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St. Joseph Superior Court 8
St. Joseph County, Indiana

STATE OF INDIANA	)	IN THE ST. JOSEPH SUPERIOR COURT 8
	) SS:	
COUNTY OF ST. JOSEPH	)	CAUSE NO. 71D08-2211-MC-002989

In Re: The Matter of A	)
Criminal Investigation	)
into Election Matters	)

REPORT TO THE COURT OF THE SPECIAL PROSECUTING ATTORNEY

The St. Joseph County Prosecuting Attorney Kenneth Cotter filed a *Petition for Appointment of a Special Prosecuting Attorney* concerning a criminal investigation into election matters on November 1, 2022 "…to avoid the appearance of impropriety or appearance of conflict of interest…" Judge Elizabeth Hurley of the St. Joseph Circuit Court granted the petition by the Court's *Order Appointing Special Prosecutor* of November 14, 2022. The Court subsequently appointed Senior Prosecuting Attorney Christopher Gaal as special prosecutor in this matter by the Court's *Amended Order Appointing Special Prosecutor* of December 14, 2022. The special prosecutor filed his *Acceptance, Affidavit for Designation as a Senior Prosecutor, and Appearance* on December 15, 2022.

Report To The Court Is A Public Record

The *Petition for Appointment of Special Prosecutor* specifically referred an investigation by the Indiana State Police "…involving the sitting St. Joseph County Clerk, Rita Glenn"

Indiana Code 33-39-10-2(f) requires:

> If the target of an investigation by the special prosecutor is a public servant (as defined in IC 35-32.5-2-261), the court shall order the special prosecutor to file a report of the investigation with the court at the conclusion of the investigation. A report filed under this subsection is a public record under IC 5-14-3.

Under IC 35-31.5-2-261 a "public servant" means a person who:

> (1) is authorized to perform an official function on behalf of, and is paid by, a governmental entity

Based on the independent investigation conducted by the Indiana State Police (ISP), the special prosecutor has determined that the target of this investigation was the St. Joseph County Clerk, and as such was authorized to perform an official function on behalf of, and paid by, a governmental entity. Therefore, the individual was a "public servant" within the meaning of IC 35-31.5-2-261(1). The special prosecutor has thus prepared this *Report To The Court Of The Special Prosecuting Attorney* as required by IC 33-39-10-2(f) to be filed as a public record. The special prosecutor has included sufficient detail in this report to generally inform the public as to the nature of the allegations and the results of the investigation.

Initiation of the Investigation

The special prosecutor contacted Brooks Johnson, District Investigative Commander, Indiana State Police (ISP) Bremen Post, to request information concerning this investigation. District Commander Johnson indicated that the ISP investigation was assigned to Senior Trooper Detective P. O'Keefe. District Commander Johnson provided the ISP case reports, and a link to digital evidence consisting of video and audio recordings of witness interviews, photographs, videos, and documents. The special prosecutor conducted an initial review of all available reports and evidence, and then met with Detective O'Keefe for further review of the evidence to ensure that the investigation was complete.

The special prosecutor hereby reports to the Court that the investigation into this matter is now complete, and the results of said investigation have been reviewed by the special prosecutor. The information that follows in the "Preliminary Facts" section of this report is intended as a general summary of the evidence, and not as a complete record.

Preliminary Facts

Detective O'Keefe received a copy of a complaint that originated from a private citizen that was sent to the Office of the Indiana Secretary of State regarding the possible violation of Indiana election laws by officials in St. Joseph County, Indiana. The complaint concerned election officials possessing and using multiple keys to access a secure absentee ballot storage area during the Primary Election of 2022 in St. Joseph County. The matter was referred

by the Indiana Secretary of State's office to the Indiana State Police for an investigation of any potential violations of criminal law.

Detective O'Keefe conducted several interviews with witnesses who had knowledge of events during the 2022 Primary Election in St. Joseph County, including but not limited to the following individuals:

Rita Glenn, County Clerk.
Benjamin Horvath, Election Board
Penny Stratton, Election Clerk
Kimberly Riskovitch, Voter Registration
Helen Jojo, Clerk's Office employee
Brian Davidson, Building Engineer

Rita Glenn interview

St. Joseph County Clerk Rita Glenn met with Detective O'Keefe and provided a lengthy voluntary interview statement along with a physical tour of the Clerk's office that included the room that was used for absentee ballot storage during the 2022 primary election, and other rooms that were previously used for such storage in prior elections.

Detective O'Keefe observed that the storage room used for the 2022 primary was secured by a wooden door with with a "Best Brand" lock on the door handle, and also a "Yale" metal deadbolt-style lock. A second entrance to the room had an accordion door blocked on both sides by metal shelving.

Glenn stated that she was aware state law required two locks for an absentee ballot storage area, and that the room was typically secured by a second lock at the time the first absentee ballots were placed inside the room. The room was then double-locked during non-business hours for the duration of the absentee voting period. The room was not double-locked in such manner year-round. During the absentee-voting period, each lock would typically be unlocked at the beginning of the business day by the election board member from each party (Republican/Democrat), or their designee. The door would then be accessed during the day by Clerk's office employees who were working on processing absentee ballots. At the end of the work day both locks would again be secured by each party's key-holder, or their designee.

Glenn stated that at an election board meeting on March 25, 2022, members of the board were informed that the business hours for the Clerk's office during the absentee voting period would be from 8:00 am to 4:30 pm every day. The Republican board member was Benjamin Horvath, and the Democrat member was Catherine Fanello. Glenn stated that both Horvath and Fanello were present at the March 25 board meeting. According to Glenn the board discussed that if the party board member were not able to be present to unlock and/or lock their party's lock, then it was their responsibility to designate someone else to do so. Fanello designated her key to Glenn.

Glenn stated that on the day the Republican lock was installed she was given two keys. Glenn provided one key to Horvath, and the other key to Election Clerk Penny Stratton to hold onto as a spare key. Glenn stated that Stratton was in possession of spare keys for both party locks throughout the 2022 primary absentee voting period.

Glenn stated that County Building Engineer Brian Davidson also had keys to both locks. Glenn believed Davidson maintained keys in case he may have needed access for the maintenance of computer server stacks and utilities that were also located in the room. She had not spoken to Davidson about a specific procedure if such maintenance access were required while the room was being used to store absentee ballots, but that situation did not arise during the primary.

Glenn described an issue that arose on Monday May 2, 2022, the day before the primary election, when Horvath did not show up to unlock the Republican lock. Glenn made several attempts to contact Horvath by text message, email, and phone. Initially, she did not receive any response. Glenn also sent messages to other members of the Republican Party to request information about Horvath's status, and to ask for their direction to enter the room. Glenn stated that due to her knowledge of the statutory requirements, she sought a Republican who might open the lock using the spare key. Glenn then had a conversation with an employee of the Clerk's office, Helen Jojo, who identified herself to Glenn as a Republican and offered to unlock the door using the spare key. Unable to reach Horvath, and having not received a

response from other Republicans whom she had attempted to contact, Glenn decided to accept Jojo's offer. However, Glenn did not take any action to verify Jojo's party status. Glenn obtained the spare "Republican" key from Stratton, and then Glenn and Jojo went together to unlock the door.

Glenn provided Detective O'Keefe printed copies of emails sent out on the morning of May 2, 2022. These records show that at 8:40 am Glenn sent an email to Horvath and others with a "High" priority label stating: "Hey Ben, we need to get into the locked ballot room so that we can get our work going!!" No reply was shown. A second email that included Republican party chair Zachary Potts and Kimberly Riskovitch was sent at 9:10 am with "High" priority stating: "Good morning. If anyone can please assist in reaching Ben, I would be most appreciative. Hoping everything is ok with him, but the ballots are still locked in the room and we need to get moving on them. Thanks, Rita." At 9:30 am Glenn sent another email to several people including Potts and Riskovitch stating: "After numerous attempts to contact Ben, I called for a master key and had a Republican from my office assist to open the door so that we may do our job. It's all on tape if needed. Thanks, rg."

Glenn also provided Det. O'Keefe copies of texts that included the following messages. At 8:47 am Glenn sent a text to Horvath stating "HELP!!! need the door opened..have to get busy." At 9:49 Glenn received a reply text from Horvath stating "texting with Kim, @ a job interview but she can come pick up key & have a break at 10:15 …..sorry did not know it was urgent." At 9:59 Glenn sent Horvath a text stating "No worries now, got the master key and had a republican clerk open it with me…have all the ballots from the weekend to check & get in order for Central Count." Horvath replied at 10:19, "Ok, I apologize! Sorry. I would have come before but didn't know."

Glenn stated that the Election Board then met on the afternoon May 2, 2022. The use of a spare key was not discussed at that time. At the end of the meeting Glenn observed Horvath attempt to secure his lock on the door to the absentee ballot storage area. Glenn informed him that clerks were still processing ballots and work for that day was not yet complete. Glenn

agreed to notify Horvath when they were done so he could come back later and lock the door. Glenn recalled that work on processing absentee ballots that evening was completed at around 5:45 pm. Glenn then sent Horvath a text to notify him that the room was ready to be locked.

On the morning of May 3, 2022 (Election Day), Glenn and Horvath met to unlock the door. Glenn unlocked the "Democrat" lock first and was then able to open the door without Horvath unlocking the "Republican" lock. Glenn stated she asked Horvath if he had locked his door the previous night, and Horvath informed her he had tried to gain entry to the building at around 7:00 pm the night before, but was unable to access the building and secure his lock. Glenn stated that she was aware of a meeting that occurred in the building on the previous night, and believed the building was occupied by county staff the entire night. Thus, she believed Horvath should have been able to gain access inside the building.

Glenn also described how she subsequently contacted the Clerk's association for additional guidance on how multiple keys to secure absentee ballot storage areas are managed by various Indiana counties. Glenn received several email responses, and provided those to Detective O'Keefe. These emails from the other counties polled suggested that there was not a uniform policy regarding the management of spare keys for absentee ballot storage areas. In six of the counties polled the Clerk maintained duplicate keys to both Republican and Democrat locks. One county advised that all keys were maintained in the Clerk's office and that election board members were not permitted to take them home at all.

Benjamin Horvath Interview

Detective O'Keefe interviewed Republican Election Board member Benjamin Horvath. The 2022 primary election was the first during which Horvath had served as an Election Board member. Horvath recalled the meeting on March 25, 2022 prior to the primary during which the board discussed that they were not in compliance with state law requiring two locks on the new room for absentee ballot storage. According to Horvath, there was also some discussion of different rooms used in past elections. The meeting determined that Glenn would lead efforts to have another lock placed on the door to be in compliance. He also recalled that the

Clerk's office would require the possessor of the key to the party lock to appear every morning to unlock, and evening to lock, the ballot storage area during the absentee voting period, and that the office generally conducted business from 8:00 am to 4:30 pm. Horvath stated Fanello verbally designating the Democrat key to Glenn during the meeting, and that he stated his intention to retain the Republican key. Horvath was later notified that his key was available to pick up, and he received a key from Glenn at the Clerk's office. Horvath recalled Glenn showed him the absentee ballot storage area, demonstrated the use of the lock, showed him the location of the video camera in the hallway, and may also have mentioned who had installed the lock. At the time he picked up the key he was not aware of the existence of any duplicate keys.

Horvath stated that he executed his duties during April by coming to unlock the door on his way to work between 7:00-7:30 am. He would then return after work at approximately 5:30 pm to lock the door. This was a part of his routine for the twenty-eight day absentee voting period prior to primary election day. He did not recall being late to open the door on any day other than the day before primary election day on May 2, 2022.

Horvath stated he had a four-hour job interview on May 2, 2022 from 8:00 am to noon. He did not notify Glenn, or anyone else involved with the Election Board, about the interview appointment despite regular contact with them during the absentee voting period. His last contact with Glenn was on the previous Friday. He stated that he was focused on the job interview due to its importance, and that he had received no feedback about the opening and closing of the door and did not see that duty as urgent. He stated that he did not initially understand the reason for the urgent need to enter the room that morning, but that such urgency then became apparent when he began receiving communications about the door being closed. He recalled the first such contact at around 9:00 am, and that he then received calls and texts from several individuals. Horvath returned a text message to Kimberly Riskovitch to arrange to have her come and get the key. He chose Riskovitch to pick up the key because he was familiar with her from Election Board meetings. He remembered being

initially relieved when he heard that Glenn had another key and was able to open the door without his assistance. He later became concerned about election security after learning of the presence of another key, and later raised the issue at an Election Board meeting. He stated that he was not certain if anything “nefarious" had occurred during the election, but would guess that nothing “nefarious” had happened. At the time of his interview with Detective O’Keefe, Horvath believed that in addition to his key, Stratton and Davidson also had copies of the Republican key.

On September 16, 2022 Horvath provided ISP with digital files of video footage from a security camera in the Clerk’s office that he had obtained from a request to the Office of the St. Joseph County Attorney. ISP copied the digital files and included them as evidence in the investigation.

Penny Stratton interview

Detective O’Keefe interviewed Penny Stratton, the St. Joseph County Election Clerk during the 2022 primary. Stratton stated that she suggested to Glenn that the absentee ballot storage room be moved because the old “supply room” storage area was managed by a Clerk’s office employee who was also on the ballot. She and Glenn together selected a new room, and then Glenn arranged to have the split door replaced with a more secure solid door. After the new door was installed Glenn received two keys and gave one to Stratton. Stratton referred to this key as the “Democrat key.” A couple of weeks later, a contractor installed a deadbolt lock on the door. Stratton recalled that St. Joseph County Building Engineer Davidson gave Glenn two keys to this lock. Glenn gave one key to Horvath, and gave the second key to Stratton for storage. Stratton referred to this key as the “Republican” key. Stratton placed both the Republican and Democrat keys on a ring and stored them.

Stratton described that during the absentee voting period clerks would access the room throughout the day using Glenn’s key to unlock the door handle. Stratton did not use the spare keys she kept for storage. By the time Stratton arrived at the Clerk’s office each day, the Republican deadbolt lock would already be unlocked. During the 2022 primary absentee voting

period she only remembered seeing Horvath on one occasion at approximately 7:55 am. The deadbolt would then remain unlocked throughout the day. At the end of the day the door would be locked by the door handle lock, and the deadbolt would remain unlocked until Horvath returned to lock it.

On the day prior to the primary election, Stratton stated there was an elevated sense of urgency to access the absentee ballot storage area. She described a backlog of incoming ballots from the final weekend of absentee voting that had to be processed. These absentee ballots needed to be sorted by precinct and placed with envelopes for "Central Count." Processing this backlog on the day before election day typically required workers to stay longer than normal. Stratton recalled that when she attempted to access the absentee ballot storage area that morning she was unable to do so. She then informed Glenn that the room was still locked and that clerks needed urgent access. Stratton did not participate in conversations about the locked door, or attempt to communicate with Horvath or anyone else. She stated that there had been a recent death in her family and that most of her conversations that day were personal in nature. Stratton left early that day due to her personal needs. Stratton recalled that Glenn and Jojo came to her desk to retrieve the spare keys, however she did not accompany them to the door.

Stratton also explained that there were multiple reports to account for ballots that had been received by absentee voting before being given to the Clerk's office for processing. She explained that the voting machines produce a spool of paper that produce ballots and reports from the machine. Stratton also stated that she no longer maintains spare keys to the absentee ballot storage area.

<u>Kimberly Riskovitch interview</u>

Detective O'Keefe also interviewed Kimberly Riskovitch who worked in voter registration during the 2022 primary election. Riskovitch's duties included attendance at all meetings of the St. Joseph County Election Board, though she was not a voting member. Riskovitch stated that approximately five years ago, the then chair of the Republican party

Murray Winn had given her a key and advised her that if she ever needed to use it he would tell her what it was for. Recently Winn informed her that the key was for the Republican lock on the old absentee ballot storage room. She was never asked to use the key. (Detective O'Keefe confirmed that Winn had given Riskovitch a spare key in a separate interview with Winn.)

Riskovitch attended the Election Board meeting where Glenn, Horvath, and Fanello discussed general expectations for the absentee voting period. She recalled a conversation regarding Horvath's responsibility to open the door and the discussion of daily times to meet.

On the day prior to the 2022 primary, Riskovitch received a call from a "panicked" Glenn who informed her that Horvath had not opened the Republican lock to the absentee ballot storage area and that she could not get a hold of him. Riskovitch then made several attempts to contact Horvath. Later that morning she received a text from Horvath that he was at a job interview and would come afterwards to unlock the storage area. She pressed the importance of opening the door and arranged to meet him to obtain the key as a representative for the Republicans. Riskovitch informed Glenn that she had arranged to get the key. Riskovitch then learned from Glenn that she did not need to do so because Glenn had a "master key" that she had already used to open the door "to get her job done." Riskovitch asked Glenn who had opened the door, and was informed that Helen Jojo had done so as a Republican. Riskovitch stated that she was surprised since she was not aware that Jojo was a Republican. Riskovitch did know other Republicans who worked in the Clerk's office whom she believed could have been used to open the door. Riskovitch looked up Jojo's voting history in voter registration records, discovered that Jojo had previously voted in Democrat primaries, and shared that information with others.

Riskovitch described the day before the election as "a crazy madhouse." She stated that she had known Glenn for a long time, and was able to identify that Glenn was in an elevated emotional state when she called that morning about the locked door. She further described Glenn as a person of integrity, and stated that she did not think Glenn would open the ballot storage door with a malicious intent.

Riskovitch described how the absentee ballot processing system would be very difficult to manipulate because every absentee ballot that is sent out to voters is documented. When the ballot is returned, it is scanned and identified as being returned in a state computer system. The ballot is placed in an envelope marked by name and precinct. The envelope does not identify political party in any way. The envelope is then sent to the Clerk's office where it is sorted and placed into the storage area. To remove a ballot, a person would have to have known the voter intimately enough to know how they had voted. A missing ballot would also have to be removed from the state system. On the day of the election, a report is generated for Central Count identifying the ballots returned by voter name. Central Count compares local and state reports of ballots returned. Any missing ballots would be identified and searched for by Central Count.

Helen Jojo interview

Detective O'Keefe interviewed Helen Jojo regarding her involvement. Jojo recalled that on the day before the election Glenn came into the office and stated that "Ben" had not unlocked the absentee ballot storage area door. This was the first time Jojo learned that the door required two keys. Jojo stated that she never saw Horvath until the day after the election. Jojo advised Glenn that she would help to open the door if needed since she was a Republican. Glenn did not accept her offer at first. Glenn later returned and advised her that Ben had still not come to unlock the door. Jojo again volunteered to open the door as a Republican. Glenn provided Jojo with a key to the Republican lock, and they both went to the absentee ballot storage area to unlock the door. At first Jojo was unable to open the door with the key provided, but was eventually able to do so after a few minutes of trying.

Jojo stated that she identified as a Republican because she "likes Trump." In response to questioning, Jojo stated that she believed she had previously registered as a Republican, generally voted for people and rather than for a party, and admitted a mixed voting history that included voting in both Democrat and Republican primaries. Jojo stated that she did not think it was a big deal for her to open the Republican lock.

Jojo stated that in her work in the Clerk's office the door to the absentee ballot storage room was normally locked during the day and she would gain access by Glenn unlocking the door handle. The door to the room was then propped open while she worked in the storage area, and then upon leaving the room she would lock the door using the lock on the inside of the door handle. During the 2022 primary election, Jojo's duties included sorting absentee ballots in the absentee ballot storage room. Prior to the 2022 primary she had not previously been involved with elections.

Brian Davidson interview

Detective O'Keefe interviewed Brian Davidson, Building Engineer for St. Joseph County. Davidson was responsible for overseeing daily operations in all of the County's buildings, including the maintenance of facilities and the routine movement of supplies. As such, he had access to all rooms in the building where the Clerk's office was located, including the absentee ballot storage room. He did not have access to a vault in the Clerk's office. He described a recent situation in which a leaking pipe had caused thousands of dollars in damage because he was restricted from accessing that area until a Clerk's office representative opened the vault so that he could gain access.

Davidson recalled that sometime in early February of 2022 Glenn contacted him to assist in selecting a new room for absentee ballot storage because the "supply closet" room that had previously been used was located close to the desk of a worker in the Clerk's office who was on the 2022 primary ballot, and who also managed and distributed the supplies from the room for the office. Glenn selected a new storage room that would not be readily accessed by a candidate on the ballot. The new room was largely unused, but also housed computer server racks and an air conditioner. Davidson stated that the condensing unit on the air conditioner was capable of failure that may have required his immediate response for repair to prevent potential water damage and/or to prevent computer servers from overheating. At the time of the move, the main entrance to the room was a door that was cut in half allowing the top and bottom to be opened independently - which was a possible security concern.

Davidson secured bids and selected a contractor to replace the split door. On February 28, 2022 the split door was replaced by a solid wood door. At that time, the contractor installed a door handle, and then Davidson installed a "Best Lock" system similar to the locking system used throughout St. Joseph County buildings. Davidson believed this system would best serve the security of the door since it made duplicating keys more difficult. Davidson was the only person in the county able to purchase additional keys for "Best Locks." At the time Davidson installed the lock, he provided two keys to the Clerk's office. He did not keep a third key for himself because he was in possession of a "grandmaster" key capable of unlocking any Best Lock in the county. According to Davidson, this grandmaster key was accessible to himself, his maintenance staff, security officers, and technical assistance personnel. He could not identify a specific number of individuals with such access.

After the door to the new absentee ballot storage room was installed, Davidson understood that a second lock was needed for the Republican party. Approximately two weeks later the contractor procured and installed a "Yale" brand deadbolt style lock and provided three keys to Davidson. A different brand of lock was required in order to meet the timeline for absentee voting. Normally the lock would come with two keys, but Davidson requested a third key so that he could retain access to the room for the purpose of emergency maintenance and repairs while still providing two keys to the Clerk's office. He also believed his key could provide access in case someone was unavailable to open the door in a time of need. Davidson was aware that the room was to be secure, so he kept his copy of the "Yale" lock key at his residence. Davidson was not aware of any requirement that duplicate copies of the keys were not permitted. Davidson stated that he had not entered the room from the time that it was initially secured with two locks through the date of the primary election. He also stated that in the event he would have had to enter the room during that period of time to check the air conditioner, he would have been in touch with both political parties before entering. At the time of the interview Davidson was still in possession of keys for both party locks to the absentee ballot storage room.

Other evidence

Detective O'Keefe reviewed Election Board minutes. Minutes from March 25, 2022 confirmed that the board discussed the requirement of using two locks, and that further discussion was suggested after researching the law requiring two locks. Minutes reflect that Fanello designated her key to Glenn, and Horvath designated his key to himself. The minutes also mentioned that the second lock was to be installed on the next Wednesday following the meeting. The board met on May 2, 2022 but the minutes did not reflect further discussion of the issue. There was no additional discussion regarding the security of absentee ballot storage until May 3, 2022 following the incident involving the use of a spare key. The issue was discussed again at the election board meeting on May 13, 2022. Det. O'Keefe also obtained a copy of the St. Joseph County ballot procedures.

The absentee ballot storage room used for the 2022 primary was subject to outside video monitoring. The previous "supply room" ballot storage area was not subject to such video monitoring.

Detective O'Keefe reviewed the video provided by Horvath and created a timeline summary of significant events that he was able to observe. These events included Glenn checking the locked door to the absentee storage room on the morning of May 2, 2022 at video timestamps of 7:42 am, 8:15 am, 8:20 am, and then eventually returning with Jojo at 9:31 am and unlocking the door at 9:33 am. The room is then accessed several times during the day by Clerk's office employees transporting boxes filled with yellow envelopes on a wheeled cart, carrying boxes, and carrying rolls of white paper. At 4:00 pm Horvath is seen entering the Clerk's office and departing at 4:37 pm. After Horvath departs, Clerk's office employees continue to access the absentee ballot storage room.

At 4:52 pm Glenn exits the Clerk's office with a white plastic bag, walks down the hallway, and enters the absentee ballot storage room. Glenn exits the room fourteen seconds later still carrying the bag. After exiting, Glenn checks the door handle and then opens a blue trash bin located outside the door. She removes what appear to be white rolled papers from

the bag, and checks each item as she places them into the blue bin. This process takes about one and a half minutes. Glenn then carries the white plastic bag to a trash pile outside the Clerk's office door and places it with its remaining contents in the pile before returning to the Clerk's office.

Clerk's office employees continue to access the absentee ballot room transporting carts with storage bins containing yellow envelopes. At 5:26 pm Glenn and Horvath appear to have a brief conversation outside the absentee ballot storage room before entering the Clerk's office. Employees from the Clerk's office continue to enter and exit the absentee ballot storage room transporting several storage bins. At 5:50 pm Glenn can be seen locking the door to the absentee ballot storage room as Clerk's office employees appear to leave for the day. Glenn checks the door again at 5:51 pm, and it appears to be locked. The video does not show Horvath appear to lock the second lock that evening, and no one else is seen approaching the absentee ballot storage room until the next morning.

The next morning, May 3, 2022 (primary election day), Glenn arrives at the Clerk's office at 4:19 am. Horvath arrives at 5:15 am and visually checks the absentee ballot storage area door before entering the Clerk's office. At 6:04 am Glenn and Horvath approach the absentee ballot storage room door together. Glenn uses a key to unlock the door and is then able to open the door. Horvath does not appear to use a key or touch the door.

Two video clips appeared in the media showing Glenn with the white trash bag. The first clip showed Glenn entering the absentee ballot storage room, and the second clip showed Glenn leaving the room. These videos appeared to be clips from the 4:52 pm events observed by Det. O'Keefe in his review of the video. The Indiana Election Commission, Office of the Indiana Secretary of State, forwarded the news article containing the video clips to Glenn, and offered her an opportunity to respond. Glenn provided an emailed response, which was then forwarded to the ISP and made a part of Detective O'Keefe's investigation file. In the email, Glenn states as follows:

> …The day at question, May 2nd, 2022 @4:52, there were NO BALLOTS in the room where the ballots are stored, with the 2 separate locks. Those ballots were in a

> separate room and being separated for Central Count, Election Day. I was destroying the 'end of the rolls of paper' that come out of the Unisyn Freedom Votes. The Freedom Votes, sound an alarm when the paper is almost out. The absentee board, removes, those rolls and replaces them with a new roll, as not to run out while the voter is voting. These thermos rolls, were then destroyed to protect the integrity of the election since they have the 'court seal & box for the bipartisan initials'. If everyone recalls, the voter places their ballot (themselves in our county) and seals them in them in a yellow envelope. I then reached in the bin and scrunched the thermos paper to mark it permanently.

Then in a follow up email Glenn adds:

> ps. I forgot to mention that the empty card board rolls, that the paper is on, could not go in the recycle bin, therefore, what you seen was me placing them in the trash pile.

Potentially applicable statutes

The following Indiana Code statutes are potentially applicable to the present investigation:

Election Code:

IC 3-11-10-10. Storage of ballots by county election boards.
During the period that absentee ballots are being received, each county election board shall keep the ballots in cabinets, boxes, or a room upon which there are two (2) locks, one (1) for each of the appointed members of the board. Each day the absentee ballots shall be placed in the cabinets, boxes, or room under the direction of the appointed members of the board. If an appointed member cannot be present each day, then that member shall designate someone from the member's political party to be present with the key to the lock at the time the ballots are secured and at the time the lock is opened the next day. The key of each appointed member of the board shall be kept secure in the manner determined by that appointed member.

Criminal Code:

IC 3-14-2-26. Tampering with ballots, ballot boxes, voting materials and records.
A person who:
(1) during the progress of an election or within the time for preparation required under this title, knowingly breaks open or violates the seal or lock of a ballot box, envelope, container, bag, or voting system component in which ballots have been deposited;
(2) knowingly obtains a ballot box, envelope, container, bag, or voting system component that contains ballots and cancels, withholds, or destroys a ballot;
(3) knowingly increases or decreases the number of ballots legally deposited in a ballot box, envelope, container, bag, or voting system component; or
(4) knowingly makes a fraudulent erasure or alteration on a tally sheet, poll book, list of voters, or election return deposited in a ballot box, envelope, bag, or voting system component;
commits a Level 6 felony.

IC 3-14-4-3. Knowing omission of official duty.
A precinct election officer or public official upon whom a duty is imposed by this title who knowingly omits to perform the duty commits a Level 6 felony.

IC 35-41-2-2 Culpability
(a) A person engages in conduct "intentionally if, when he engages in the conduct, it is his conscious objective to do so.
(b) A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

Standards for the charging decision

The **Indiana Rules of Professional Conduct RULE 3.8 Special Responsibilities of a Prosecutor** states as follows: "The prosecutor in a criminal case shall (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause." The Comments for RULE 3.8 further state "[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence."

The American Bar Association **Criminal Justice Standards For The Prosecutor Function** include the following provisions:

> **Standard 3-4.3 Minimum Standards For Filing And Maintaining Criminal Charges**
> (a) A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.
>
> **Standard 3-4.4 Discretion in Filing, Declining, Maintaining, and Dismissing Criminal Charges**
> (a) In order to fully implement the prosecutor's functions and duties, including the obligation to enforce the law while exercising sound discretion, the prosecutor is not obliged to file or maintain all criminal charges which the evidence might support. Among the factors which the prosecutor may properly consider in exercising discretion to initiate, decline, or dismiss a criminal charge, even though it meets the requirements of Standard 3-4.3, are:
> * * *
> (xvi) whether the public's interests in the matter might be appropriately vindicated by available civil, regulatory, administrative, or private remedies.

Determinations of the special prosecutor

The special prosecutor, having reviewed the evidence available from the official independent investigation conducted by ISP Senior Trooper Detective O'Keefe, now makes the following determinations:

1. That the special prosecutor has attempted to fairly and impartially review the statements of each witness with the presumption that each was truthful, and has further attempted not to disregard any statement without careful consideration and good reason.
2. That the statements of the witnesses are generally in agreement as to the facts of what occurred.
3. That there exists additional evidence in the form of text messages, emails, and video surveillance footage that corroborates the credibility of witness statements and provides a reliable timeline for events such that the special prosecutor is able to determine the facts with a high degree of confidence.
4. That St. Joseph County Clerk Rita Glenn had an official duty to perform the functions of her office, which included the fair and efficient administration of the 2022 primary election.
5. That such duties specifically included the secure storage and processing of absentee ballots as required by Indiana Code and according to local election procedures.
6. That Glenn was aware of the statutory requirement of IC 3-11-10-10 that absentee ballots be secured by "…two locks, one for each of the appointed members of the board."
7. That IC 3-11-10-10 imposed a duty on election board members that "If an appointed member cannot be present each day, then that member shall designate someone from the member's political party to be present with the key to the lock at the time the ballots are secured and at the time the lock is opened the next day."
8. That on the morning of May 2, 2022, the day before the primary election, Republican Election Board member Benjamin Horvath failed to appear or designate someone to unlock the absentee ballot storage room door in a timely manner.
9. That Helen Jojo identified herself to Glenn as a Republican.
10. That Glenn designated Jojo to unlock the Republican lock using a spare key without the presence of Republican election board member Horvath or his designee, without his direction to do so, and without attempting to verify Jojo's party status.
11. That Horvath was unaware of the existence of a spare key.

12. That had Glenn waited for election board member Horvath to appear, or for Horvath to respond to messages and approve the use of a spare key by his designee or Glenn's designee, then the present controversy could have been avoided.
13. That had Glenn waited for election board member Horvath to appear, or for Horvath to respond to messages and approve the use of a spare key by his designee or Glenn's designee, then the delay could also have compromised the efficient reporting of election results, and would have likely placed a significant additional burden on employees of the Clerk's office who would have been required to stay later and perform additional hours of work to process the backlog of absentee ballots from the final weekend of absentee voting immediately prior to primary election day. These likely and foreseeable consequences presented exigent circumstances.
14. That Glenn acted knowingly to open the door under the exigent circumstances then present.
15. That on the morning of May 2, 2022, Horvath violated the duty imposed on him by IC 3-11-10-10 as an election board member by failing to appear or communicate a designee, and thus bears responsibility for creating the exigent circumstances then present and existing.
16. That Horvath stated in his interview with Detective O'Keefe that he was not certain that anything "nefarious" had happened, but would guess that nothing "nefarious" had happened.
17. That Riskovitch, who initially raised a concern about Jojo's voting record, described Glenn as a person of integrity who would not open the absentee ballot storage door with a malicious intent.
18. That there is insufficient evidence that Glenn acted knowingly to commit a criminal act. Rather, the available evidence supports a reasonable belief that Glenn knowingly acted under exigent circumstances in good faith to fairly and efficiently perform the duties

imposed upon her office in a timely manner by attempting to seek out a Republican to open the door.

19. That among Indiana counties there does not appear to be a consistent policy regarding the management of duplicate keys to secure absentee ballot storage areas. However practices seem to commonly include the maintenance of duplicate keys in case of exigent circumstances.
20. That the previous Republican election board member in St. Joseph County made use of a duplicate key.
21. That IC 3-11-10-10 "Storage of ballots by county election boards" concerns the regulation and/or administration of elections and does not provide for a criminal offense.
22. That the matter of any potential violation of IC 3-11-10-10 based upon the maintenance of duplicate keys is a matter of public policy in which the public's interest is more appropriately vindicated by an available regulatory and/or administrative remedy provided through the Office of the Indiana Secretary of State and/or the St. Joseph County Election Board, and as such under the circumstances merits the exercise of prosecutorial discretion as described in ABA Standard 3-4.4(xvi).
23. That under the circumstances known to the State based upon the independent official investigation conducted by the ISP in this matter, the credible and admissible evidence is not sufficient to support a reasonable belief that there exists probable cause, and/or to prove beyond a reasonable doubt that a criminal offense has occurred. As such, the special prosecutor will not file criminal charges in this matter.

Conclusion

The special prosecutor has determined that under the circumstances known to the State based upon the official investigation conducted by the ISP investigator in this matter, the credible and admissible evidence does not support the filing of criminal charges. As such, the special prosecutor has determined that no criminal charges shall be filed, that the criminal investigation into this matter should now be closed, and that no further action will be taken.

Having discharged his duties in this cause, the special prosecutor now requests that his appointment in the matter of the investigation under this cause be terminated.

Respectfully submitted,

/s/ Christopher Gaal

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CERTIFICATE OF SERVICE

I certify that a copy of this pleading was delivered to Kenneth Cotter, Office of the St. Joseph County Prosecuting Attorney, by means of electronic filing this day 13th day of January, 2023.

/s/ Christopher Gaal

Christopher G. Gaal 20130-53
Senior Prosecuting Attorney