

BEFORE THE HOWARD COUNTY ELECTION BOARD

IN RE:)
) SS:
CANDIDACY OF ROBERT HAYES, SR.)

**MEMORANDUM IN SUPPORT OF ROBERT HAYES, SR's
MOTION TO DISMISS CANDIDATE FILING CHALLENGE**

The challenge to Councilman Robert “Bob” Hayes’ candidacy—which is based upon an admittedly uninformed opinion—fails to meet the basic requirements of Indiana law. The Howard County Election Board should dismiss the challenge as facially invalid.

BACKGROUND FACTS

I. Councilman Hayes’ Background

On February 4, 2019, Councilman Hayes filed a timely declaration of candidacy for councilman-at-large for the City of Kokomo in the May democratic primary. In his declaration, Councilman Hayes lists a Kokomo address and certifies that all of the information provided in the declaration is true and complete, including his residency. Councilman Hayes has served the City of Kokomo as a member of the Common Council for approximately nineteen years, and has been Council President for the past five years.

II. The Challenge

On February 14, 2019, Joshua Layton filed a Candidate Filing Challenge (“Challenge”) with the Howard County Circuit Court Clerk. Mr. Layton ran an unsuccessful campaign for a councilman-at-large seat in the 2015 republican primary. He also helps run the “Kokomo Brief,” a very active Facebook community reporting on various local issues and quite frequently criticizing local politicians. The Kokomo Brief frequently condemns Councilman Hayes. Mr. Layton’s stated basis for challenging Councilman Hayes’ candidacy is reproduced below, directly from the Challenge.

(5) If I am filing this challenge as a registered voter or a county political party chairman, I question the eligibility of the following individual, who is a candidate for the office:	
<u>Robert (Bob) Hayes</u> Name of Candidate	<u>Council At-Large</u> Office sought (include District, if applicable)
(6) The following facts are known to me and lead me to believe that the individual listed above is ineligible to be a candidate for this office (attach additional sheets if necessary):	
<u>Primary Residency is not May not be Howard County</u>	

Mr. Layton verified the Challenge by swearing, under penalties for perjury, that the statements he made were true.

ARGUMENT

I. The Challenge Fails to Surpass a Basic and Statutorily Required Threshold and Should Be Dismissed.

The Challenge is invalid on its face. Ind. Code § 3-8-1-2(d) requires that a challenge: (1) be filed, with the election division or board, by a registered voter or county chairman of a major political party of a county in which a part of the election district is located; (2) question the eligibility of the candidate seeking office; and (3) set

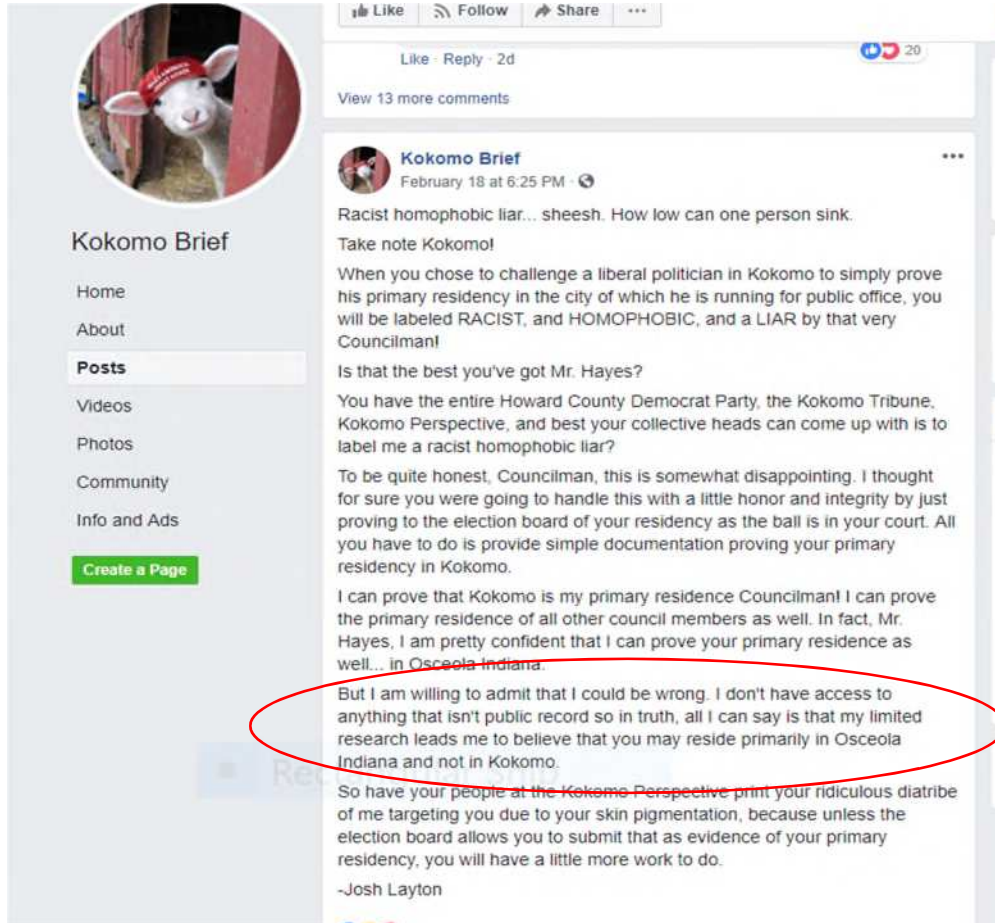
forth the facts known to the voter or county chairman concerning the question of eligibility. The Challenge should be dismissed because Mr. Layton, by his own admission, did not set forth *facts known to him* concerning Councilman Hayes' eligibility to run for councilman-at-large. Instead, he merely speculates that Councilman Hayes "may not" be a resident of the City of Kokomo. Such speculation is insufficient as a matter of law to support the Challenge.

The law is clear. Any challenge must be based on "facts known to the voter." The courts have not previously construed this section. When a statute has not been previously construed, interpretation is controlled by the express language and the rules of statutory construction. *Fight Against Brownsburg Annexation v. Town of Brownsburg*, 32 N.E.3d 798, 806 (In. Ct. App. 2015). The primary goal in statutory construction is to determine and implement the intent of the legislature, and the best evidence of legislative intent is the language of the statute itself. *Masterbrand Cabinets v. Waid*, 72 N.E.3d 986, 992 (In. Ct. App. 2017). Words contained in a statute must be given their plain and ordinary meaning unless otherwise indicated, and it is important to recognize both what a statute *does* say and what a statute *does not* say. *Id.* at 992. A statute should be analyzed in a way that effectuates its "reasonable, commonly understood meaning." *Garner v. Kemf*, 93 N.E.2d 1091, 1094 (In. 2018). If the legislature has not defined a word, it is given its plain, ordinary and usual meaning, and English language dictionaries may

be consulted in determining that meaning. *Moriarity v. Indiana Dep't of Nat. Res.*, 113 N.E.3d 614, 621 (In. 2019)

Here, the plain language of Ind. Code § 3-8-1-2(d)(2) demonstrates the legislature's intent to permit only challenges based on "facts known" to the challenger. The legislature could have permitted challenges based on "beliefs" or "facts and beliefs," but did not. The American Heritage Dictionary defines "fact" as (1) information presented as objectively real, (2) a real occurrence; an event, (3) something having real, demonstrable existence, or (4) the quality of being real or actual. *Fact*, The American Heritage College Dictionary (3rd ed. 2000).

The Challenge does not set forth any facts regarding Councilman Hayes' residency. Seemingly unable to commit to a fact for fear of committing perjury, Mr. Layton crossed out the words "is not" and replaced them with the words "may not be a resident of Howard County." The statement that Councilman Hayes' residency "may not be" in Howard County represents Mr. Layton's *belief*, and is not an assertion of fact. Doubling down on his beliefs, and careful to avoid making a factual assertion, Mr. Layton posted the following on Facebook on February 18th, days after he filed the Challenge.



The post, signed by Mr. Layton, lays bare Mr. Layton's lack of conviction about the basis for the Challenge. Specifically, Mr. Layton states only that he believes[s] that [Councilman Hayes] "may" reside primarily in Osceola Indiana and not in Kokomo." And the document attached to the Challenge adds nothing. First, the mere fact that Councilman Hayes is listed as an owner of a property outside of Kokomo is an insufficient basis for a challenge to candidacy. By that logic, most candidates for office who have worked for decades and bought property outside of Kokomo would be in jeopardy. Second, Mr. Layton failed to assert Mr. Hayes' ownership of the home in the Challenge. Again, lacking the conviction of his beliefs, all he could muster to state

under oath is that he believes Councilman Hayes “may not” reside in Howard County. That is not enough.

In addition to falling short of the statutory requirements for a proper challenge of candidacy, the Challenge should be dismissed as a matter of public policy. Proper challenges to a candidacy result in hearings, potential appeals, and devotion of time and resources from members of the Election Board, the candidate, and court officials and judges. When a voter challenges a candidacy with known facts, rather than bias and conjecture, those resources are well spent, and the integrity of the electoral process is preserved. But when a challenge is equivocated by someone’s *opinion or rank speculation*, like in this case, those precious resources are wasted, and the integrity of the process is damaged.

CONCLUSION

Councilman Hayes certified that he is a resident of Kokomo and that he meets the requirements to be an at-large candidate for the Kokomo City Council. The Challenge to his candidacy is generally based on a belief informed by nothing more than speculation.

Accordingly, this Board should enforce the plain language of the statute that requires a challenge to be based on facts, and dismiss the Challenge to Councilman Hayes’ candidacy.

Respectfully submitted,

/s/ Manuel "Manny" Herceg

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served on the following individuals via electronic mail on February 22, 2019 at or before 12:00 p.m.

Debbie Stewart, Clerk
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Alan Wilson, Esq.
alan.wilson@howardcountyin.gov

/s/ Manuel "Manny" Herceg

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