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Clay County Circuit Court
Clay County, Indiana

State of Indiana
Clay County Circuit Court

Jeffrey P. Gallant, *Petitioner*, *v.* **Indiana Election Commission,** *Respondents*.	**Civil Cause No.** 11C01-2603-RA-000185

Memorandum in Support of
Petition for Judicial Review of Final Agency Action

Introduction

Petitioner, Jeffrey P. Gallant, is a registered voter of the Otter Creek-F Precinct of the Township of Otter Creek in Vigo County, Indiana. He resides within Indiana Senate District 38.

On February 5, 2026, Alexandra Rachelle Wilson ("**Mrs. Wilson**") filed her Declaration of Candidacy ("CAN-2") for Senate District 38 in the May 5, 2026 Republican primary.

On February 13, 2026, Mr. Gallant filed a CAN-1 Candidate Challenge, ("**Challenge**") Exhibit 2, asserting that, pursuant to Indiana Code 3-8-1-5 ("**Disqualification Statute**"), Mrs. Wilson is disqualified from assuming or being a candidate for elected office in Indiana. On February 18, he filed appearance of his counsel and supplemental materials, all of which were entered into the record at the hearing, and true and correct copies of which are attached hereto as Exhibit 3.

On February 16, 2016, the Indiana Election Commission (the "**Commission**") noticed a hearing on the Challenge for February 25, 2026, Exhibit 4. During the hearing, Mrs. Wilson's attorney opened by admitting that Mrs. Wilson was Alexandra R. Anderson, who committed a felony in Vermillion County in 2010, to which she pleaded guilty and which was reduced to a

misdemeanor. Hearing Transcript, Exhibit 6, p. 6 17. After hearing argument from and questioning attorneys for Mr. Gallant and Mrs. Wilson, the Commission voted 2/2, denying the Challenge, which action has the default effect of ordering that Mrs. Wilson's name be placed on the ballot for the May 5, 2026 Republican primary as a candidate for Indiana Senate District 38.

The action of denying the Challenge was not in accordance with law because the order denying the Challenge *requires* an erroneous interpretation or construction of IC 3-8-1-5. That is, the Disqualification Statute plainly applies to the undisputed facts of Mrs. Wilson's 2010 case in Vermillion County. Moreover, the history of the statute underscores the legislative intent both to disqualify persons that have pleaded guilty to a felony and to preclude any effect on that disqualification from the reduction of the felony to a misdemeanor. Indeed, the Indiana Attorney General expressly advised that 2005 changes to the Statute established that reducing a felony to a misdemeanor has no effect on a disqualification based on a guilty plea to a felony. Exhibit 8.

Under IC 4-21.5-5-11(b), the Court reviews the Commission's action de novo and owes no deference to the Commission's interpretation of the Disqualification Statute. The Court should easily find that the Disqualification Statute applies to Mrs. Wilson's 2010 guilty plea to disqualify her from assuming or election to office, and the Commission's denial of the Challenge is contrary to law. In addition, "if an agency misconstrues a statute, there is no reasonable basis for the agency's ultimate action and the trial court is required to reverse the agency's action as being arbitrary capricious." *Peabody Coal Co. v. Ind. Dep't of Nat. Res.*, 606 N.E.2d 1306, 1308 (Ind. Ct. App. 1992) (citation omitted).

Petitioner requests that the Court set aside the Commission's action and remand to the Commission to uphold the Challenge, disqualify Mrs. Wilson from being a candidate and

prohibit her name appearing on the ballot for the 2026 Republican primary for Indiana Senate District 38 and so order the respective election boards of Vigo, Clay, and Sullivan Counties.

Standing, Jurisdiction, and Venue

The Court has jurisdiction because the Commission's action is a final order that exhausts administrative remedies. Hearing Transcript, Exhibit 6 52:9-23, (two Commissioners agree to deny the Challenge), *id.* 55: 24-56:9 (two Commissioners agree to grant the Challenge); *id.* 54:14-20 (General Counsel explaining that two votes "both ways" exhaust administrative remedies affording a court jurisdiction). IC 4-21.5-5-4. The Petition was filed within thirty (30) days of the action for which review is sought. IC 4-21.5-5-5.

Petitioner has standing under IC 4-21.5-5-3; he was both a party to the proceedings of the Commission that led to the final agency action, IC 4-21.5-5-3(a)(2), and the final agency action of denying the Challenge is specifically directed to him. IC 4-21.5-5-3(a)(1).

Venue is proper in Clay County under IC 4-21.5-5-6. Clay County lies wholly within Indiana Senate District 38, where the agency action, denying Petitioner's candidate challenge, will be carried out or enforced; the Commission's action requires the Clay County Election Board to place the challenged candidate's name on the Republican ballot for the May primary election, the very thing that the Challenge seeks to avoid.

Argument

The Commission's decision is arbitrary, capricious, and contrary to law because it depends on, indeed it *requires* an incorrect interpretation of a statute. Even if it were still entitled to deference, *contra* IC 4-21.5-5-11(b), "an agency's interpretation of a statute which is incorrect is entitled to no weight." *Bd. of Trs. v. Baughman*, 450 N.E.2d 95, 96 (Ind. Ct. App. 1983).

A. Indiana Code 3-8-1-5 plainly applies to the undisputed facts here and requires disqualification.

Subpart (d) of the Disqualification Statute provides that

> **A person is disqualified from assuming or being a candidate for an elected office if**:
>
> (1) the person gave or offered a bribe, threat, or reward to procure the person's election, as provided in Article 2, Section 6 of the Constitution of the State of Indiana;
>
> (2) the person does not comply with IC 5-8-3 because of a conviction for a violation of the federal laws listed in that statute;
>
> **(3) in a:**
>
> (A) jury trial, a jury publicly announces a verdict against the person for a felony;
>
> (B) bench trial, the court publicly announces a verdict against the person for a felony; or
>
> **(C) guilty plea hearing, the person pleads guilty or nolo contendere to a felony;**

Indiana Code 3-8-1-5 (d) (emphasis added). Subpart (e) of IC 3-8-1-5, which was added by the Indiana Legislature in 2005, *see infra*, provides that

> (e) **The subsequent reduction of a felony to a Class A misdemeanor under IC 35 after the**:
>
> (1) jury has announced its verdict against the person for a felony;
>
> (2) court has announced its verdict against the person for a felony; or
>
> (3) **person has pleaded guilty or nolo contendere to a felony;**
>
> **does not affect the operation of subsection (d).**

Indiana Code Ann. § 3-8-1-5(e) (emphases added). Substituting the undisputed facts peculiar to Mrs. Wilson into the Disqualification Statute, the proposition becomes

> 1. Mrs. Wilson is disqualified from assuming or being a candidate for office if
>
> A. In a guilty plea hearing, she pleaded guilty or nolo contendere to a felony; and, if so,
>
> 2. The subsequent reduction of a felony to Class A misdemeanor after she pleaded guilty to a felony
>
> A. Does not affect the disqualification that follows pleading guilty to a felony.

It is undisputed that in 2010, she pleaded guilty to resisting arrest, a Class D felony. *See*, *e.g.* Exhibit 6, p. 6 17. As the statute expressly provides, pleading guilty to a felony effected disqualification, but the undisputed fact of a subsequent reduction of the felony to a misdemeanor after she had pleaded guilty to the felony does not affect the disqualification effected by pleading guilty to the felony. Put another way, the undisputed fact of her pleading guilty to a felony falls squarely under the statute's (d)(3) prohibition clause, and subpart (e)'s "does not affect" clause squarely precludes the reduction to a Class A misdemeanor affecting the disqualification. The disqualification still applies, no matter the reduction from felony to misdemeanor.

The Disqualification Statute is not a criminal statute and is therefore not subject to the favorable construction that Petitioner submits would be required to find that these clauses do not work exactly as they appear; that is, a guilty plea to a felony will itself effect disqualification, and the reduction to a misdemeanor does not change that effect. It is axiomatic that "when construing a statute, [the Court's] primary goal is to determine and effect legislative intent.'"*Jennings v. State*, 982 N.E.2d 1003, 1005 (Ind. 2013) (citation omitted). And there is also ample evidence that the Legislature intended the Statute to work this way.

In 2005, the Indiana Legislature amended the Disqualification Statute to both reiterate that pleading guilty to a felony itself triggered prohibition[1] and, for the first time, affirmatively blocked the reduction of a felony to misdemeanor from "affect[ing] the operation of" the

[1]Public Law 113-2005 added two other circumstances triggering prohibition—what remains as 3-8-1-5 (d)(3)(A) and (B) (disqualification is triggered by a jury announcing a verdict against the person for a felony or, in a bench trial, a court announcing a verdict against a person for a felon). *See* Exhibit 7.

The legislature also removed "convicted of a felony (as defined in IC 35-50-2-1)" and expanded "entered a plea of nolo contendere" to "*in a guilty plea hearing, the person pleads guilty or nolo contendere to a felony*." *Id.*

disqualification provision, which is how the statute essentially still reads. Exhibit 7 . It must be presumed that the Legislature intended to remove an exception to or escape from disqualification triggered in the subpart (d)(3) prohibition clause. *See Lake Co. Bd. Of Elections and Registration v. Millender*, 727 N.E. 2d 483, 486-87 (Ind. Ct. App. 2000) (courts presume that the legislature is aware of existing statutes). The Legislature must be presumed to know that there existed such an exception and/or that the addition of the "does not affect" clause would eliminate it.

1. The Indiana Attorney General has advised that under the Statute, pleading guilty to a felony itself effects disqualification that is unaffected by the reduction to a misdemeanor.

In 2007, the Indiana Attorney General answered questions from a member of the Indiana House of Representatives about PL 113-2005's changes to the Disqualification Statute—that is, the addition of the "does not affect" clause. *See* Indiana Attorney General Opinion 2006-4 (Exhibit 8). In sum, "[a] person whose felony charge is entered into judgment as, or converted to, a conviction for a Class A misdemeanor under Indiana Code section 35-50-2-7 or 35-38-1-1.5 is disqualified by section 3-8-1-5." *Id.*, Ex. 8 03.[2]

In a more detailed response, the Attorney General advised that

> The statute now disqualifies a person from assuming or being a candidate for office if the person *committed* a Class D felony that has been converted to a Class A misdemeanor under section 35-38-1-1.5, *or entered into judgment* as a Class A misdemeanor under section 35-50-2-7. In other words, a person who has a felony conviction that was reduced to a Class A misdemeanor under section 35-50-2-7 or 35-38-1-1.5 is now disqualified from assuming or being a candidate for an elected office

Id. at Ex. 8-07 (emphasis added). So, under the Attorney General's reading of the Disqualification Statute with the then-new "does not affect" clause would apply to the undisputed

[2]Reference to IC 35-50-2-7 and 35-38-1-1.5 was in later years changed to simply IC 35.

facts of Mrs. Wilson's 2010 guilty plea just as it would as outlined *supra*. She is disqualified because, as the guilty plea signifies, she committed a Class D felony which was entered into judgment as a Class A misdemeanor. The Indiana Attorney General has advised, in effect, that the Indiana Legislature intended for the Disqualification Statute to trigger disqualification on the basis of a guilty plea to a felony and the conversion to or judgment as a Class A misdemeanor does not affect the disqualification.

2. Even if the Disqualification Statute did require a conviction of a felony to trigger disqualification, Mrs. Wilson's plea agreement included conviction

One cannot read too much into the use of the term "conviction":

> The word . . . "is not a term of art, and its multiple definitions create some confusion." Black's Law Dictionary 335 (7th ed. 1999) offers two legal definitions. The first is: "The act or process of judicially finding someone guilty of a crime; the state of having been proved guilty." *Id.* (emphasis added). The second is: "The judgment (as by a jury verdict) that a person is guilty of a crime." *Id.* Courts, including this one, commonly say "a jury convicted the defendant of . . . ."

Carter v. State, 750 N.E.2d 778, 779 (Ind. 2001). So, in the Advisory Opinion offered above, the use of the term "conviction" could well mean a guilty plea,[3] but even if the Disqualification Statute is read to require a conviction to trigger disqualification, a proposition that Petitioner does not concede, Mrs. Wilson's "Guilty Plea and Judgment of Conviction" provides that the Court was entering judgment of conviction for the crime of Resisting Law Enforcement, a Class D Felony. Exhibit 3, p. 3 15. So even if the Commission's interpretation of the Statute were correct in this regard, it still should have ruled that it disqualified Mrs. Wilson.

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[3]Indeed, if the term "conviction" meaning entry of judgment were transplanted into every instance of "felony" in the Disqualification Statute, absurdities would result. For example subpart (d)(3)(A) would read a person is disqualified if in a "guilty plea hearing, the person pleads guilty or nolo contendere to a felony [conviction]." The absurd result would be to nullify the obvious intent to include a guilty plea as a disqualifying event.

Conclusion

The action of denying the Challenge was not in accordance with law because the order denying the Challenge requires an erroneous interpretation or construction of IC 3-8-1-5. That is, the Disqualification Statute plainly applies to the undisputed facts of Mrs. Wilson's 2010 case in Vermillion County. There is ample evidence that the Legislature intended that a guilty plea to a felony itself triggers disqualification and that the reduction to a Class A misdemeanor does not affect the disqualification. Even if the Statute is read to require a conviction for a felony to trigger the disqualification, the Guilty Plea and Judgment of Conviction here specifies that judgment of conviction was entered for a Class D Felony.

Because the Commission's action in denying the Challenge was not in accordance with law, the Court should set aside the Commission's action and remand to the Commission to uphold the Challenge, disqualify Mrs. Wilson from being a candidate and prohibit her name appearing on the ballot for the 2026 Republican primary for Indiana Senate District 38 and so order the respective election boards of Vigo, Clay, and Sullivan Counties.

Dated: March 4, 2026

Respectfully submitted,

/s/ James Bopp, Jr.

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Certificate of Service

I certify that on March 4, 2026, I electronically filed the foregoing documents and all attachments thereto using the Indiana E-filing System. I further certify that on March 3, the foregoing was served upon the following persons via IEFS:

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