

STATE OF INDIANA) IN THE MARION COUNTY CIRCUIT COURT
) SS:
COUNTY OF MARION) CAUSE NO. 49C01-1012-MI-055881

IN RE ELECTION CONTEST)
)
INDIANA DEMOCRATIC PARTY,)
By its Chairman, DANIEL J. PARKER)
)
Petitioner)
)
v.)
)
THOMAS E. WHEELER et al.,)
)
Respondents)

FILED
161 JAN 03 2011
Elizabeth L. White
CLERK OF THE MARION CIRCUIT COURT

MOTION TO STAY PENDING APPEAL

Respondents Thomas E. Wheeler, Bernard L. Pylitt, and Gordon Durnil, in their official capacity as members of the Recount Commission, by counsel, Betsy M. Isenberg, Deputy Attorney General, respectfully move this Court to stay proceedings of the Indiana Recount Commission and enforcement of the Opinion and Judgment entered December 21, 2011. In support of this motion, Respondents state the following:

1. On December 21, 2011, this Court issued its order reversing and setting aside the June 28, 2011 Findings of Fact, Conclusions of Law and Final Order of the Indiana Recount Commission and granted the Election Contest to the Indiana Democratic Party.
2. The order further remanded the matter with instructions to the Commission to declare Charlie White ineligible to be a candidate for the office of Secretary of State and to certify the candidate who received the second highest number of votes, Vop Osili, as Secretary of State.
3. Respondents will file a timely Notice of Appeal with the Court of Appeals.

4. Indiana Trial Rule 62 authorizes this Court to stay the judgment pending the appeal of this matter.

5. The Respondents have a meritorious appeal of the judgment as set forth in their prior briefing in this matter.

6. As a matter of public policy, it is critical that this Court allow the appellate process to run its course before taking the extraordinary step of removing an elected official from office, a step certain to result in confusion and instability within multiple governmental organizations.

7. This Court clearly appreciates the gravity of judicial intervention into the electoral process, and has noted on several occasions that courts should be extremely wary of removing a successful candidate from an elected position. Indiana courts have consistently acknowledged a “longstanding respect for the right of the people to free and equal elections,” and a reluctance “to remove from office a person duly elected by the voters.” *Burke v. Bennett*, 907 N.E. 2d 529, 532 (Ind. 2009).

8. The disruption at the state level that would result from the immediate enforcement of this Court’s order during pendency of the appeal is obvious. The Secretary of State’s Office would be in state of flux with a new Secretary of State assuming the office, perhaps only temporarily, while the Court of Appeals exercises review of this Court’s order.

9. It is not even entirely clear who would assume the position of Secretary of State. Mr. Osili is not immediately available to assume the position, as he currently serves as a councillor for the City-County Council of Indianapolis and Marion County. Assuming that Mr. Osili is willing to assume the office for, perhaps, a temporary period, he would have to resign as councillor, as he is prohibited from holding both positions simultaneously by Article II Section 9

of the Indiana Constitution. Thus, the results of another election, this time at the city and county level would, in effect, be upset and in a state of limbo while the Court of Appeals resolves this matter.

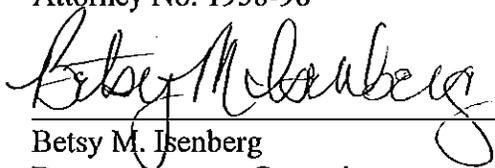
10. Immediate enforcement of this Court's December 21, 2011 order would cause confusion throughout the state and local governments of Indiana. There has been enough uncertainty during the pendency of this matter. Before enforcing the removal of an elected officer of government, Respondents respectfully urge this Court to allow this proceeding to come to its final and certain resolution.

WHEREFORE, the Indiana Recount Commission respectfully requests the Court to stay enforcement of its December 21, 2011 Order, and for all other proper relief.

Respectfully Submitted,

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Indiana Attorney General
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By:


Betsy M. Isenberg
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served upon the party of record listed below by United States mail, first-class postage prepaid, on this 2nd day of January, 2012:

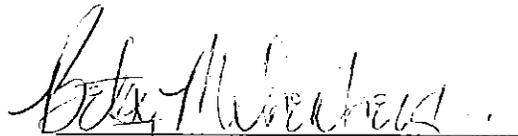
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