW: March 23ed of this year.

23 CHAIRMAN CARTER: Well, I don't have,

1 you know, the dates in my head.

2 MR. STRAW: This is how it is today.

3 CHAIRMAN CARTER: Okay. Where's the
4 ramp? They said there was supposed to be a ramp.

5 MR. STRAW: There is a ramp. It's
6 there. That's it. That's all that's left of the
7 ramp.

8 CHAIRMAN CARTER: Oh, okay. So that
9 presumably with the ramp, one could reach the
10 buzzer, I guess, certainly. It doesn't look very
11 useful to have the buzzer up --

12 MR. STRAW: They don't bring the --

13 CHAIRMAN CARTER: -- one or two
14 steps.

15 MR. STRAW: Yeah, they don't bring
16 the ramp out until after you --

17 CHAIRMAN CARTER: After you buzz the
18 inaccessible buzzer?

19 MR. STRAW: Right.

20 COMM. CRENSHAW: Oh.

21 MR. STRAW: So, it's --

22 CHAIRMAN CARTER: It doesn't --

23 well --

1 MR. STRAW: Well, someone else said
2 to me -- actually, I don't think the issue is the
3 ramp, but the rust. You could get tetanus if
4 you'd fall and hit it.

5 CHAIRMAN CARTER: I don't think the
6 ADA addresses rust.

7 MR. STRAW: No.

8 CHAIRMAN CARTER: But perhaps it
9 should.

10 Does anyone else have a question?

11 (No response.)

12 CHAIRMAN CARTER: No?

13 COMM. CRENSHAW: I've got a question.
14 To go back to this VAN access.

15 MR. STRAW: Right.

16 COMM. CRENSHAW: To make sure I
17 understand, supposedly you were posting people's
18 information about how they vote on Facebook?

19 MR. STRAW: That's false. And in
20 fact, when they sent me the letter taking away my
21 access, they don't mention any specific reason,
22 just generally a section of the contract.

23 COMM. CRENSHAW: Yeah, because I have

1 that in here.

2 MR. STRAW: Yeah.

3 COMM. CRENSHAW: Do you have any
4 backup to that?

5 MR. CHINN: No, ma'am, I don't have,
6 you know, record evidence about that. That's my
7 understanding, however, from talking to
8 officials. That's why it was removed, the
9 access.

10 COMM. CRENSHAW: So, someone told you
11 that?

12 MR. CHINN: That's right.

13 COMM. CRENSHAW: Can you obtain that
14 information?

15 MR. CHINN: I may be able to. I
16 guess the question is: Are -- is the Commission
17 saying it's taking new evidence? Because we
18 could. I --

19 COMM. CRENSHAW: I mean if you're --
20 if he's basing that the reason why he -- you're
21 saying -- if I hear you correctly, you're saying
22 you're injured because they're saying that you
23 took -- you got access to this VAN network and

1 supposedly posted people's voting histories or
2 what have you on Facebook.

3 MR. STRAW: Uh-huh.

4 COMM. CRENSHAW: And you're saying
5 that's the reason why they restricted your
6 access, that's part of the reason --

7 MR. STRAW: There was --

8 COMM. CRENSHAW: -- you're saying
9 you're injured?

10 MR. STRAW: There was an issue in the
11 campaign about this Brandon Mullin, and I -- I
12 got -- through public records requests in
13 Washington, D.C. and Indiana found that he was
14 registered to vote in both places at the same
15 time.

16 COMM. CRENSHAW: Okay.

17 MR. STRAW: And first he voted in
18 one, and then he voted in the other, while
19 registered in both.

20 COMM. CRENSHAW: Right.

21 MR. STRAW: And that means when he
22 signed his name saying that he wasn't registered
23 anywhere else -- it's just an issue in the

1 campaign.

2 MR. CHINN: Mr. Chairman, if I might,
3 just from our -- to try to put a little
4 perspective in there, the reason it's challenging
5 for me to say that is it's not in the complaint;
6 all right? So, if you look at the complaint that
7 was filed by Mr. Straw on November 15th, 2012,
8 there are three allegations, none of which have
9 to do the VAN access.

10 So, you know, I became aware because
11 Mr. Straw has, subsequent to the findings, talked
12 about the VAN access, so I got myself prepared
13 today to respond to what likely would come up,
14 but it's simply not part of what's before you.

15 CHAIRMAN CARTER: Yeah, we're not
16 entertaining new evidence.

17 MR. CHINN: Right.

18 CHAIRMAN CARTER: Is that -- that is
19 your main objection?

20 Well, if there are no more questions, I
21 guess we'll take it under advisement and see what
22 we can do.

23 MR. CHINN: Thank you.

1 MR. STRAW: Thank you very much.

2 CHAIRMAN CARTER: Thank you.

3 I suppose -- there. Now you can stop
4 typing.

5 - - -
6 Thereupon, the proceedings of
7 April 25, 2014 were concluded
8 at 1:49 o'clock p.m.
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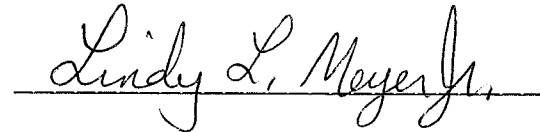
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CERTIFICATE

I, Lindy L. Meyer, Jr., the undersigned
Court Reporter and Notary Public residing in the
City of Shelbyville, Shelby County, Indiana, do
hereby certify that the foregoing is a true and
correct transcript of the proceedings taken by me
on Friday, April 25, 2014 in this matter and
transcribed by me.



Lindy L. Meyer, Jr.,
Notary Public in and
for the State of Indiana.

My Commission expires October 27, 2016.

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