

1 suggesting anything.

2 MR. BROOKS: Okay.

3 THE WITNESS: That's the way I  
4 took it when you said that.

5 MR. BROOKS: You and I were --  
6 were agreeing on the process.

7 MR. CHAIRMAN: Yeah. Okay.

8 Q And, in fact, Donna, do you know if the  
9 challenge procedure for absentee ballots  
10 that's provided in the statute where one -- a  
11 Democrat or the Republican that sits as your  
12 absentee board, was that utilized at all?

13 A Not to my knowledge.

14 Q So the Democrat and Republican, neither one  
15 of them had any problems with this process  
16 that caused either one of them to make a  
17 challenge to a voter?

18 A They didn't -- I was unaware that that  
19 happened. I was on the ballot this year, so  
20 I was not involved with any of the ballots  
21 with the voting. I was not in there. They  
22 didn't -- the two election workers did not  
23 approach that, oops, we forgot to have --  
24 this person did not sign. Until this recount  
25 and all this happened, we were unaware of

1           that or I was unaware of that.

2           Q    But you would have heard if the challenge  
3            procedure was utilized, you think, or not?

4           A    I would have hoped that they would have  
5            approached me with that.

6           Q    They normally would have?

7           A    Normally.  Normally I would have been right  
8            there assuring things were done right.

9           Q    But in a county like Posey, you would have  
10          got wind of it, perhaps, as clerk?

11          A    As clerk I'm right there.

12          Q    Yeah.  I'd like to take this opportunity in  
13          order for efficiency to ask the clerk while  
14          she's up here a couple other questions for  
15          the record that don't have to deal with this  
16          particular precinct.  Is that all right with  
17          the Commission members?

18                         Thank you.

19                         There's been some discussion from  
20          precinct to precinct about other issues with  
21          regard to the process and procedure.  One  
22          example comes from Lynn East where the back  
23          of a poll book was signed.

24          A    Uh-huh.

25          Q    Do you have anything to offer for the record

1 or for the Commissioners that explains that  
2 process? Did you train poll workers in that  
3 regard or -- you've been sitting here the  
4 whole day. Anything to offer with regard to  
5 why the back of a poll book wouldn't be  
6 signed -- or would be signed when they  
7 weren't listed and then -- then they  
8 presumably went forward and voted, or not?

9 A Yes. In my four years as clerk, as we run  
10 the poll books, generate all the poll books,  
11 there are people that live in Lynn East that  
12 inadvertently get left off of the poll book.  
13 I'm not sure why it doesn't generate their  
14 name out, but in the last -- these past four  
15 years, there's times that that happens. And  
16 what I instruct the people during the -- the  
17 people that are going to work the polls  
18 during the training, if someone comes in to  
19 vote and they're not on that poll book, they  
20 call into the office; we check the SVRS to  
21 see if they are registered to vote in that  
22 precinct. If they are then I instruct the  
23 inspectors and the judges and the clerks just  
24 have them sign -- you know, show their ID,  
25 sign the back of the poll book and fill out

1 the VRG412 to see maybe if it was a change-  
2 of-address situation, you know, see what  
3 happened, and then that is supposed to all be  
4 put back in the poll books.

5 Q So in every instance when the back of a poll  
6 book is signed, there is supposed to be a  
7 VRG412 on there?

8 A Not every time. It's just only maybe if it  
9 would be the certificate of error that would  
10 --

11 Q Yeah.

12 A -- have been -- or maybe they, you know,  
13 again, were left off the poll book and that  
14 is their voting district.

15 MR. CHAIRMAN: Did that generate  
16 any questions from Commissioners? Did that  
17 generate any questions while we have the  
18 witness on that issue?

19 MR. BROOKS: Not -- not from me,  
20 Mr. Chairman.

21 MR. CHAIRMAN: Mr. Brown.

22 MR. BROWN: Thank you,  
23 Mr. Chairman.

24 MR. BROWN:

25 Q Donna, thank you for being here today. We --

1           some people that work with me, we copied  
2           voter registration cards from your office,  
3           and I think you were actually present when we  
4           did that.

5           A    Yes.

6           Q    And we found -- and those are the latest  
7           voter registration cards you have on file for  
8           -- for voters --

9           A    Yes.

10          Q    -- in Posey County?

11                   And is that the same material used when  
12           a poll worker presumably follows procedure as  
13           you stated and calls in on election night if  
14           someone is going to sign into the back of the  
15           poll book, are those voter registration cards  
16           used to verify where the voter is registered?

17          A    If we cannot find them in the system.

18          Q    Okay.

19          A    And there are numerous times that active  
20           registered voters, you cannot locate them in  
21           the system by any means, backwards, forwards,  
22           upsidedown, so, therefore, we do go to the  
23           file cabinet to see if we can find that they  
24           are an active registered voter.

25          Q    If they're not registered within the precinct

1 from which you're getting the call, what are  
2 your instructions to a poll worker at that  
3 point?

4 A If they're not registered, then my  
5 instructions are to, once we determine where  
6 they are to go vote, we instruct them to go  
7 to their proper precinct.

8 Q Okay.

9 MR. BROWN: Thank you.

10 MR. CHAIRMAN: Okay.

11 MR. CHAIRMAN:

12 Q Donna, I have another question on a different  
13 issue.

14 Recently, just recently we -- we came  
15 across a precinct, Smith West, in where it  
16 was alleged that there were 11 absentee  
17 votes, but really we could find only eight  
18 applications, and the counterargument to that  
19 was, well, that doesn't mean those eight  
20 applications -- more than eight applications  
21 don't exist. It could -- just could be in  
22 the impoundment order and -- and the  
23 kerfuffle that surrounds that, that just  
24 they're not available. Do you have any  
25 comment to add to that or anything that

1 explains the discrepancy between 11 absentee  
2 votes and --

3 A Like I said --

4 Q -- us having our hands on eight applications?

5 A Right. Like I said, at about nine a.m. the  
6 day after election, everything was impounded,  
7 so there was no time for us to go back  
8 through and --

9 Q Okay. But, otherwise, you think you have  
10 applications for every absentee vote?

11 A Yes. Every -- what -- what each one of the  
12 election workers, the Democrat and the  
13 Republican worker done was, after someone  
14 come in and voted absentee or if they had it  
15 by mail, it was put in the safe every night  
16 and locked up.

17 Q And do you do any internal tallies to keep  
18 things in order or to check at the end of the  
19 day or at the end of the process or anything  
20 like that?

21 A For the absentees?

22 Q Yeah, just to compare numbers, or is there  
23 any internal processes you use that you want  
24 to get on record here?

25 A Just through the SVRS we can pull up the

1 report.

2 Q Okay.

3 THE CHAIRMAN: Any other  
4 questions from Commission members?

5 MR. DURNIL: I'll give you a  
6 little comment.

7 I went to vote in a mayor's election  
8 three years ago or almost four years ago in  
9 Marion County, and I had been at the same  
10 residence for 40 years registered and my name  
11 wasn't there and I found out they lost -- the  
12 registration board lost all of Pennsylvania  
13 Street from downtown to the 9th District's  
14 County Line Road, so things happen.

15 MR. CHAIRMAN: Any questions from  
16 Counsel on that last issue?

17 Hearing none.

18 Thank you, Donna, very much. Don't go  
19 too far.

20 THE WITNESS: Thank you.

21 MR. CHAIRMAN: Anything else,  
22 Mr. Brooks?

23 MR. BROOKS: No, Your Honor or --  
24 I keep saying that -- Mr. Chairman.

25 MR. CHAIRMAN: Questions from

BEFORE THE STATE RECOUNT COMMISSION

MARK OWEN, in his )  
capacity as Chairperson )  
of the Vanderburgh )  
County Democratic )  
Central Committee, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
WENDY (Mac) MCNAMARA, )  
 )  
Respondent. )

VOLUME II

(Pages 234 - 475)

This recount hearing was reported by me, Faith Hurley, Court Reporter, Notary Public, County of Vanderburgh, State of Indiana, on the 12th day of December 2010, between the hours of 12:19 P.M. and 10:08 P.M., at the Hovey House, Mt. Vernon, Indiana.

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1 Commission members?

2 Hearing none.

3 Motions?

4 MR. KUZMAN: Mr. Chairman, I move  
5 -- under 3-11-10-26 it clearly states that a  
6 signed application on a form prescribed by  
7 the Commission under IC311-4-5.1 -- and this  
8 is clearly not signed. I'd ask the votes to  
9 be removed.

10 MR. CHAIRMAN: There's a motion.

11 Second for discussion.

12 How would you find the two votes?

13 MR. KUZMAN: They were absentee,  
14 so -- I mean, they were absentee. We could  
15 go back and find them that way, I would  
16 assume. They're not on electronic, so it  
17 would be --

18 MS. BARNES: They are electronic.

19 MR. KUZMAN: They are electronic?

20 (Off the record - Mr. Kuzman  
21 conferring with Ms. Barnes)

22 They can apparently be found based upon  
23 that number (indicating).

24 MR. CHAIRMAN: Any other  
25 discussion?

1 MR. DURNIL: It's my view again  
2 this is a clerical error. This is nothing  
3 the voter did wrong.

4 MR. KUZMAN: If -- if I may  
5 comment on that, nothing the voter did wrong  
6 when he presented a valid ID to vote the  
7 second day not knowing that it was valid or  
8 not invalid, so we -- we -- let's stay  
9 consistent.

10 MR. CHAIRMAN: Again, I think  
11 that because this is an absentee vote, it --  
12 there's a different standard and you have to  
13 -- you have to provide more scrutiny to the  
14 process. It's a special dispensation. If  
15 this was a mail-in absentee ballot, I can't  
16 see under the circumstances that I would vote  
17 against your motion. Because this is an in-  
18 person absentee ballot, because a log was  
19 presented, because the -- the signature on  
20 that log matches the voter registration  
21 signature, and most importantly, because  
22 we're assured through testimony that a valid  
23 photo ID was presented, I will be voting  
24 against the motion, but, again, I'd make -- I  
25 would make a differentiation in my vote

1           between the evidence presented and the  
2           in-person nature of it versus the mail.

3           All in favor of the motion signify by  
4           saying, "Aye."

5                         MR. KUZMAN:  Aye.

6                         MR. CHAIRMAN:  All opposed?

7                         MR. DURNIL:  Aye.

8                         MR. CHAIRMAN:  Aye.

9           Motion fails.

10           Mr. Skolnik.

11                         MR. SKOLNIK:  Are there any --  
12           Mr. Chairman and -- and Counsel, are there  
13           any other disputed ballots or objections or  
14           challenges in connection with precinct Black  
15           Number 6?

16                         MR. CHAIRMAN:  Hold on.  
17           Commissioner wants to stop.  Commissioner  
18           wants to stop for a minute.

19                         MR. KUZMAN:  We want to make sure  
20           -- I just want to make sure the court --  
21           sorry -- the court reporter has all the  
22           exhibits from this last one before we move  
23           on.

24                         MR. CHAIRMAN:  Okay.  That's  
25           fine.

1 MR. KUZMAN: I apologize. I  
2 just --

3 MR. CHAIRMAN: That's fine.  
4 Okay. Thank you.

5 Here you go (indicating).

6 MR. KUZMAN: Sorry about that. I  
7 don't want to get confused. We've got a lot  
8 of paperwork up here.

9 MR. CHAIRMAN: That's  
10 appreciated.

11 Now, there's also another two exhibits  
12 here that I believe came from the State Board  
13 of Accounts in Black 6 that have the  
14 notations. Do you want these back?

15 MR. KUZMAN: Do you want to mark  
16 those? Do we need to mark those since we  
17 referred to those numbers to find them in the  
18 log?

19 (Off the record - Discussion  
20 regarding exhibits)

21 MR. CHAIRMAN: Do we need to  
22 identify them at all? They're Exhibit Number  
23 11 from the State Board of Accounts and  
24 Exhibit Number 12 from the State Board of  
25 Accounts.

1 Mr. Skolnik.

2 MR. SKOLNIK: Are there any other  
3 -- Counsel, are there any other disputes  
4 pertaining to precinct Black 6?

5 MR. BROOKS: I'm sorry?

6 MR. SKOLNIK: Are there any other  
7 disputes pertaining to Black Number 6?

8 MR. BROOKS: No. If we had any,  
9 we withdraw them.

10 MR. SKOLNIK: And it's my  
11 understanding, Mr. Brown, there are no  
12 other --

13 MR. BROWN: No.

14 MR. SKOLNIK: -- that you have?

15 MR. BROWN: None from our side.

16 MR. SKOLNIK: Mr. Chairman, my  
17 records reflect that -- therefore, that the  
18 tally in precinct Black 6 would be 213 votes  
19 for Mr. Deig, 122 votes for Ms. McNamara, one  
20 invalid ballot tallied for Mr. Deig, three  
21 invalid ballots tallied for Ms. McNamara and  
22 seven no votes.

23 MR. DURNIL: I move we accept the  
24 tally as final.

25 MR. CHAIRMAN: Second.

1 All in favor?

2 MR. DURNIL: Aye.

3 MR. CHAIRMAN: Aye.

4 All opposed?

5 MR. KUZMAN: Aye.

6 MR. CHAIRMAN: Motion carries two  
7 to one.

8 Mr. Skolnik.

9 MR. SKOLNIK: Mr. Chairman, it is  
10 my understanding that that concludes  
11 Petitioner -- in connection with Petitioner's  
12 case in chief all of the precincts in Posey  
13 County. There's one precinct still left in  
14 Posey County, Robb Number 1, where there's  
15 some disputed ballots that are evidently --  
16 that Mr. Brooks has preserved for Respondent,  
17 but now we would -- it's my understanding we  
18 would turn our attention to Vanderburgh  
19 County.

20 MR. CHAIRMAN: Vanderburgh  
21 County.

22 MR. SKOLNIK: In the first  
23 precinct in Vanderburgh County, Ward 6,  
24 Number 1, the tally by the State Board of  
25 Accounts reflects that there were 78 votes

1 for Mr. Deig, 47 for Ms. McNamara, four  
2 disputed valid ballots tallied for Mr. Deig,  
3 three no votes.

4 MR. BROWN: We do not have any  
5 dispute -- we withdraw all disputes related  
6 to precinct 6-1.

7 MR. BROOKS: We withdraw all our  
8 challenges.

9 MR. SKOLNIK: Both parties having  
10 withdrawn their disputes in Ward 6, Number 1,  
11 the tally should read Mr. Deig 78 votes,  
12 Ms. McNamara 47 votes, three no votes.

13 MR. DURNIL: I move we accept the  
14 tally as final.

15 MR. CHAIRMAN: Second.

16 All in favor, "Aye."

17 MR. DURNIL: Aye.

18 MR. KUZMAN: Aye.

19 MR. CHAIRMAN: Motion -- aye.

20 Motion carries unanimously.

21 Mr. Skolnik.

22 MR. SKOLNIK: The next precinct  
23 is Ward 6, Number 2. The tally from the  
24 State Board of Accounts reflects 119 votes  
25 for Mr. Deig, 110 for Ms. McNamara, two

1           disputed valid ballots tallied for Mr. Deig,  
2           two invalid ballots tallied for Mr. Deig, two  
3           disputed invalid ballots tallied for  
4           Mr. Deig, five no votes.

5                         MR. BROWN: Thank you,  
6           Mr. Chairman and members of the Commission.

7                         The exhibits that we will be referring  
8           to are Exhibit 11 -- sorry -- this is 6 to  
9           Exhibit 11 and Exhibit 12. There's more than  
10          one page on each exhibit, but they are  
11          together in an exhibit.

12                        MR. CHAIRMAN: So exhibits --

13                        MR. BROWN: 11 and 12.

14                        MR. CHAIRMAN: Exhibits 11 and 12  
15          are multiple pages --

16                        MR. BROWN: Right.

17                        MR. CHAIRMAN: -- per exhibit.

18                        Thank you.

19                        Okay. Mr. Brown.

20                        MR. BROWN: Thank you. I'm sorry  
21          for the delay.

22                        This voter had her absentee ballot  
23          judged invalid based on the signature being  
24          determined it did not match. And we have an  
25          application where the signature was compared

1 to the registration. And I actually -- we --  
2 we have an affidavit that I'll show opposing  
3 counsel. This voter was registered to vote  
4 or -- I'm sorry -- asked to vote as a voter  
5 with a disability. She's actually legally  
6 blind. And we have an affidavit that states  
7 her name, that she voted by absentee ballot  
8 in the general election held on the second  
9 day of November 2010. She -- that she says:  
10 I submitted my absentee application on the  
11 28th of September 2010. My absentee ballot  
12 and envelope were completed to the best of my  
13 ability and mailed to the Vanderburgh County  
14 election office on the 5th of October 2010.  
15 I am legally blind and considered disabled.  
16 My disability causes my signature to appear  
17 distorted and different from signatures  
18 written at different times.

19 And being that the Election Board --  
20 and I'll give this to opposing counsel while  
21 I'm finishing my argument and then I'll  
22 submit it to the Commission. But the  
23 extenuating circumstances here and the fact  
24 that I'm not aware of anyone in the  
25 Vanderburgh County election process that's a

1 signature expert, I would defer to the sense  
2 of the Commission in opening and counting  
3 Ms. Tramill's ballot. Thank you.

4 MR. CHAIRMAN: Will you bring  
5 that up for marking and then we'll hear from  
6 Mr. Brooks.

7 MR. SKOLNIK: Mr. Chairman, this  
8 exhibit will be marked as Exhibit P7.

9 MR. BROOKS: Give us just one  
10 minute. They're conferring with the clerk's  
11 staff.

12 Mr. Chairman, we would simply defer to  
13 the Local Election Board's decision-making  
14 process. We understand that you will look at  
15 them and make a determination that is -- is  
16 fair. We're not going to argue about it.

17 MR. CHAIRMAN: By Election Board  
18 do you mean the County Election Board --

19 MR. BROOKS: The County Election  
20 Board. They made a determination which we  
21 believe would ordinarily be entitled to  
22 deference. That's the only thing we have to  
23 say about these two provisionals.

24 MR. CHAIRMAN: Okay.

25 Questions from Commissioners.

1 MR. BROOKS: And I would note  
2 that -- that there was unanimous amongst the  
3 three.

4 MR. CHAIRMAN: Thank you.

5 Questions from Commissioners.

6 MR. DURNIL: I was just looking  
7 at this one, Maryann and Johanas Meyers?  
8 They were the only -- there's more than one?

9 (Off the record - Discussion)

10 MR. CHAIRMAN: Questions from  
11 Commissioners.

12 I have a question of our counsel.

13 MR. BROOKS: Oh, could I -- I  
14 forgot about this. Our exhibit -- is your  
15 Exhibit two-sided for Number 11 and 12? 11  
16 -- 11, I guess -- 12 I don't care about  
17 because it has a signature on it, but --

18 MR. CHAIRMAN: It's a three-page  
19 one-sided exhibit that we have.

20 MR. BROOKS: Well, the -- I guess  
21 what I'm saying is, the signature for  
22 Exhibit 11 would be on the opposite side.  
23 Mine is blank. I'm just asking if you have  
24 -- if your privacy envelope have both sides  
25 on it.

1 MR. CHAIRMAN: No.

2 MR. BROOKS: In which case I  
3 would think we're going to need to look -- I  
4 mean, if it's a signature issue, you're going  
5 to actually have to see the other signature  
6 because it's not here, because the copying  
7 was not two-sided.

8 MR. CHAIRMAN: Let me ask the  
9 State Board of Accounts if they have the  
10 original.

11 (Off the record - Distributing  
12 original)

13 MR. CHAIRMAN: Commission  
14 discussion?

15 MR. KUZMAN: I move we open the  
16 ballot.

17 MR. CHAIRMAN: There's a motion  
18 to move to open the ballot. I second.

19 Discussion?

20 Counsel, is there -- is there any law  
21 in this regard, statutory or any case law  
22 that you know where someone who has a  
23 disability in their vision that the signature  
24 process, the comparison process doesn't then  
25 apply or --

1 MR. KING: Mr. Chairman and  
2 members of the Commission, there are special  
3 provisions which can be invoked by someone  
4 who has a disability, but with regard to the  
5 comparison of signatures, if the disabled  
6 voter chooses to write their signature on the  
7 ballot, then, no, there is no -- no special  
8 --

9 MR. CHAIRMAN: What are some of  
10 the other options available to someone  
11 without vision?

12 MR. KING: The voter who lacks  
13 vision or has a vision impairment can be  
14 assisted. I believe from -- from what I saw  
15 here that appears to be the case. There's an  
16 individual at the bottom who is identified as  
17 having assisted the applicant, which is  
18 permitted and documented.

19 MR. CHAIRMAN: Can you point to  
20 that.

21 MR. KING: Yes. It's box number  
22 five. I'm referring to the first of the two  
23 -- two exhibits.

24 MR. KUZMAN: Are you -- are you  
25 referring to --

1 MR. KING: I was referring to  
2 Exhibit 12.

3 MR. KUZMAN: We're talking about  
4 Exhibit 11.

5 MR. KING: Oh, sorry. Sorry. I  
6 beg your pardon.

7 MR. KUZMAN: I think -- I think  
8 that's correct.

9 Am I right, Mr. Chairman?

10 MR. CHAIRMAN: Yeah, we're on 11.

11 MR. KING: I had the wrong one on  
12 top.

13 MR. KUZMAN: Thank you.

14 MR. KING: No. That -- that --  
15 that particular provision in law was not --  
16 was not taken advantage of by the voter with  
17 regard to Exhibit 11.

18 MR. CHAIRMAN: Okay. Anything  
19 else?

20 MR. KING: Not that would be  
21 relevant to an absentee.

22 MR. CHAIRMAN: Okay.

23 MR. DURNIL: The same person as  
24 the affidavit?

25 MR. CHAIRMAN: Yes.

1 Commission discussion?

2 I would say that there were provisions  
3 in Indiana law for this voter to utilize  
4 assistance. The signature she made on 10 --  
5 October 3rd, in fact, looks nothing like the  
6 signature she made on 9.28, and I defer to  
7 the County Election Board and agree with the  
8 decision that they made, so I will be voting  
9 against this motion.

10 Any other discussion?

11 MR. KUZMAN: Yes, I would like to  
12 discuss.

13 We don't know if the voter was told  
14 that there was an option. We're assuming she  
15 was informed there was an option for  
16 assistance in absentee balloting, and we  
17 don't know if it was available, and that  
18 would -- that if they don't -- we don't know  
19 the outcome; we don't know what was told; we  
20 don't know what this voter was informed if  
21 she doesn't sign, does sign or could have  
22 assistance, so I -- I would be a little  
23 concerned about what information was provided  
24 to this voter and assistance if -- if  
25 assistance was able to have with this

1 absentee ballot. I'm not sure it was given  
2 to her or informed to her that we do this.

3 MR. CHAIRMAN: I understand, and  
4 I don't know if that's determinative of the  
5 issue. Voters have not only rights, but they  
6 have duties as well. I would also note that  
7 the Secretary of State's office and several  
8 counties as well have done a tremendous  
9 amount of outreach relative to anything done  
10 before; radio, TV, through service providers.  
11 So, again, that doesn't mean she -- this  
12 voter actually got the message or not, but I  
13 think very reasonable efforts are made by the  
14 government, especially relative to what's  
15 been done in the past, to get these options  
16 and words out. So hopefully this issue being  
17 brought forth at the Recount Commission and  
18 being streamed over the internet will help  
19 disseminate that kind of information.

20 It doesn't give me any kind of pleasure  
21 to not count this vote, but it does not  
22 comply with the law.

23 All in favor of the motion signify by  
24 saying, "Aye."

25 MR. KUZMAN: Aye.

1 MR. DURNIL: Aye.

2 MR. CHAIRMAN: All opposed to the  
3 motion? Who made the motion?

4 MR. KUZMAN: I made the motion to  
5 open the ballot.

6 MR. CHAIRMAN: All opposed to the  
7 motion signify by saying, "Aye."

8 MR. KUZMAN: Aye.

9 MR. CHAIRMAN: You made --

10 MR. KUZMAN: You voted. Two to  
11 one.

12 MR. CHAIRMAN: I know. I know.

13 MR. KUZMAN: So -- so --

14 MR. CHAIRMAN: I was getting  
15 ready to put mine -- mine on the record.

16 I'm against the motion --

17 MR. KUZMAN: Okay.

18 MR. CHAIRMAN: -- and I'll  
19 signify that by saying, "Aye."

20 MR. KUZMAN: Okay. I was just  
21 confused when he -- I didn't -- I didn't know  
22 what you -- so I apologize.

23 MR. CHAIRMAN: Yeah. No, no, not  
24 at all. It happens here.

25 MR. KUZMAN: Yeah.

1 MR. CHAIRMAN: The Chair gets  
2 rolled.

3 MR. KUZMAN: I'm going to take  
4 the coffee away from the Chair. Let the  
5 record --

6 MR. CHAIRMAN: So the motion  
7 carries. We are somehow opening -- opening  
8 this ballot, so here we go. Ready?

9 MR. BROOKS: Number 11?

10 MR. CHAIRMAN: Uh-huh.

11 MR. BROOKS: I must be confused.  
12 I thought it was --

13 MR. CHAIRMAN: I initially was  
14 confused too.

15 MR. BROOKS: -- two to one  
16 against opening it.

17 MR. CHAIRMAN: No. The motion  
18 was for opening the -- Mr. Kuzman made the  
19 motion and it was for opening the ballot, to  
20 open the ballot and be counted.

21 MR. BROOKS: Okay. I'm sorry.  
22 But you or Mr. Durnil voted for that?

23 MR. DURNIL: I did.

24 MR. BROOKS: Okay. Okay.

25 MR. CHAIRMAN: It has the clerk's

1 initials. Where are we? It's a new ballot  
2 style. Where are we here?

3 For State Representative District 76,  
4 there's one vote recorded for Bob Deig.

5 Okay. Mr. Brown, any other arguments  
6 on that one?

7 MR. BROWN: One more rejected  
8 absentee ballot also for a signature match.  
9 This voter, as Counsel was referring to the  
10 wrong exhibit in Exhibit 12 but rightly  
11 pointed out, this voter did request and  
12 receive assistance from actually a traveling  
13 board, so I -- I don't -- really don't  
14 understand why the Election Board felt it  
15 could reject based on the signature match  
16 after this voter, this blind voter requested  
17 assistance in the proper manner. So we see  
18 no reason not to open and vote this ballot as  
19 well and we would ask you for consideration  
20 and thank you.

21 MR. CHAIRMAN: Counsel.

22 MR. BROOKS: I don't have any  
23 other comment.

24 MR. CHAIRMAN: Questions from  
25 Commission members.

1 Discussion from Commission members.

2 MR. KUZMAN: I move that we open  
3 the ballot.

4 MR. CHAIRMAN: Motion to move to  
5 open the ballot.

6 I second.

7 Discussion.

8 MR. DURNIL: What we're comparing  
9 here is the envelope signature and her  
10 signature on the application, correct?

11 MR. CHAIRMAN: Yeah. She's had  
12 assistance, and apparently the Local Election  
13 Board denied the ballot because the  
14 signatures did not match.

15 Can we see the -- the actual envelope.

16 Thank you.

17 Okay. So there's that side. I note  
18 that this is -- this is a travel board  
19 absentee ballot, so there were actually a  
20 Republican and a Democrat on that traveling  
21 board as well who also made signature.

22 Other discussion.

23 Hearing none.

24 All in favor of the motion signify by  
25 saying, "Aye."

1 MR. KUZMAN: Aye.

2 MR. DURNIL: Aye.

3 MR. CHAIRMAN: Aye.

4 Ayes have it.

5 In the race for State Representative  
6 District 76, there is no vote marked for  
7 either candidate. Oh, excuse me. A straight  
8 ticket, it appears. The signature is on the  
9 ballot itself. So it appears a straight  
10 ticket has been called for.

11 Does Counsel want to take a look?

12 And the Commissioners are also  
13 wondering -- the -- the envelope was open.  
14 That -- that would be normal if the ballot  
15 would have been looked at but not necessarily  
16 counted, right? You're saying that this was  
17 an uncounted ballot?

18 MR. BROWN: Right. Yes.

19 MR. DURNIL: Can we ask Counsel  
20 what the law is on the signature being on the  
21 straight party vote.

22 MR. KING: Mr. Chairman and  
23 members of the Commission, there are two  
24 statutes for the Commission to consider. The  
25 first is on page 368, 312-11, which in brief

1 is described as the intent of the voter being  
2 the primary factor to consider in determining  
3 the voter's choice; however, that statute is  
4 subject to several sections in the chapter,  
5 one of which is the distinguishing marks  
6 section, 312-110 on page 371, which reads: A  
7 ballot on which the voter writes the voter's  
8 name -- then several other possibilities --  
9 if written with the intent to enable a person  
10 to determine who cast the ballot is void  
11 again qualifies 312-11, and if the Commission  
12 finds that the mark on the ballot is, in  
13 fact, the voter's name, then under 312-110,  
14 the ballot would not be counted.

15 MR. DURNIL: Void it.

16 MR. CHAIRMAN: Okay.

17 Discussion.

18 MR. KUZMAN: Mr. Chairman.

19 MR. CHAIRMAN: Yeah.

20 MR. KUZMAN: On this, I think  
21 we've established that it was a traveling  
22 board, and if we're going to stay consistent,  
23 it's a -- it's a mistake of two people there  
24 that witnessed this occurrence, I think we  
25 need to stay consistent and count this

1 ballot.

2 MR. CHAIRMAN: Okay.

3 Mr. Durnil, anything?

4 MR. DURNIL: If it's a  
5 distinguishing mark, then the ballot is void.  
6 The law is clear.

7 MR. CHAIRMAN: Yeah. I think I  
8 agree with Mr. Durnil. What's very  
9 inconsistent here is the fact that the voter  
10 unfortunately made a very distinguishing  
11 mark, to wit, her name, and clearly under  
12 statute, that voids this ballot.

13 So the motion was to open and count the  
14 ballot, correct?

15 MR. KUZMAN: Correct.

16 MR. CHAIRMAN: All in favor of  
17 that motion?

18 MR. KUZMAN: We -- we already --  
19 the motion to open it and count the ballot  
20 was unanimous. We opened the ballot and we  
21 discovered something, so --

22 MR. DURNIL: We discovered a void  
23 ballot.

24 MR. KUZMAN: We discovered a void  
25 ballot, so --

1 MR. CHAIRMAN: Which can't be  
2 counted.

3 MR. KUZMAN: Which can't be  
4 counted.

5 MR. CHAIRMAN: So I'll take a  
6 motion -- I'll, as Chair, then move if I  
7 could.

8 Given that unexpected surprise, I'll  
9 move that this ballot not be counted.

10 Second?

11 Discussion?

12 All in favor say, "Aye."

13 MR. DURNIL: Aye.

14 MR. CHAIRMAN: Aye.

15 All opposed same.

16 MR. KUZMAN: Aye.

17 MR. CHAIRMAN: Motion carries two  
18 to one.

19 Mr. Brown.

20 MR. BROWN: No further disputes  
21 in that precinct.

22 MR. CHAIRMAN: Mr. Brooks, any  
23 disputes?

24 MR. BROOKS: We withdraw any  
25 remaining.

1 MR. CHAIRMAN: Mr. Skolnik.

2 MR. SKOLNIK: Mr. Chairman and  
3 members of the Commission, I therefore --  
4 after those deliberations, I now reflect or  
5 understand the tally in Ward 6, Number 2 to  
6 be 120 votes for Mr. Deig, 110 for  
7 Ms. McNamara, three invalid ballots for  
8 Mr. Deig, five no votes.

9 MR. CHAIRMAN: Motions?

10 MR. DURNIL: I move we accept the  
11 tally as final.

12 MR. CHAIRMAN: Second.

13 All in favor?

14 Aye.

15 MR. DURNIL: Aye.

16 MR. CHAIRMAN: Two Ayes.

17 All opposed?

18 MR. KUZMAN: No.

19 MR. CHAIRMAN: Motion carries.

20 Mr. Skolnik.

21 MR. SKOLNIK: Mr. Chairman, the  
22 next precinct is Ward 6, Number 3. The  
23 entire precinct has been disputed.

24 MR. CHAIRMAN: Mr. Brown.

25 MR. BROWN: We withdraw any

1           disputes in that precinct.

2                   MR. CHAIRMAN: Thank you.

3           Mr. Brooks.

4                   MR. BROOKS: We withdraw.

5                   MR. CHAIRMAN: Thank you.

6           Mr. Skolnik.

7                   MR. SKOLNIK: Mr. Chairman,  
8 therefore, the final tally in Ward 6, Number  
9 3 would reflect 171 votes for Mr. Deig, 111  
10 for Ms. McNamara, six -- six no votes.

11                   MR. DURNIL: I move we accept  
12 that tally as final.

13                   MR. CHAIRMAN: Second.

14           All in favor?

15           Aye.

16                   MR. DURNIL: Aye.

17                   MR. KUZMAN: Aye.

18                   MR. CHAIRMAN: Carried  
19 unanimately.

20           Mr. Skolnik.

21                   MR. SKOLNIK: Mr. Chairman, the  
22 next precinct is Ward 6, Number 4.

23                   MR. BROWN: Mr. Chairman, we --  
24 we will be referring to Exhibit 12 and 13, 14  
25 and 15.

1 MR. CHAIRMAN: 12, 13, 14 and 15.

2 MR. BROWN: In 6 -- yes, in 6-4.

3 MR. CHAIRMAN: Ward 6-4.

4 MS. BARNES: Is this 6-3?

5 MR. KUZMAN: Is this 6-3?

6 MR. CHAIRMAN: I had 6-4 or 6-3?

7 MR. BROWN: 6-4.

8 MR. SKOLNIK: Ward 6-4.

9 MR. CHAIRMAN: 6-4.

10 MR. KUZMAN: Thank you.

11 MR. SKOLNIK: Or more correctly,

12 Ward 6, Number 4.

13 MR. KUZMAN: What exhibits were  
14 those again? I'm sorry.

15 MR. BROWN: 12 through 15.

16 MR. KUZMAN: 12 through 15.

17 Thank you.

18 (Off the record - Distributing  
19 exhibits)

20 MR. CHAIRMAN: Okay.

21 MR. BROWN: Thank you,

22 Mr. Chairman and members of the Commission.

23 As evidence related to this -- these

24 exhibits, I have an affidavit from David

25 Shaw. The Democrat Election Board member who

1 was in attendance at the Vanderburgh County  
2 Election Board meeting on November 12th, he  
3 sat, along with other Election Board members,  
4 and this states that there were unopened  
5 absentee ballots in House District 76 that  
6 were judged and opened on that day. And  
7 these materials were all preserved together  
8 by the County Election Board in one -- the --  
9 the materials gathered that day that were  
10 opened were all compiled together and were in  
11 a separate -- everybody that audited will  
12 remember they were in a separate box. That's  
13 the reason the ballot for this voter is  
14 actually linked to the materials related to  
15 this voter. And it is our contention that  
16 the -- there was no legal authority to open  
17 the ballot that day based on -- and I'll hand  
18 the affidavit -- 311-10-35. It's on page  
19 309. And since these ballots were not opened  
20 election night, we don't believe they could  
21 have been legally opened on -- at the County  
22 Election Board meeting ten days later. And  
23 there are certain procedures that the General  
24 Assembly ensures to protect voters from  
25 tampering, protect them from fraud. And

1           there's an Indiana Supreme Court case. It is  
2           Schloer -- it's S-C-H-L-O-E-R -- 482  
3           Northeast Second 460. The Supreme Court  
4           actually ran into a procedure where there was  
5           a requirement -- and let me just submit the  
6           affidavit and I'll just stop there.

7                     MR. CHAIRMAN: Does opposing  
8           counsel have it? Have you seen this  
9           affidavit?

10                    MR. SKOLNIK: Have you seen this?

11                    MR. BROOKS: I understand the  
12           purpose of this affidavit, Adam, is to show  
13           that that -- only that that -- that ballots,  
14           some absentees were opened --

15                    MR. BROWN: That there were  
16           absentees opened --

17                    MR. BROOKS: -- on -- on  
18           provisional day?

19                    MR. BROWN: Right.

20                    MR. SKOLNIK: Have you seen this,  
21           Mr. Brooks (indicating)?

22                    MR. BROOKS: Yes.

23                    MR. SKOLNIK: Excuse me,  
24           Mr. Brown. This will be marked as Exhibit  
25           P8.

1 MR. BROWN: Thank you.

2 And the -- the case I just cited from  
3 the Indiana Supreme Court, the Supreme Court  
4 chose to throw out 342 votes in that case.  
5 And -- and I don't want to make light of  
6 this, but simply because they stated a  
7 mandatory procedure to ensure a proper and  
8 accurate recording of votes cast was  
9 violated. And that procedure in that case  
10 was, immediately upon closing of the polls,  
11 you have to seal voting machines, and in that  
12 case, they -- they -- there was someone that  
13 mistakenly did not seal the machines and the  
14 Supreme Court chose to throw out 342 votes.  
15 And as you'll see, that affidavit will relate  
16 to several materials in this county that were  
17 opened on that day, absentee ballots, that we  
18 believe were illegally opened that day and,  
19 therefore, because they should not have been  
20 opened and were not protected by this statute  
21 to ensure against fraud and tampering, should  
22 not be counted. So we'll -- we'll ask for  
23 the Commission's decision to invalidate that  
24 ballot in this case and hope it will stay  
25 consistent in the coming precincts where we

1 have more of these ballots that will occur.

2 MR. CHAIRMAN: Thank you.

3 Counsel.

4 MR. BROOKS: Mr. Chairman, I must  
5 tell you that I am not as Encyclopedic as  
6 Mr. King. I can't say that I recall any --  
7 that particular case, and needless to say, I  
8 don't have an opportunity to read it.

9 This is a central count in Vanderburgh  
10 County, Mr. Chairman, and so the clerk's  
11 office is the one that's supposed to count  
12 these things anyway. And, I mean, we can  
13 have the clerk testify if you like, but this,  
14 like other situations, was one that, as I  
15 understand it, there was -- as I understand  
16 it, this particular -- I only recall one that  
17 was in House District 76 where it arrived on  
18 Election Day but didn't get moved off with  
19 the rest of them, things got impounded, and  
20 then when they opened all this stuff up,  
21 there was -- there was one that was validly  
22 -- there's no question that it was properly  
23 done by the voter. And it was registered.  
24 It got filled in. There's no -- some of  
25 these other arguments about being registered

1 here, there or -- or the rest. The only  
2 issue is that this one, because it came in  
3 late in the day, wasn't put in the central  
4 count and when things got impounded, it was  
5 there with the provisionals. And so the only  
6 reason it wasn't looked at and opened was  
7 some mixture of error on the part of the  
8 staff not getting it to the right place  
9 compounded by the impound order. Certainly  
10 you can ask the -- but, I mean, now -- now --  
11 now we're down to trying not to let people  
12 vote that actually did everything right and  
13 were registered in the right place. I mean,  
14 I -- I just think it would be unconscionable  
15 not to allow people who have done everything  
16 exactly correctly to have their vote count.  
17 I mean, we've been arguing that people ought  
18 to have their vote count this whole time and  
19 this is certainly one.

20 MR. KUZMAN: You're right. I've  
21 been arguing that all night. The votes  
22 should be counted, and we -- we just threw  
23 one out.

24 MR. BROOKS: No, no. I think  
25 you're mistaken. I've been arguing that all

1           these votes that were -- that Mr. Brown is  
2           trying to --

3                   MR. KUZMAN:    I understand.

4                   MR. BROOKS:   -- dig out and throw  
5           out --

6                   MR. KUZMAN:    I understand.

7                   MR. BROOKS:   -- I've been for  
8           that, and this is --

9                   MR. KUZMAN:    Okay.

10                   MR. BROOKS:   -- very consistent  
11           with that.

12                   MR. KUZMAN:    All right.

13                   MR. CHAIRMAN:  Questions from  
14           Commission members.

15                   MR. KUZMAN:    I want to hear what  
16           Adam -- I want to hear some more --

17                   MR. CHAIRMAN:  Okay.

18                   MR. KUZMAN:   -- before we move  
19           forward.

20                   Do you have any more on -- on this,  
21           Adam?

22                   MR. BROWN:    Just that the impound  
23           order was the next day, and regardless of  
24           when -- I mean, that was the next day after  
25           -- the statute is clear.  I mean, we just

1 talked about a statute that was clear on  
2 signing a ballot. This statute is clear.  
3 You cannot open an absentee ballot. It -- it  
4 says -- now, if these would have been -- it  
5 says in Section B: If an envelope containing  
6 an absentee ballot has not been opened before  
7 the close of the polls, then the envelope may  
8 not be opened without an order of a court.

9 MR. BROOKS: That can't be the  
10 case in a central count. Which statute are  
11 you on, Adam?

12 MR. BROWN: I'm sorry. Three --  
13 it's on page 309. It's 311-10-35.

14 MR. CHAIRMAN: Questions from  
15 Commission members.

16 MR. BROOKS: Which section was  
17 it, Adam? I'm sorry.

18 MR. BROWN: I'm sorry. It was  
19 311-10-35. It's on page 309.

20 MR. CHAIRMAN: While they're  
21 looking I'll hear from our counsel on this  
22 matter. Mr. King's first.

23 MR. KING: Mr. Chairman and  
24 members of the Commission, it's important to  
25 note that in central count counties where

1 absentee ballots are not sent to the precinct  
2 legislature is provided a different set of  
3 rules and procedures.

4 On page 343 is the start of Article  
5 11.5. 3-11.5-1-4 reads: To the extent that  
6 they are in conflict with this article, the  
7 following statutes do not apply to a county  
8 that has adopted a central count procedure.

9 On the following page, 344, 3-11-10-35  
10 is mentioned.

11 MR. BROOKS: I'm not sure I'm on  
12 the same page you are.

13 MR. KING: On page 343 and 344.

14 MR. BROOKS: Okay. Sorry. I'm  
15 caught up.

16 MR. CHAIRMAN: Does the  
17 Democratic counsel have anything to add to  
18 that before I move on?

19 MS. BARNES: I don't at this  
20 time.

21 MR. CHAIRMAN: Okay. Thank you.

22 MR. KUZMAN: I have a question  
23 for Counsel.

24 MR. CHAIRMAN: Please.

25 MR. KUZMAN: So my understanding

1 is that if you're a central count county,  
2 what you're saying is we count them whenever?

3 MR. KING: Mr. Commissioner,  
4 under -- on page 347 --

5 MR. KUZMAN: Uh-huh.

6 MR. KING: -- and on 346 are the  
7 -- the pertinent provisions.

8 MR. KUZMAN: Okay.

9 MR. KING: 3-11.5-4-7 on page  
10 346 --

11 MR. KUZMAN: Thank you.

12 MR. KING: -- it says not later  
13 than noon on Election Day clerk visits the  
14 appropriate post office to accept delivery of  
15 absentee envelopes.

16 And then 311.5-4-10 on the next page  
17 says subject to what I just read absentee  
18 ballots received by mail or from military and  
19 overseas voters after noon on Election Day  
20 are considered as arriving too late and may  
21 not be counted.

22 MR. KUZMAN: But I take that a  
23 step further as saying that that still  
24 doesn't allow them to open it the next day.  
25 I haven't heard a statute or a cite where it

1 says they're allowed to open the next day. I  
2 see when they should pick them up; I see when  
3 they can be opened after noon, but nothing in  
4 the statute says it can be opened the next  
5 day, I mean, unless there's another --

6 MR. KING: Can I -- can I respond  
7 to say that 311-10- --

8 MR. KUZMAN: Okay.

9 MR. KING: -- 35B back on page  
10 309 --

11 MR. KUZMAN: Got it.

12 MR. KING: -- would not apply in  
13 a central count situation because it says if  
14 an envelope containing an absentee ballot has  
15 not been opened before the close of the  
16 polls, the absentee ballot is never going to  
17 the polls in a central count county.

18 MR. KUZMAN: Okay.

19 MR. KING: It's retained at the  
20 county for processing in accordance with the  
21 -- the central count statutes.

22 MR. KUZMAN: But they should --  
23 they open them that day at central count  
24 counties. Is that how it usually happened?  
25 I came from a central count county.

1 MR. KING: Yes. Central count  
2 absentee ballots can be processed after the  
3 final delivery -- or final return of  
4 certificates from the precincts which have  
5 had central counts received at the county.

6 MR. CHAIRMAN: All right. And  
7 that period of time, if I may interject --

8 MR. KUZMAN: Sure.

9 MR. CHAIRMAN: -- goes until how  
10 long, until the certified count has to be  
11 done? Do you know how long?

12 MR. KING: It states it begins  
13 when the -- it can begin when the certified  
14 list of the last ballots received by the  
15 county is received back from the precinct.

16 I'll look further to identify the --  
17 any deadline that's applicable, but...

18 MR. CHAIRMAN: I just wondered if  
19 there was one.

20 Any other questions?

21 MR. DURNIL: Let me make sure  
22 I've got it straight in my mind.

23 What we're -- we're talking about is --  
24 was this ballot counted or was not counted?

25 MR. KUZMAN: It was counted.

1 MR. DURNIL: It was counted and  
2 you don't want it counted.

3 MR. BROWN: Right.

4 MR. KUZMAN: And it was counted  
5 ten days after the election was held.

6 MR. BROWN: Correct.

7 MR. BROOKS: Like the  
8 provisionals.

9 MR. CHAIRMAN: Okay. No  
10 discussion.

11 Is there a motion?

12 MR. KUZMAN: Yeah. That's --  
13 that's -- I don't see why 35 is in conflict.

14 MR. CHAIRMAN: Because this other  
15 statute says it is.

16 MS. BARNES: It says to the  
17 extent that they are in conflict.

18 MR. KUZMAN: To the extent.

19 MS. BARNES: Sorry, Mr. Chairman.

20 MR. CHAIRMAN: Yeah.

21 MR. KUZMAN: They're not in  
22 conflict. There's -- there's no conflicting  
23 -- there's not one way if it's central count  
24 or one way if it's not central count, so  
25 where's the conflict? So, therefore, I

1 believe 311-10-35 still applies.

2 MR. CHAIRMAN: Well, I've -- I've  
3 known central count counties to go way beyond  
4 the close of the polls opening ballots.  
5 That's just out of experience.

6 MR. KING: Mr. Chairman.

7 MR. CHAIRMAN: Yeah.

8 MR. KING: If I can just add, the  
9 other statute that I see that would be  
10 applicable here is on page 355.

11 MR. CHAIRMAN: Okay.

12 MR. KING: 3-11.5-6-4.

13 MR. KUZMAN: You said 355?

14 Sorry.

15 MR. KING: Uh-huh. 3- -- page  
16 355 --

17 MR. KUZMAN: Sure.

18 MR. KING: -- 3-11.5-6-4. To  
19 minimize delay, the absentee ballot counters  
20 shall continue to count without interruption  
21 until all absentee ballots for the precinct  
22 are canvassed and the certificates required  
23 by this chapter prepared, et cetera. There's  
24 not a deadline with regard to close of the  
25 polls as there's in 311-10-35.

1 MR. CHAIRMAN: I'm not hearing  
2 questions before --

3 MR. BROOKS: Mr. Chairman, I just  
4 would remind --

5 MR. CHAIRMAN: Hold on. I'm just  
6 going to let counsel go back.

7 MR. BROOKS: Oh, I'm sorry.

8 MR. KUZMAN: The absentee ballots  
9 counted shall continue to count without  
10 interruption until the absentee ballots of  
11 the precincts are canvassed and certificates  
12 required by the chapter are provided and  
13 delivered.

14 Where -- where is the conflict then?

15 MR. KING: 311-10-35,  
16 Mr. Commissioner, says that envelopes may not  
17 be opened --

18 MR. KUZMAN: Uh-huh.

19 MR. KING: -- after the close of  
20 the polls.

21 MR. KUZMAN: Right.

22 MR. KING: There is no such  
23 restriction in 311.5-6-4. And I would add  
24 that I think there -- there's a presumption  
25 of a conflict, otherwise, the legislature

1 would not have included this particular cite,  
2 311-10-35 in its list.

3 MR. KUZMAN: When the legislature  
4 has intent and kept intent, we don't keep  
5 intent, the legislature does not keep intent,  
6 so -- I understand.

7 MR. KING: But I would -- but I  
8 would -- I would say that one of the rules of  
9 statutory construction is that words and  
10 phrases and code cites are presumed to have  
11 some meaning.

12 MR. KUZMAN: I agree. I agree  
13 there.

14 MR. CHAIRMAN: Other questions  
15 from Commission members.

16 One more minute round each from  
17 Counsel.

18 Mr. Brown.

19 MR. BROWN: The statutes  
20 referenced, I've -- believe me I've looked  
21 and there's -- there's nothing conflicting  
22 with that very clear statute that says you  
23 cannot open.

24 Counsel refers to counting the ballots.  
25 We're not saying you can't count them after

1 Election Day; we're saying they have to be  
2 opened before the close of the polls, and  
3 that statute is clear. You need to open it  
4 before the close of the polls. It's a --  
5 it's a protection of voters so there is not  
6 fraud and tampering. They have very precise  
7 procedures between when they open, when they  
8 count, how they move the ballots from one  
9 place to another, and that's the reality of  
10 election code. We would just ask that that  
11 clear statute be upheld here today. Thank  
12 you.

13 MR. CHAIRMAN: Thank you.

14 Counsel.

15 MR. BROOKS: The analysis that  
16 Mr. King has gone through is correct from our  
17 -- in our opinion, and you've got a voter  
18 that did everything right, got everything in,  
19 absolutely qualified, and if the voting -- if  
20 the canvassing, which is to go on without  
21 interruption, I would remind the Commission  
22 that -- that the -- all the election  
23 materials were impounded the next day, so  
24 whether this would have been done on  
25 Wednesday afternoon as they continued to do

1 the counting -- and you may recall that the  
2 -- there were requests from the county clerks  
3 to un-impound some materials so that they  
4 could all finish. It's not an unusual thing  
5 here. And to penalize this voter when all  
6 the materials were impounded until the day of  
7 the provisionals really is defeating of the  
8 sense of democracy when a voter has done  
9 every single thing right.

10 MR. CHAIRMAN: Okay.

11 Motions.

12 MR. DURNIL: I move that we count  
13 the vote or that we deny the request not to  
14 count the vote.

15 MR. CHAIRMAN: So the motion is  
16 to let these votes stand as counted?

17 MR. DURNIL: Yeah. Yes.

18 MR. CHAIRMAN: Second.

19 Any more discussion.

20 I would say I haven't seen any evidence  
21 of tampering or anything like that, and so I  
22 agree with Respondent that the votes should  
23 be counted.

24 All in favor?

25 MR. DURNIL: Aye.

1 MR. CHAIRMAN: Aye.

2 Opposed?

3 MR. KUZMAN: Aye.

4 MR. CHAIRMAN: Motion carries two  
5 to one.

6 Mr. Skolnik.

7 MR. SKOLNIK: Are there any other  
8 disputed or challenged matters in this  
9 precinct, Mr. Brown?

10 MR. BROWN: No, we have none.

11 MR. BROOKS: None from us.

12 MR. SKOLNIK: Mr. Brooks, do you  
13 withdraw any --

14 MR. BROOKS: Yes.

15 MR. SKOLNIK: Mr. Chairman and  
16 members of the commission, the tally for Ward  
17 6, precinct 7 reflects 73 votes for --

18 MR. DURNIL: Precinct 4?

19 MR. CHAIRMAN: 6-7.

20 MR. SKOLNIK: -- Ward 6 --

21 MR. DURNIL: 6-4?

22 MR. CHAIRMAN: 6-7.

23 MR. SKOLNIK: -- Ward 6, Number 4

24 -- correct?

25 MR. BROOKS: That's what we just

1 closed.

2 MR. SKOLNIK: Close enough. I  
3 think so. Ward 6-4, 73 votes for Mr. Deig,  
4 63 for Ms. McNamara, two no votes.

5 MR. DURNIL: I move we accept the  
6 tally as final.

7 MR. CHAIRMAN: Second.

8 All in favor?

9 Aye.

10 MR. DURNIL: Aye.

11 MR. CHAIRMAN: Opposed?

12 MR. KUZMAN: Aye.

13 MR. CHAIRMAN: Motion carries two  
14 to one.

15 Mr. Skolnik.

16 MR. SKOLNIK: Ward 6, Number 7.

17 MR. BROWN: Yes --

18 MR. CHAIRMAN: Mr. Brown.

19 MR. BROWN: -- Mr. Chairman.

20 Exhibit -- I'm referring to Exhibit  
21 -- in 6-7 it's Exhibit 8 -- Exhibit 8 and  
22 Exhibit 33. There should be, again, multiple  
23 pages involved.

24 MR. CHAIRMAN: Exhibit 8 through  
25 33?

1 MR. BROWN: No. Just 8 and 33.

2 MR. CHAIRMAN: 8 and 33.

3 MR. BROWN: And Exhibit 53 as  
4 well.

5 MR. CHAIRMAN: 8, 33 and 53.

6 MR. BROWN: Yes, sir.

7 MR. SKOLNIK: Adam, could you  
8 identify what the exhibits consist of. That  
9 still might help us --

10 MR. BROWN: Yes. The --

11 MR. SKOLNIK: -- sort through the  
12 materials.

13 MR. BROWN: The Exhibit 8, as I  
14 have marked -- it might actually be 8 and 9.  
15 I -- I thought these were both 8, but now  
16 that I'm reading it, it might be a 9. I'm  
17 sorry. But it should be a mail-in absentee  
18 ballot, front and back, attached to an  
19 absentee application, and then the final page  
20 is the exhibit number. And that would be for  
21 voter Homer Ash. And then --

22 MR. KUZMAN: What's the name?

23 MR. BROWN: Homer Ash A-S-H. And  
24 then the other exhibit is for Lois Ash.  
25 It's, again, a mail-in, front and back of the

1 envelope, privacy envelope, as well as her  
2 application with the final page being the  
3 exhibit number.

4 And then the last exhibit I'm referring  
5 to is the Absentee Activity Report which was  
6 part of the audit in Vanderburgh, which would  
7 be Number 53.

8 MR. CHAIRMAN: Is one of the  
9 exhibits the ballot itself?

10 MR. BROWN: No. In neither of  
11 these cases there is -- these are absentee  
12 ballots we want to bring to your attention.

13 MR. CHAIRMAN: Okay.

14 MR. BROWN: We do not have  
15 ballots involved in these, no.

16 MR. CHAIRMAN: Okay. Adam, do  
17 you have a list of all the exhibits that you  
18 intend to produce somewhere on your sheets  
19 there? Not just for the precinct, but  
20 just for the recount.

21 MR. BROWN: Yeah. I can -- if  
22 you -- are we going to take a break soon?  
23 I'm happy to write that down for -- in the  
24 coming precincts or -- I'll have someone  
25 write that down --

1 MR. CHAIRMAN: Yeah, so they --

2 MR. BROWN: -- and give it to  
3 them to lead up. That's a good idea,  
4 Mr. Chairman.

5 MR. CHAIRMAN: Let these guys get  
6 a head start.

7 MR. BROWN: Good idea. Thank  
8 you.

9 MR. CHAIRMAN: And then I'll ask  
10 the State Board of Accounts, we're going to  
11 get you a list of exhibits that will presumed  
12 to be presented if you want to start pulling  
13 them.

14 Okay. Mr. Brown.

15 MR. BROWN: Thank you,  
16 Mr. Chairman and members of the Commission.

17 I'll first draw your attention to the  
18 activity report, Exhibit 53, Lois Ash and  
19 Homer Ash, both listed as voting. Lois Ash,  
20 you know, her vote and her absentee ballot  
21 were cast properly. The problem is it looks  
22 like she attempted to assist her husband. I  
23 mean, we don't have -- we have what looks  
24 like a scribbling, an attempt of scribbling  
25 of initials. He did not sign the application

1 at all. She -- she attempted to assist him,  
2 but we don't believe this was -- this was  
3 done properly, and, therefore, we would ask  
4 that -- we can't attach this absentee ballot  
5 -- or this absentee application to a ballot,  
6 but, I mean, by this evidence you could -- I  
7 mean, it looks as though Lois Ash got two  
8 votes. But, anyway, we would ask for a  
9 special election in this precinct since it  
10 looks like you cannot determine which ballot  
11 to remove within this precinct. Thank you.

12 MR. CHAIRMAN: Unless they voted  
13 -- they voted exactly the same way, right,  
14 then you would.

15 Counsel.

16 MR. BROOKS: Well, I was trying  
17 to dig out one of these exhibits. Can you  
18 look on the -- can I just --

19 MR. CHAIRMAN: Could we have the  
20 ballots up and the -- and the secrecy  
21 envelopes if that's helpful.

22 While Counsel is locating and preparing  
23 for the exhibits, I'd like to hear from our  
24 counsel about what presumptions, if any, we  
25 have or deference we are to give to the Local

1 Election Board who made initial decisions on  
2 -- on these ballots.

3 MR. KING: Mr. Chairman and  
4 members of the Commission, as -- as I  
5 mentioned previously, in the past the Recount  
6 Commission has given deference to the  
7 decisions of County Election Boards with  
8 regard to absentee ballots where there is  
9 sufficient information available on the face  
10 of the document to identify the basis for the  
11 County Election Board's decision.

12 MR. CHAIRMAN: And where there  
13 was no basis? Go ahead.

14 MR. KING: Where there was no  
15 basis, the Commission went ahead with regard  
16 to opening the absentee ballot envelopes,  
17 but, again, I repeat the -- that the recount  
18 statute does not provide for a special  
19 election as a remedy in a recount.

20 MR. CHAIRMAN: Okay.

21 Counsel.

22 MS. BARNES: Thank you,  
23 Mr. Chairman.

24 The County Election Board's decision is  
25 generally final until somebody files for --

1 for a recount. And -- and in this case, the  
2 Recount Commission has the authority, has the  
3 statutory authority to review the decisions  
4 of the County Election Board. And I know you  
5 weren't talking about this one in particular;  
6 you had just asked this question, but it's my  
7 opinion that the Recount Commission has the  
8 authority to review the decision of the  
9 County Election Board.

10 In the Supreme Court Case that was  
11 earlier cited by Mr. Brown, it's a 1984  
12 Indiana Supreme Court case out of a Lake  
13 County. It was a local Recount Commission,  
14 but the local Recount Commission overrode the  
15 decision of the County Election Board in that  
16 case and -- and reviewed the decision of the  
17 County Election Board and that was upheld by  
18 the Indiana Supreme Court.

19 MR. CHAIRMAN: Okay. Thank you.

20 Counsel.

21 MR. BROOKS: Well, just what I  
22 thought. These are two -- two voters that  
23 got these. One born in 1919, one born in  
24 1917, and it's apparent they're trying to  
25 help each other get this done. So now I

1           suppose we'll listen to an argument about  
2           disenfranchising 93-year-old, 95-year-old,  
3           whatever the math is, people who are trying  
4           to help each other get this done. But more  
5           importantly, there's no ballots attached to  
6           this thing, so -- so there's nothing --  
7           there's nothing to recount. So fine, we'll  
8           all make a note that Mr. Brown and the  
9           Democrats really think that 93- and  
10          95-year-olds ought to really do better with  
11          their handwriting and making sure they follow  
12          procedures, but there's nothing to do.

13                   MR. CHAIRMAN: Okay.

14                   I'll give you a ten-second response if  
15                   you want.

16                   MR. BROWN: I'm on an empty  
17                   stomach, but I know I didn't say to  
18                   disenfranchise anyone. We asked for a  
19                   special election in the precinct. There was  
20                   an invalid execution of an absentee ballot,  
21                   so I don't feel there's any internal problem  
22                   with my logic there.

23                   MR. BROOKS: Well, I -- I guess  
24                   would want the record to reflect that he  
25                   didn't say disenfranchise. He'll just

1 substitute and have the entire precinct vote  
2 again because two 93-year-olds or  
3 95-year-olds were trying to help each other.

4 MR. CHAIRMAN: Okay.

5 Questions from Commission members.

6 Motions.

7 MR. DURNIL: I move that we deny  
8 the motion for a special election.

9 MR. CHAIRMAN: Second.

10 Discussion.

11 Hearing none.

12 All in favor?

13 MR. DURNIL: Aye.

14 MR. CHAIRMAN: Aye.

15 Opposed?

16 MR. KUZMAN: Aye.

17 MR. CHAIRMAN: Motion carries  
18 two to one.

19 Mr. Skolnik.

20 MR. SKOLNIK: Are there any  
21 other disputed matters, Mr. Brown, in Ward 6,  
22 precinct 7?

23 MR. BROWN: No further disputes  
24 in 6-7.

25 MR. BROOKS: We withdraw.

1 MR. SKOLNIK: Mr. Chairman, there  
2 being no further disputed matters in Ward 6,  
3 precinct 7, the tally should read as follows:  
4 178 votes for Mr. Deig, 196 votes for  
5 Ms. McNamara.

6 MR. DURNIL: I move we accept the  
7 tally as final.

8 MR. CHAIRMAN: Second.

9 All in favor?

10 Aye.

11 MR. DURNIL: Aye.

12 MR. CHAIRMAN: Opposed?

13 Motion carries two to zero.

14 MR. KUZMAN: I'm sorry. I  
15 oppose. I apologize.

16 MR. CHAIRMAN: Motion carries --

17 MR. KUZMAN: I was reading  
18 something.

19 MR. CHAIRMAN: -- two to one.

20 MR. KUZMAN: I apologize.

21 MR. CHAIRMAN: Motion carries two  
22 to one.

23 MR. KUZMAN: Can I ask for about  
24 a five-minute break.

25 MR. CHAIRMAN: Yeah.

1 MR. KUZMAN: Thanks.

2 MR. CHAIRMAN: We'll reconvene at  
3 6 a.m.

4 (Off the record - Break)

5 MR. CHAIRMAN: Okay. Proceeding  
6 in the District 76 matter. I think we were  
7 beginning Ward 6-8. Ward 6-8. One disputed  
8 ballot by Mr. Brown, it looks like.

9 MR. BROWN: Yes, Mr. Chairman.

10 This was going to be -- I'll just make  
11 a note in for the record this was another --  
12 this was actually another absentee ballot  
13 that was opened ten days after the election.  
14 And the definite ruling by the Commission on  
15 the previous ballot, we will note it for the  
16 record but with withdraw the dispute.

17 MR. CHAIRMAN: Shown withdrawn.  
18 Thing you.

19 Mr. Brooks, nothing there, I don't see.

20 MR. BROOKS: We don't have any.

21 MR. CHAIRMAN: Mr. Skolnik.

22 MR. SKOLNIK: Mr. Chairman, the  
23 -- and members of the Commission, the tally  
24 in Ward 6, precinct 8 reflects 184 votes for  
25 Mr. Deig, 130 for Ms. McNamara and there were

1 seven no votes.

2 MR. CHAIRMAN: Motion.

3 MR. DURNIL: I move we accept the  
4 tally as final.

5 MR. CHAIRMAN: Second.

6 All -- all in favor?

7 MR. DURNIL: Aye.

8 MR. CHAIRMAN: Aye.

9 All opposed?

10 MR. KUZMAN: Aye.

11 MR. CHAIRMAN: Motion carries two  
12 to one.

13 Mr. Skolnik.

14 MR. SKOLNIK: The next precinct  
15 is Ward 6, precinct 12.

16 MR. CHAIRMAN: Mr. Brown.

17 MR. BROWN: Mr. Chairman and  
18 members of the Commission, thank you.

19 This voter -- I'm sorry. The exhibits  
20 I'm referring to -- the exhibit -- I think  
21 there's just one -- Exhibit 26. Sorry.

22 MR. CHAIRMAN: Exhibit 26?

23 MR. BROWN: And I have given my  
24 exhibit list to the State Board of Accounts.

25 MR. CHAIRMAN: Did you say

1 Exhibit 6?

2 MS. BARNES: 26.

3 MR. BROWN: 26.

4 MR. CHAIRMAN: 26. 26.

5 Okay. We're ready.

6 MR. BROWN: This voter was  
7 challenged at the polls because he actually  
8 -- and you'll see a copy -- he actually  
9 presented a Hawaii driver's license with an  
10 Evansville address. That's clearly a  
11 fraudulent license. He then came in and  
12 perfected his vote with a -- with a -- with a  
13 passport which does not show his address.  
14 And the voter -- even though the voter was  
15 challenged for lack of identification,  
16 because of the fraudulent nature of the ID he  
17 presented and -- we felt that -- we feel this  
18 voter should have been required to present  
19 proof of residency as well, and, therefore,  
20 we would ask you to invalidate this ballot.

21 MR. CHAIRMAN: Counsel.

22 MR. BROOKS: Well, apparently  
23 Mr. Brown is asking you to invent a law. I  
24 mean, you'll -- you -- you have to produce  
25 your address in certain circumstances, none

1 of which he's alleged. The -- the gentleman  
2 came in with a passport, which while it does  
3 not have his address on it, it does not need  
4 to have his address on it. And so the  
5 Election Board correctly -- he had an invalid  
6 ID. We all agree with that. And so he voted  
7 provisional and brought in proper ID. People  
8 who do that get to vote.

9 MR. CHAIRMAN: Thank you.

10 Questions from Commissioners.

11 Hearing none.

12 Discussions or motions.

13 MR. DURNIL: The request is to  
14 not count this ballot?

15 MR. CHAIRMAN: Yeah, that's the  
16 request.

17 MR. DURNIL: I move that we deny  
18 that request and count the ballot as counted.

19 MR. CHAIRMAN: Second.

20 Discussion.

21 I agree. The purpose of the photo ID  
22 is that the person voting is who they say  
23 they are. The purpose for -- we determine  
24 residency via the signature on a poll book is  
25 one -- one way we do it. Do you show

1 evidence, Mr. Brown, that he signed the poll  
2 book in a way that would -- the signing of a  
3 poll book is an affirmation that you -- among  
4 other things, that you live where the poll  
5 book says you live. Do you allege anything  
6 different than what the poll book says?

7 MR. BROWN: No, we can't.

8 MR. CHAIRMAN: Okay. I'll be  
9 voting for in Mr. Durnil's motion.

10 Any other discussion.

11 All in favor, "Aye."

12 MR. DURNIL: Aye.

13 MR. CHAIRMAN: Aye.

14 All opposed?

15 MR. KUZMAN: Aye.

16 MR. CHAIRMAN: Motion carries two  
17 to one.

18 Mr. Brown, anything else?

19 MR. BROWN: We -- we have no  
20 further disputes in that precinct.

21 MR. CHAIRMAN: Mr. Brooks.

22 MR. BROOKS: No. We're  
23 withdrawing.

24 MR. CHAIRMAN: Mr. Skolnik.

25 MR. SKOLNIK: Mr. Chairman, both

1 parties having withdrawn all -- any further  
2 challenged ballots they have in that  
3 precinct, the final tally reflects that there  
4 are 120 votes for Mr. Deig, 83 for  
5 Ms. McNamara and eight no votes.

6 MR. DURNIL: I move we accept the  
7 tally as final.

8 MR. CHAIRMAN: Second.

9 All in favor, "Aye."

10 MR. DURNIL: Aye.

11 MR. CHAIRMAN: Aye.

12 All opposed same sign.

13 MR. KUZMAN: Aye.

14 MR. CHAIRMAN: Motion carries two  
15 to one.

16 Mr. Skolnik.

17 MR. SKOLNIK: Mr. Chairman, the  
18 next precinct is Ward 6, precinct 13. The  
19 tally from the State Board of Accounts  
20 reflects 167 votes for Mr. Deig, 112 for  
21 Ms. McNamara. There are three disputed valid  
22 votes for Mr. Deig, five disputed valid  
23 ballots tallied for Ms. McNamara, five no  
24 votes.

25 MR. CHAIRMAN: Mr. Brown.

1 MR. BROWN: Again, in 6-13,  
2 Mr. Chairman, we would note for the record  
3 that there was an absentee ballot opened ten  
4 days after the election, and hearing the  
5 Commission's response to that earlier, we  
6 will withdraw it after making that note on  
7 the record. Thank you.

8 MR. CHAIRMAN: So noted.

9 Mr. Brooks.

10 MR. BROOKS: I have no new  
11 comments on those issues.

12 MR. CHAIRMAN: Mr. Skolnik.

13 MR. SKOLNIK: Are you withdrawing  
14 any objections you have here?

15 MR. BROOKS: No. We're -- no.  
16 We're going to -- no. We have a different  
17 exhibit that we would reserve the right to  
18 argue.

19 MR. SKOLNIK: Oh. That would be  
20 offered as part of Respondent's case then,  
21 correct?

22 MR. BROOKS: Yes.

23 MR. SKOLNIK: Okay. So you're  
24 not withdrawing any objections you may have?

25 MR. BROOKS: No.

1 MR. CHAIRMAN: Okay. Thank you.

2 MR. SKOLNIK: I'll, therefore,  
3 defer the tally until the -- the Respondent  
4 can present its case --

5 MR. CHAIRMAN: Okay.

6 MR. SKOLNIK: -- in chief.

7 MR. BROOKS: You're going to  
8 leave it open, right, because we're going --

9 MR. SKOLNIK: Pardon?

10 MR. BROOKS: -- to come back  
11 around?

12 MR. SKOLNIK: Yeah, we're going  
13 to come back around.

14 MR. BROOKS: Thanks.

15 MR. CHAIRMAN: So we're at Ward  
16 6-14?

17 MR. SKOLNIK: Ward 6, precinct  
18 14, Mr. Chairman. The tally from the State  
19 Board of Accounts reflects 190 votes, valid  
20 votes for Mr. Deig, 151 for Ms. McNamara.  
21 There are two votes for -- two valid votes  
22 for Mr. Deig that have been disputed and six  
23 no votes.

24 MR. BROWN: The exhibits in this  
25 precinct, Mr. Chairman, are Exhibit 4 -- 3

1 and 4.

2 MR. CHAIRMAN: Exhibit 3 and 4,  
3 Ward 6-14. Exhibit 3 and 4.

4 Okay.

5 MR. BROWN: The -- at the top of  
6 the poll book page, Cheryl and Donald  
7 Wakeman, someone signed the poll book. They  
8 were -- the ABS was circled. These were  
9 walk-in absentee voters, yet in the auditing  
10 of the materials, there were no applications  
11 located for these two voters. The tally of  
12 the State Board of Accounts shows that there  
13 were 78 absentee votes and only 76 absentee  
14 applications and we would request, again, in  
15 the totality of the circumstances seeing this  
16 issue occur in several precincts throughout  
17 House District 76, this is beginning to tally  
18 up, we would ask that there be a special  
19 election conducted in this precinct. Thank  
20 you.

21 MR. CHAIRMAN: Thank you.

22 Counsel.

23 MR. BROOKS: I have no new  
24 arguments with respect to the special  
25 election issue, but I would note that

1 throughout you'll have situations where  
2 there's an ABS on somebody's signature line  
3 or box and a poll worker will print or write  
4 in a name. It doesn't mean they voted twice.  
5 It means that the poll worker -- you'll look  
6 and see, I think, those addresses -- I mean,  
7 the handwriting is the same. You'll also  
8 note that there are initials by those names  
9 indicating that presumably the poll worker  
10 wrote those names in, not -- not the voters.  
11 A Democrat and a Republican initialed that as  
12 presumably something they wrote in.

13 MR. CHAIRMAN: Thank you.

14 Questions from Commissioners.

15 Discussion by Commissioners or motions.

16 MR. DURNIL: I move to deny the  
17 motion for a special election.

18 MR. CHAIRMAN: Second.

19 Discussion.

20 All in favor of the motion signify by  
21 saying, "Aye."

22 MR. DURNIL: Aye.

23 MR. CHAIRMAN: Aye.

24 All opposed?

25 MR. KUZMAN: Aye.

1 MR. CHAIRMAN: Motion carries two  
2 to one.

3 Mr. Brown, anything else, sir?

4 MR. BROWN: No further dispute --  
5 that was 6-14, correct? No further disputes  
6 in 6-14.

7 MR. CHAIRMAN: Okay.

8 Mr. Brooks.

9 MR. BROOKS: We withdraw.

10 MR. CHAIRMAN: Mr. Skolnik.

11 MR. SKOLNIK: Mr. Chairman, since  
12 Respondent has withdrawn any disputes it may  
13 have in Ward 6, precinct 14, the tally in  
14 that precinct should read 190 votes for  
15 Mr. Deig, 151 votes for Ms. McNamara, six no  
16 votes.

17 MR. DURNIL: I move we accept the  
18 tally as final.

19 MR. CHAIRMAN: Second.

20 All in favor, "Aye."

21 MR. DURNIL: Aye.

22 MR. CHAIRMAN: Aye.

23 Opposed?

24 MR. KUZMAN: Aye.

25 MR. CHAIRMAN: Motion carries two