

INDIANA STATE RECOUNT COMMISSION

MINUTES OF THE JUNE 28, 2011 MEETING

MEMBERS PRESENT: Thomas E. Wheeler, II, Chairman of the Indiana State Recount Commission (“the Commission”); Gordon Durnil, Member; Bernard L. Pylitt, Member

MEMBERS ABSENT: None

STAFF ATTENDING: Mark Palmer, Recount Director; J. Bradley King, Majority Counsel; Linda Vitone, Minority Counsel

OTHERS ATTENDING: Mr. James Bopp, Jr.; Ms. Karen Celestino-Horseman; Mr. William R. Groth; Ms. Anita Y. Woudenberg

1. CALL TO ORDER:

The chair called the meeting of the Commission to order at 9: 00 a.m. at Room 404 of the Indiana State House, 200 West Washington Street, Indianapolis, Indiana.

2. COMMISSION BUSINESS:

The Commission transacted the business and took the official actions set forth in the Transcript prepared by Rhonda C. Hobbs, Connor + Associates, Inc., which is incorporated by reference into these minutes.

The Commission approves the Transcript, with the following corrections:

Page 2, line 9, replace “ELECTION DIVISION” with “RECOUNT COMMISSION”.

Page 6, line 10, replace “take” with “takes”.

Page 26, line 3, replace “Fisher’s” with “Fishers”.

Page 26, line 7, replace “Fisher’s” with “Fishers”.

Page 26, line 14, replace “Fisher’s” with “Fishers”.

Page 26, line 23, replace “Fisher’s” with “Fishers”.

Page 27, line 4, replace “Fisher’s” with “Fishers”.

Page 27, line 20, replace “Fisher’s” with “Fishers”.

Page 29, line 11, replace “numbered” with “renumbered”.

Page 32, line 7, replace “church” with “Church”.

Page 34, line 16, replace “3-8-11-1(b)” with “3-8-1-1(b)”.

Page 43, line 25, replace “While” with “White”.

Page 50, line 12, replace “changs” with “changes”

3. ADJOURNMENT:

There being no further business before the Commission, the Commission adjourned at 9:52 a.m.

APPROVED:

Thomas E. Wheeler, II
Thomas E. Wheeler, II *by MJK*
Pursuant to Order 2011-15 of
The Indiana State Recount Commission

Original

BEFORE THE
INDIANA RECOUNT COMMISSION

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IN RE: ELECTION CONTEST)
)
INDIANA DEMOCRATIC PARTY,)
by its Chairperson, DANIEL J. PARKER)
)
Petitioner,)
)
v.)
)
CHARLIE WHITE,)
)
Respondent.)

Conducted On: Tuesday, June 28, 2011

Location: Indiana Statehouse
Suite 404
302 West Washington Street
Indianapolis, Indiana 46204

A STENOGRAPHIC RECORD BY:
Rhonda J. Hobbs, RPR
Notary Public
Stenographic Reporter

Connor + Associates, Inc.

1650 One American Square
Indianapolis, IN 46282
(317) 236-6022

A P P E A R A N C E S

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INDIANA RECOUNT COMMISSION:

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Mr. Thomas Wheeler - Chairman

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Mr. Bernard L. Pylitt - Commission Member

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Mr. Gordon Durnil - Commission Member

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Mr. Mark Palmer - Recount Director

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INDIANA ELECTION DIVISION STAFF:

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Ms. Linda Vitone - Minority Counsel

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Mr. Bradley King - Majority Counsel

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A P P E A R A N C E S

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FOR THE PETITIONER, DEMOCRATIC PARTY:

Ms. Karen Celestino-Horseman
AUSTIN & JONES, P.C.
One North Pennsylvania Street
Suite 220
Indianapolis, Indiana 46204

Mr. William R. Groth
FILLENWARTH DENNERLINE GROTH & TOWE, LLP
429 East Vermont Street
Suite 200
Indianapolis, Indiana 46202

FOR THE RESPONDENT, CHARLIE WHITE:

Mr. James Bopp, Jr.
Ms. Anita Y. Woudenberg
BOPP, COLESON & BOSTROM
1 South Sixth Street
Terre Haute, Indiana 47807-3510

1 **CHAIRMAN T. WHEELER:** I'm going to call to
2 order this meeting of the Indiana Recount
3 Commission. We are meeting pursuant to Public
4 Notice in Room 404 of the Indiana Statehouse.
5 As before, we are web streaming this hearing as
6 well.

7 A couple of ground rules with this hearing --
8 first of all, I recognize the quorum. I would note
9 Commissioner Pylitt and Commissioner Durnil here.
10 A couple of ground rules. The purpose of this
11 meeting is to consider proposed findings of fact,
12 conclusions of law, and order in this matter based
13 upon the evidence the Commission received at its
14 last hearing.

15 The purpose of this meeting is not to hear
16 additional evidence or hear argument from the
17 parties or deal with any issues related to the
18 transcript or the record. The record is complete
19 and full in front of us. Each of the commission
20 members has a transcript of the hearing, as well as
21 copies of the exhibits, and the original exhibits
22 are right here to my left.

23 As we move through this process, the
24 commission members will be discussing proposed
25 findings of fact and conclusions of law. There

1 will be no audience participation and we will
2 resolve it and we will vote on the final
3 proposed -- set of findings of fact, conclusions of
4 law and an order at the conclusion of this meeting.

5 With that, there are a couple of procedural
6 matters that we need to address related to some of
7 our staff and some other issues, and I'll turn to
8 Mr. King to address proposed Order 2011-15.

9 **MR. B. KING:** Thank you, Mr. Chairman and
10 Members of the Commission. I'll also take this
11 opportunity to document that notice of the
12 meeting was posted 48 hours in advance outside
13 of this room and posted on our website.

14 The members should have a copy of Order
15 2011-15 in their packets. This concerns the
16 post-contest procedures for the approval of claims,
17 minutes and other business. To avoid having
18 additional commission meetings simply to approve
19 claims, what Order 2011-15 does is to empower
20 Mr. Palmer, the recount director, to approve the
21 reimbursement of individuals, agencies or offices
22 for expenses related to this contest proceeding,
23 except for his own expenses.

24 Section 2 of the order empowers Mr. Wheeler to
25 approve the claims of Mr. Palmer for his salary as

1 recount director and related expenses, and also to
2 approve the minutes of the commission meetings
3 conducted in December 2010, May of 2011, and June
4 of 2011.

5 Section 4 provides that Mr. Wheeler's
6 empowered to preside over and adjourn this meeting
7 after the commission makes its final determination.
8 Section 5 corrects a mis-numbering in an earlier
9 order, and Section 6 provides the Order 2011-15
10 take effect immediately upon passage.

11 **CHAIRMAN T. WHEELER:** I'll accept a motion
12 or Order 20__ -- on Order 2011-15.

13 **COMMISSION MEMBER G. DURNIL:** So moved.

14 **COMMISSION MEMBER B. PYLITT:** Second.

15 **CHAIRMAN T. WHEELER:** The motion is made
16 and seconded -- just a brief note, the reason
17 that we need Section 4, which seems a little bit
18 unusual, in that it empowers me to preside over
19 and adjourn the meeting, is that according to
20 statute, the Commission's charge ends
21 immediately upon its vote on the final order, so
22 that allows me to actually adjourn the meeting
23 after that final order. With that, the
24 motions's made and seconded, all in favor of
25 approving Order 2011-15, signify by saying aye?

1 **THE COMMISSION:** Aye.

2 **CHAIRMAN T. WHEELER:** Those opposed, same
3 sign?

4 *(No response.)*

5 **CHAIRMAN T. WHEELER:** Motion carries. All
6 right, we're going to move on to the discussion
7 of proposed findings of fact, conclusions of law
8 and order, In Re: Election Contest, Indiana
9 Democratic Party, by its Chairman, Daniel J.
10 Parker versus Charlie White as Respondent.

11 As the commissioners will recall, at the
12 conclusion of the June 21st, 2011 hearing, the
13 Commission asked the parties to tender proposed
14 findings of fact, conclusions of law. We have
15 received those from both Petitioners and from
16 Respondents.

17 At that point we asked the staff of the
18 Commission on both sides to concurrently prepare a
19 draft of proposed findings of fact, conclusions of
20 law, and final order for the commission members to
21 review here at this meeting, primarily consisting
22 of the stipulated facts, the evidence in the
23 record, to ensure that the parties' proposals had
24 been supported by the record, and we have
25 received -- we're in the process of receiving -- do

1 we have it here, that is from Mr. King, who will be
2 passing that out to the commission members.

3 What I'd like to do is all of us to take a
4 little bit of time -- for the commission members,
5 I'd like to work our way through the proposals. I
6 would note that we have -- this documented item in
7 front of me has 21 pages, along with an attached
8 order, Proposed Order 2011-14; does all the
9 commission members have all those pages?

10 **COMMISSION MEMBER B. PYLITT:** Yes.

11 **COMMISSION MEMBER G. DURNIL:** Yes.

12 **CHAIRMAN T. WHEELER:** Okay. We'll start
13 with the findings of fact, conclusions of law
14 and final order. There's a preliminary
15 paragraph in there. Do any of the commission
16 members have any questions or concerns about the
17 preliminary paragraph that sets out basically
18 the date of the prior evidentiary hearing and
19 the frame work of the proposal?

20 **COMMISSION MEMBER B. PYLITT:** No.

21 **CHAIRMAN T. WHEELER:** Nothing?

22 **COMMISSION MEMBER G. DURNIL:** No.

23 **CHAIRMAN T. WHEELER:** I have a couple. In
24 the second sentence, it says, and these are
25 stylistic, and I apologize, heard evidence

1 regarding the election contest petition, it says
2 of and I prefer the term filed by, and then on
3 the one, two, three, four, fifth line, it refers
4 to at which the Commission would enter findings
5 of fact, comma, line, and conclusions of law,
6 comma, and order an order in this matter, which
7 I think more accurately reflects the fact that
8 we're issuing the order as well on the findings
9 of fact and conclusions are attached to the
10 order. That's all I have with respect to the
11 preliminary paragraph. Anything?

12 *(No response.)*

13 **CHAIRMAN T. WHEELER:** I'll just walk
14 through them. No. 1.

15 **COMMISSION MEMBER B. PYLITT:** Do we need a
16 motion for that?

17 **CHAIRMAN T. WHEELER:** Do we need a motion
18 for that or just...

19 **MR. B. KING:** You just do it.

20 **CHAIRMAN T. WHEELER:** Yeah, we'll take the
21 changes as -- Paragraph 1, any concerns related
22 to Paragraph 1?

23 *(No response.)*

24 **CHAIRMAN T. WHEELER:** Hearing none, any
25 concerns related to Paragraph 2?

1 (No response.)

2 **CHAIRMAN T. WHEELER:** I have a concern
3 regarding Paragraph 3. Paragraph 3 states
4 Mr. White and Ms. Mills had a child in January
5 of 2001, and it has the child's name, and I
6 would prefer the child's name to be redacted.

7 **COMMISSION MEMBER B. PYLITT:** I agree.

8 **CHAIRMAN T. WHEELER:** From this throughout,
9 it's referring to him as the son or child.

10 **COMMISSION MEMBER G. DURNIL:** I agree.

11 **CHAIRMAN T. WHEELER:** By consent, that
12 would eliminate the child's name from Paragraph
13 3. Paragraph 4?

14 (No response.)

15 **CHAIRMAN T. WHEELER:** Hearing none,
16 Paragraph 5?

17 (No response.)

18 **CHAIRMAN T. WHEELER:** Hearing none,
19 Paragraph 6?

20 (No response.)

21 **CHAIRMAN T. WHEELER:** Hearing none,
22 Paragraph 7?

23 (No response.)

24 **CHAIRMAN T. WHEELER:** Hearing none,
25 Paragraph 8, again, that's the child name, and

1 also in Paragraph 9. I assume we'll just after
2 legal custody of their son, period.

3 **MR. B. KING:** Yes, Mr. Chairman, if
4 that's...

5 **COMMISSION MEMBER G. DURNIL:** Agreed.

6 **COMMISSION MEMBER B. PYLITT:** Agreed.

7 **CHAIRMAN T. WHEELER:** And using their son's
8 in place of the name in Paragraph 9. Paragraph
9 10?

10 *(No response.)*

11 **CHAIRMAN T. WHEELER:** Paragraph 11.

12 *(No response.)*

13 **CHAIRMAN T. WHEELER:** And part of it this,
14 too, is primarily the stipulated facts. The
15 parties stipulated to 52 facts, and so these are
16 primarily stipulated facts by the parties.
17 Paragraph 12?

18 *(No response.)*

19 **CHAIRMAN T. WHEELER:** Paragraph 13?

20 *(No response.)*

21

22 **CHAIRMAN T. WHEELER:** Paragraph 14?

23 *(No response.)*

24 **CHAIRMAN T. WHEELER:** Paragraph 15?

25 *(No response.)*

1 **CHAIRMAN T. WHEELER:** Paragraph 16?

2 *(No response.)*

3 **CHAIRMAN T. WHEELER:** Paragraph 17?

4 *(No response.)*

5 **CHAIRMAN T. WHEELER:** Paragraph 18?

6 *(No response.)*

7 **CHAIRMAN T. WHEELER:** I have a proposed
8 change on Paragraph 18, while this is a
9 stipulated fact, I would add a CFA-1 form
10 (Candidate's Statement of Organization and
11 Designation of Principal Committee or
12 Exploratory), after that, Brad, adding for Mr.
13 White, dated January 18, 2009, just to make that
14 clear that that's his CFA-1 form? There's no
15 objection?

16 **COMMISSION MEMBER G. DURNIL:** No objection.

17 **COMMISSION MEMBER B. PYLITT:** No.

18 **CHAIRMAN T. WHEELER:** Paragraph 19?

19 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
20 I would propose that we switch the order of 19
21 and 20. It appears that chronologically Mr.
22 White moved out in May of 2009 is 20, and 19 is
23 June of 2009.

24 **CHAIRMAN T. WHEELER:** It makes absolute
25 sense to me. Commissioner Durnil?

1 **COMMISSION MEMBER G. DURNIL:** I agree.

2 **CHAIRMAN T. WHEELER:** I would note that in
3 Paragraph 20, there is a duplicate. It says
4 begin living with his, with his, son. Delete
5 the first one, please.

6 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
7 I would also move that we add from the testimony
8 of Mr. White in the new Paragraph 19 that Mr.
9 White did not pay his ex-wife any rent on...

10 **CHAIRMAN T. WHEELER:** Commissioner Durnil?

11 **COMMISSION MEMBER G. DURNIL:** Okay.

12 **CHAIRMAN T. WHEELER:** I think that's a fair
13 statement of the record. Do you want to say
14 that again for the panel?

15 **COMMISSION MEMBER B. PYLITT:** Sure. At the
16 end of the new No. 19, the original 20, it would
17 concluded that Mr. White testified that he did
18 not pay any rent to his ex-wife.

19 **CHAIRMAN T. WHEELER:** Is that it for
20 Paragraph, new Paragraph 19, former 20?

21 *(No response.)*

22 **CHAIRMAN T. WHEELER:** All right. Former
23 Paragraph 19, now new Paragraph 20. I have two
24 concerns on that one. The parties -- as you
25 know, we did a kind of -- kind of -- we pulled

1 findings of fact and conclusions of law from
2 both sides and there's some debate about what to
3 call Michelle Quigley. So there won't be
4 confusion with Miss Mills and Miss White and
5 Miss Quigley, what I'm going to propose
6 throughout is that she be referred to rather
7 than as Michelle, which I think at least one of
8 the parties used, that she be referred to as
9 Michelle Quigley-White throughout or Miss
10 Quigley-White.

11 **COMMISSION MEMBER B. PYLITT:** Agreed.

12 **CHAIRMAN T. WHEELER:** I think there is a
13 cut and paste between the two. It says
14 transcript 120, 209, and there's a period after
15 that; is that a period?

16 **MR. B. KING:** Yes.

17 **CHAIRMAN T. WHEELER:** That's been pulled
18 out of -- all right, with that, new Paragraph
19 20?

20 *(No response.)*

21 **CHAIRMAN T. WHEELER:** No objections, moving
22 on to Paragraph 21, anything?

23 **COMMISSION MEMBER G. DURNIL:** No.

24 **CHAIRMAN T. WHEELER:** Paragraph 22?

25 *(No response.)*

1 **CHAIRMAN T. WHEELER:** Hearing nothing,
2 Paragraph 23?

3 *(No response.)*

4 **CHAIRMAN T. WHEELER:** Hearing nothing,
5 Paragraph 24?

6 *(No response.)*

7 **CHAIRMAN T. WHEELER:** Just for -- just for
8 clarity sake, one, two, third sentence beginning
9 he testified -- it's the last, right at the end,
10 he testified that he believed -- Mr. White, just
11 to make that clear, that's Mr. White testifying.
12 Any objection to that?

13 **COMMISSION MEMBER B. PYLITT:** Agreed.

14 **CHAIRMAN T. WHEELER:** Paragraph 25?

15 *(No response.)*

16 **CHAIRMAN T. WHEELER:** Paragraph 26?

17 *(No response.)*

18 **CHAIRMAN T. WHEELER:** Paragraph 27?

19 *(No response.)*

20 **CHAIRMAN T. WHEELER:** Paragraph 28?

21 *(No response.)*

22 **CHAIRMAN T. WHEELER:** Paragraph 29?

23 *(No response.)*

24 **CHAIRMAN T. WHEELER:** Paragraph 30?

25 *(No response.)*

1 **CHAIRMAN T. WHEELER:** Two small ones, on
2 the loan application, I would say dated rather
3 than of, first line, and then there's another
4 period floating after the paragraph, Page 3.

5 **COMMISSION MEMBER B. PYLITT:** Agreed.

6 **COMMISSION MEMBER G. DURNIL:** Agreed.

7 **CHAIRMAN T. WHEELER:** Paragraph 31, another
8 floating period at the very end.

9 *(No response.)*

10 **CHAIRMAN T. WHEELER:** Paragraph 32?

11 *(No response.)*

12 **CHAIRMAN T. WHEELER:** One comment, Mr.
13 White's present address and mailing address,
14 once again was, which is present tense versus
15 past tense, is replaced with was.

16 **COMMISSION MEMBER B. PYLITT:** Agreed.

17 **COMMISSION MEMBER G. DURNIL:** Agreed.

18 **CHAIRMAN T. WHEELER:** Paragraph 33?

19 *(No response.)*

20 **CHAIRMAN T. WHEELER:** Paragraph 34?

21 *(No response.)*

22 **CHAIRMAN T. WHEELER:** Paragraph 35?

23 *(No response.)*

24 **CHAIRMAN T. WHEELER:** Paragraph 36?

25 *(No response.)*

1 **CHAIRMAN T. WHEELER:** I have a note here.
2 I have a little bit of a concern. Mr. White did
3 testify that someone else filled out the
4 application for him, and I throw that out there
5 for discussion purposes, the paragraph currently
6 reads the loan application signed on January 28
7 2010, states that the information provided
8 within the application was provided by Mr. White
9 and submitted by fax or mail.

10 My recollection of Mr. White's testimony is
11 that although he did not specify which of the loan
12 applications, he did specify the applications were
13 filled out by the loan originator, and that may not
14 be inartful drafting.

15 **COMMISSION MEMBER G. DURNIL:** On advice of?

16 **COMMISSION MEMBER B. PYLITT:** Right, but it
17 would be -- still be based upon information he
18 provided.

19 **CHAIRMAN T. WHEELER:** Fair enough. I'll
20 withdraw that. With that, 36 stays the same.

21 **COMMISSION MEMBER B. PYLITT:** Agreed.

22 **CHAIRMAN T. WHEELER:** 37?

23 *(No response.)*

24 **CHAIRMAN T. WHEELER:** 38?

25 *(No response.)*

1 **CHAIRMAN T. WHEELER:** 39?

2 *(No response.)*

3 **CHAIRMAN T. WHEELER:** On 39 there's not a
4 citation to 39. I believe that's from
5 stipulated Exhibit 10, Page 3, Paragraph 5, as
6 was the -- Paragraph 37, I think it's the same,
7 that's the same provision.

8 **COMMISSION MEMBER B. PYLITT:** Second.

9 **CHAIRMAN T. WHEELER:** Okay. So can you
10 just add that citation?

11 **MR. B. KING:** Yes.

12 **CHAIRMAN T. WHEELER:** Paragraph 40, this is
13 a pure typo. Mr. White's name used in twice in
14 the same sentence, I would use his the second
15 time. Mr. White obtained a homeowner's
16 insurance policy on the Overview condo and his
17 prior home insurance policy was amended to
18 change his address to the Overview condo.

19 **COMMISSION MEMBER G. DURNIL:** Agreed.

20 **COMMISSION MEMBER B. PYLITT:** Agreed.

21 **CHAIRMAN T. WHEELER:** Paragraph 41?

22 *(No response.)*

23 **CHAIRMAN T. WHEELER:** Paragraph 42?

24 *(No response.)*

25 **CHAIRMAN T. WHEELER:** Again, I'd like the

1 change, other than Mr. White, I'd just use
2 himself. Commissioner Pylitt?

3 **COMMISSION MEMBER B. PYLITT:** I agree.

4 **CHAIRMAN T. WHEELER:** Paragraph 43, two
5 issues. Rather than Mr. White was paying, I'd
6 use the word pay, and then it should be Mr. In
7 front of White just for consistency in that
8 sentence.

9 **COMMISSION MEMBER B. PYLITT:** Agree.

10 **COMMISSION MEMBER G. DURNIL:** Agree.

11 **CHAIRMAN T. WHEELER:** 44, that would be a
12 Quigley-White, Miss Quigley-White, rather than
13 Michelle there throughout. Same thing with 45.
14 This is really picky, but there's a -- I don't
15 believe that comma -- for this reason comma --
16 well, maybe Commissioner Pylitt's better at that
17 than I, it's a comma splice.

18 **COMMISSION MEMBER B. PYLITT:** Either or.

19 **CHAIRMAN T. WHEELER:** All right. We'll
20 leave it. Paragraph 46?

21 **COMMISSION MEMBER B. PYLITT:** Fourth line
22 should be remain to remained.

23 **CHAIRMAN T. WHEELER:** I have the same note,
24 and then the line right after it, the fourth
25 line it says the Farragut Circle, Indianapolis,

1 Indiana remained, her principal residence, and
2 then as you move onto the next sentence, it
3 says, or the next line, and did not consider the
4 Overview condo to be -- I assume it should be
5 her new...

6 **MR. B. KING:** Her new?

7 **CHAIRMAN T. WHEELER:** Her new principal
8 residence, and of course, the Quigley-Whites on
9 both the two Michelles.

10 **MR. B. KING:** Okay.

11 **CHAIRMAN T. WHEELER:** All right 47, I think
12 there's a redundant. It says one to two times a
13 week Mr. White usually spent the time with
14 William at the -- I'm sorry, let me redact
15 that -- usually spent the night with his son.

16 **COMMISSION MEMBER B. PYLITT:** I don't
17 understand the usually.

18 **CHAIRMAN T. WHEELER:** Yeah, I don't
19 understand why usually is -- one to two times a
20 week Mr. White spent the night with his son at
21 the Overview condo, comma, sleeping on the
22 couch.

23 **COMMISSION MEMBER B. PYLITT:** Agreed.

24 **COMMISSION MEMBER G. DURNIL:** Agreed.

25 **CHAIRMAN T. WHEELER:** All right, 48?

1 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
2 I think we need to add Petitioner's 37 in there
3 to tell us who Tammi Kaeser is before we get to
4 48, before we talk about Tammy Kaeser. I think
5 it's Petitioner's 37.

6 **CHAIRMAN T. WHEELER:** Petitioner's 37 reads
7 Tammi Kaeser worked for Executive Homes and sold
8 White the Overview condominium?

9 **COMMISSION MEMBER B. PYLITT:** Yes, so I
10 would recommend that we add that as the new 48.

11 **CHAIRMAN T. WHEELER:** Commissioner Durnil?

12 **COMMISSION MEMBER G. DURNIL:** That's fine
13 with me.

14 **COMMISSION MEMBER B. PYLITT:** Leave it
15 combined with the combined 48.

16 **CHAIRMAN T. WHEELER:** Why don't we leave it
17 with combined with the current 48 -- what do you
18 want to do, do you want to...

19 **COMMISSION MEMBER B. PYLITT:** That's fine,
20 keep it combined.

21 **CHAIRMAN T. WHEELER:** Okay. Combine that
22 with the 48, so just put -- that would be the --
23 that will be -- the first sentence in 48 will be
24 now Tammy Kaeser, if I'm pronouncing her name
25 correctly, worked for Executive Homes and sold

1 Mr. White the Overview condo. Since condo is
2 the -- we've been calling it the Overview condo
3 as well.

4 **MR. B. KING:** Mr. Chairman, just to
5 clarify, the addition would be a new sentence
6 beginning of Paragraph 48, which would be
7 Petitioner's, or rather -- yeah, Petitioner's
8 proposed finding 37 with condominium changed to
9 condo.

10 **CHAIRMAN T. WHEELER:** And Mr. In front of
11 White.

12 **MR. B. KING:** Thank you.

13 **COMMISSION MEMBER B. PYLITT:** Michelle
14 changed to Quigley-White.

15 **MR. B. KING:** Yes.

16 **CHAIRMAN T. WHEELER:** And in 48, there's
17 two floating periods after 190 and 203. There's
18 a tab issue at 49. It just needs to be
19 tabulated; do you agree with Paragraph 49?

20 **COMMISSION MEMBER B. PYLITT:** Yes.

21 **CHAIRMAN T. WHEELER:** 50, we'll have
22 Quigley-White as well in that one. 51, you okay
23 with 51?

24 **COMMISSION MEMBER B. PYLITT:** Yes.

25 **CHAIRMAN T. WHEELER:** 52 -- I'm moving on

1 unless I hear something.

2 (No response.)

3 **CHAIRMAN T. WHEELER:** 53, I would just
4 stick a comma in while employed by Krieg.

5 **COMMISSION MEMBER B. PYLITT:** Yeah.

6 **CHAIRMAN T. WHEELER:** 54, there's a tab
7 issue. It just needs to be tabbed over.
8 There's a floating period in the second
9 sentence, and then it says White instead of Mr.
10 White. Paragraph 55?

11 (No response.)

12 **CHAIRMAN T. WHEELER:** 56?

13 (No response.)

14 **CHAIRMAN T. WHEELER:** 57?

15 (No response.)

16 **CHAIRMAN T. WHEELER:** 58?

17 (No response.)

18 **CHAIRMAN T. WHEELER:** 59 has a tab issue
19 again. 60?

20 (No response.)

21 **CHAIRMAN T. WHEELER:** 61?

22 (No response)

23 **CHAIRMAN T. WHEELER:** Quigley-White issue.

24 62?

25 (No response.)

1 **CHAIRMAN T. WHEELER:** 63.

2 *(No response.)*

3 **CHAIRMAN T. WHEELER:** 64?

4 *(No response.)*

5 **CHAIRMAN T. WHEELER:** 65?

6 *(No response.)*

7 **CHAIRMAN T. WHEELER:** 66?

8 *(No response.)*

9 **CHAIRMAN T. WHEELER:** 67?

10 *(No response.)*

11 **CHAIRMAN T. WHEELER:** 66?

12 *(No response.)*

13 **CHAIRMAN T. WHEELER:** 67?

14 *(No response.)*

15 **CHAIRMAN T. WHEELER:** 68?

16 *(No response.)*

17 **CHAIRMAN T. WHEELER:** 69?

18 *(No response.)*

19 **CHAIRMAN T. WHEELER:** 70, and again, that's
20 Quigley-White. On 70, there's the term stuff in
21 there, and I believe that was the testimony of
22 the ex-wife.

23 **COMMISSION MEMBER G. DURNIL:** 71.

24 **MR. B. KING:** 71.

25 **CHAIRMAN T. WHEELER:** 71, I'm sorry.

1 **COMMISSION MEMBER B. PYLITT:** I agree.

2 **MR. B. KING:** Mr. Chairman, 71?

3 **CHAIRMAN T. WHEELER:** I don't think it is a
4 change. It's a clarification, because in other
5 sections, it's used as belongings, which the
6 code word stuff, which is the term she actually
7 used, I guess. 72?

8 *(No response.)*

9 **CHAIRMAN T. WHEELER:** 73?

10 *(No response.)*

11 **CHAIRMAN T. WHEELER:** 74?

12 *(No response.)*

13 **CHAIRMAN T. WHEELER:** 75?

14 *(No response)*

15 **CHAIRMAN T. WHEELER:** And again, these are
16 coming primarily from stipulated facts or
17 stipulated exhibits. 76?

18 *(No response.)*

19 **CHAIRMAN T. WHEELER:** 77?

20 *(No response.)*

21 **CHAIRMAN T. WHEELER:** 78?

22 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
23 I --

24 **CHAIRMAN T. WHEELER:** 78?

25 **COMMISSION MEMBER B. PYLITT:** Yes. I

1 propose at the end of 78 that we add
2 Petitioner's 81, which indicates Mr. White's
3 gross pay for serving on the Fisher's Town
4 Council was \$1,000 a month. It's in the
5 transcript on Page 79. They use the word gross
6 pay while, and that's the gross pay, while
7 serving on the Fisher's Town Council.

8 **CHAIRMAN T. WHEELER:** This would be --
9 you'd insert Petitioner's 81, which would read.
10 Mr. White's --

11 **MR. B. KING:** Gross pay.

12 **CHAIRMAN T. WHEELER:** -- gross pay for
13 serving on...

14 **COMMISSION MEMBER B. PYLITT:** Yes, Fisher's
15 Town Council is \$1,000 per month.

16 **COMMISSION MEMBER G. DURNIL:** Same wording?

17 **COMMISSION MEMBER B. PYLITT:** It's a little
18 different.

19 **COMMISSION MEMBER G. DURNIL:** Can you read
20 it again?

21 **COMMISSION MEMBER B. PYLITT:** White's gross
22 pay, I would change it to for serving on the
23 Fisher's Town Council was \$1,000 a month.

24 **COMMISSION MEMBER G. DURNIL:** Agreed.

25 **CHAIRMAN T. WHEELER:** All right. I would

1 also amend that to also note, because I don't
2 think this is noted anywhere else, and I know
3 Mr. White made a point of this during his
4 testimony, that for the service on the Fisher's
5 Town Council, they did not receive any health
6 insurance or benefits.

7 **COMMISSION MEMBER B. PYLITT:** I have no
8 problem.

9 **CHAIRMAN T. WHEELER:** I'd add that as well.

10 **COMMISSION MEMBER G. DURNIL:** No problem.

11 **COMMISSION MEMBER B. PYLITT:** And I would
12 also add that as well and I would put in there
13 an additional sentence.

14 **CHAIRMAN T. WHEELER:** Hold on a second, get
15 Brad caught up.

16 **COMMISSION MEMBER B. PYLITT:** Sure.

17 **MR. B. KING:** Let me read it back, that
18 insertion of Petitioner's 81 with amendments
19 would read Mr. White's gross pay for serving on
20 the Fisher's Town Council was \$1,000 per month.
21 He did not receive any health insurance
22 benefits.

23 **COMMISSION MEMBER B. PYLITT:** Right, and I
24 would add one additional sentence, that the
25 total amount received during 2009 was \$12,000

1 and that's Exhibit 66 that was stipulated.

2 **CHAIRMAN T. WHEELER:** Any objection?

3 **COMMISSION MEMBER G. DURNIL:** Fine.

4 **CHAIRMAN T. WHEELER:** Give him a chance to
5 catch up.

6 **COMMISSION MEMBER B. PYLITT:** Okay, I'm
7 sorry.

8 **MR. B. KING:** The additional sentence I
9 have would be the total amount he received in
10 2009 was 12,000, which is stipulated Exhibit 6.

11 **COMMISSION MEMBER B. PYLITT:** 66.

12 **MR. B. KING:** 66, thank you.

13 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
14 I would add the new 79, if you were staying with
15 those numbers, Mr. White earned \$78,801 while
16 employed by the State of Indiana during 2009,
17 and that is stipulated Exhibit 65, Mr. White
18 earned \$78,801 from the State of Indiana in the
19 year 2009.

20 **CHAIRMAN T. WHEELER:** I have no objection,
21 Gordon?

22 **COMMISSION MEMBER G. DURNIL:** No.

23 **COMMISSION MEMBER B. PYLITT:** Exhibit 65,
24 Brad.

25 **CHAIRMAN T. WHEELER:** Ready to move on?

1 **COMMISSION MEMBER B. PYLITT:** I am.

2 **MR. B. KING:** Mr. Chairman, just to
3 clarify, this will be inserted at the end of
4 existing Paragraph 78?

5 **CHAIRMAN T. WHEELER:** It would be a new
6 paragraph.

7 **MR. B. KING:** A new paragraph?

8 **CHAIRMAN T. WHEELER:** A new Paragraph 79.
9 It has automatic pagination, I suspect, so...

10 **MR. B. KING:** The following paragraphs will
11 be numbered?

12 **CHAIRMAN T. WHEELER:** Right.

13 **COMMISSION MEMBER B. PYLITT:** Yes.

14 **MR. B. KING:** Okay. Thank you.

15 **CHAIRMAN T. WHEELER:** You want to read that
16 back so you make sure you got it?

17 **MR. B. KING:** Sure. Paragraph 79, Mr.
18 White earned 78,801 while employed by the State
19 of Indiana in calendar year 2009 stipulated
20 Exhibit 65.

21 **CHAIRMAN T. WHEELER:** All right. 79?

22 *(No response.)*

23 **CHAIRMAN T. WHEELER:** 80?

24 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
25 just for the benefit of the parties, none of us

1 ever read -- we're reading through all these
2 pages, and obviously, we shared with our counsel
3 reaction to the combined, the proposed findings.

4 In doing that all day last Friday with Miss
5 Vitone, my counsel, we had recommended that 80,
6 which was proposed by the Petitioner, be in the
7 combined proposed entry for the day.

8 In retrospect, I think that Exhibit ZZ, Mr.
9 Church's note speaks for itself and I would
10 recommend that we remove 80, that was my
11 recommendation and suggestion. I don't think it
12 adds anything to our decision.

13 **CHAIRMAN T. WHEELER:** I do agree because I
14 think the Church memo, which we did not have in
15 front of us at the last meeting, although there
16 was testimony about it, which is reflected in
17 80 -- I think since the memo is in, I do think
18 the memo speaks for itself as well.

19 Commissioner Durnil?

20 **COMMISSION MEMBER G. DURNIL:** For the memo?

21 **CHAIRMAN T. WHEELER:** It's in the next
22 paragraph.

23 **COMMISSION MEMBER G. DURNIL:** All right.

24 **COMMISSION MEMBER B. PYLITT:** Next two
25 paragraphs.

1 **CHAIRMAN T. WHEELER:** 81 and 82, so
2 eliminating Paragraph 80, which will allow you
3 to come back on that on -- all right, by
4 agreement, Paragraph 80 has been eliminated.
5 Paragraph 81, I assume there's no objection?

6 **COMMISSION MEMBER B. PYLITT:** Just inert
7 Respondent in front of Exhibit ZZ.

8 **CHAIRMAN T. WHEELER:** So Respondent
9 possessive in front of Exhibit ZZ?

10 **COMMISSION MEMBER B. PYLITT:** Right.

11 **CHAIRMAN T. WHEELER:** Paragraph 82?

12 **COMMISSION MEMBER B. PYLITT:** I would
13 remove the editorial in the first line. It says
14 nothing about Mr. White serving in good faith,
15 however, the finding would be the Church memo
16 states colon.

17 **CHAIRMAN T. WHEELER:** Fair enough, because
18 I think that was actually a response to the 80
19 paragraph?

20 **COMMISSION MEMBER B. PYLITT:** Right.

21 **CHAIRMAN T. WHEELER:** Commissioner Durnil?

22 **COMMISSION MEMBER G. DURNIL:** We'll start
23 with discussion.

24 **CHAIRMAN T. WHEELER:** We'll start with
25 Church memo states. It says nothing about Mr.

1 White serving in good faith.

2 **COMMISSION MEMBER G. DURNIL:** All right.

3 Is that it for 82?

4 *(No response.)*

5 **CHAIRMAN T. WHEELER:** 83, there's a
6 paragraph issue as well with 83, and then I
7 would use the word also, the church memo also
8 states. Anything else for 83?

9 **COMMISSION MEMBER B. PYLITT:** No.

10 **CHAIRMAN T. WHEELER:** That is the end of
11 the findings of fact.

12 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
13 I do have two additional findings that I do
14 think should be included. Those would be
15 Petitioner's 2 and 3. It makes no difference
16 where we insert them. Two says the general
17 election was held. The candidates were Mr.
18 White and Mr. Osili, and then 3 is the final
19 certified numbers for the race in the general
20 election were as follows. I think it's crucial
21 that those numbers be a part of...

22 **CHAIRMAN T. WHEELER:** I agree 100 percent.
23 In fact, I had a -- I had a copy printed to do
24 that as well so I would concur that those -- I
25 guess it makes sense that we write at the end of

1 the conclusion and findings of fact, Nos. 84 and
2 85?

3 **COMMISSION MEMBER B. PYLITT:** That's fine.

4 **CHAIRMAN T. WHEELER:** So 84 would be
5 Petitioner's 2, in the November general election
6 held on November 3rd, 2010, general election
7 Respondent, Charlie White, Mr. White, and Vop
8 Osili, Mr. Osili, were both on the ballots as
9 candidates for Indiana Secretary of State, that
10 would be Paragraph 84.

11 Paragraph 85 would be Petitioner's, No. 3, the
12 final certified numbers for White/Osili race in the
13 general election were as follows: Vop Osili,
14 632,129; Mike Wherry, 100,795; Charlie White,
15 976,810.

16 **COMMISSION MEMBER G. DURNIL:** Agreed.

17 **CHAIRMAN T. WHEELER:** Mr. Pylitt?

18 **COMMISSION MEMBER B. PYLITT:** Yes.

19 **CHAIRMAN T. WHEELER:** All right, that's the
20 end of findings of fact and conclusions of
21 law -- findings of fact, I apologize, on to
22 conclusions of law. Anything about Paragraph 1?

23 *(No response.)*

24 **CHAIRMAN T. WHEELER:** Nothing for Paragraph
25 1. No. 2 is the summary of the contest

1 proceeding statute and -- nothing there?

2 **COMMISSION MEMBER B. PYLITT:** No.

3 **CHAIRMAN T. WHEELER:** No. 3, which is a
4 summary of the Burke v. Bennett case, anything
5 on that?

6 *(No response.)*

7 **CHAIRMAN T. WHEELER:** No. 4, a summary of
8 the contest statute, in particular, for
9 challenge. Anything on No. 4?

10 *(No response.)*

11 **CHAIRMAN T. WHEELER:** Conclusions on No. 5
12 which is a summary of Judge Rosenberg's
13 decision. I have a couple, just typographical
14 things. As interpreted by the Marion County
15 Circuit Court on April 7th, 2011, I.C.
16 3-8-11-1(b) requires a knowing and/or fraudulent
17 failure to register to vote in conformity with
18 Indiana Election Law, closed quote, and I think
19 it needs to say in order to make a person
20 ineligible to be a candidate rather than the
21 word were.

22 **COMMISSION MEMBER B. PYLITT:** I've got it
23 as were.

24 **CHAIRMAN T. WHEELER:** Do you have your
25 book? I think it's actually -- the quote is

1 actually from the code itself. Mr. Bopp,
2 Paragraph 4, Conclusion of Law, No. 4, which is
3 use recites. Citation is incorrect; do you know
4 what the citation is on Conclusion of Law, No.
5 4?

6 **MR. J. BOPP:** Do I know what that is?

7 **CHAIRMAN T. WHEELER:** Your proposed
8 Conclusion of Law, No. 4, it says as determined
9 by the Marion County Circuit Court on April 7th
10 I.C. 3-8-1-1(b) requires lawful voter
11 registration, and it goes on and there's a quote
12 regarding what -- and you refer to Page 7 of
13 Judge Rosenberg's order, and I'm not finding a
14 Page 7.

15 **MS. A. WOUDEBERG:** It should be the -- the
16 quote should be directly in front of his
17 decision that was issued on April 7th.

18 **CHAIRMAN T. WHEELER:** That's what I
19 thought.

20 **MS. A. WOUDEBERG:** I know.

21 **CHAIRMAN T. WHEELER:** So where is it?

22 **MS. A. WOUDEBERG:** Towards the bottom of
23 the page.

24 **CHAIRMAN T. WHEELER:** And/or fraudulently
25 failure...to register to vote, why don't we

1 leave the whole quote in there, knowingly or
2 fraudulent failure on the part of White -- what
3 I'm suggesting is that entire quote, knowingly
4 or fraudulent failure on the part of White to
5 register to vote and in conformity with
6 Indiana -- with Indiana Election Law. That's
7 what he says?

8 **COMMISSION MEMBER B. PYLITT:** Yeah.

9 **CHAIRMAN T. WHEELER:** With that
10 amendment --

11 **MR. B. KING:** Mr. Chairman, would you like
12 me to read that back?

13 **CHAIRMAN T. WHEELER:** Yeah. There's also
14 at the very end, if you bring the IC -- the
15 Indiana Code cite to the same format that's
16 being used same earlier in the same sentence
17 I.C., etc.

18 **MR. B. KING:** No. 5 is interpreted by the
19 Marion County Circuit Court, on April 7th, 2011,
20 I.C. 3-8-1-1(b) requires a lawful voter
21 registration, end quote. A knowing and/or
22 fraudulently failure on the part of White to
23 register in conformity with Indiana Election
24 Law, closed quote.

25 **CHAIRMAN T. WHEELER:** And then I would add

1 in order to make...

2 **MR. B. KING:** In order to make a person
3 ineligible to be a candidate under IC.
4 3-8-1-1(b).

5 **CHAIRMAN T. WHEELER:** Do the commissioners
6 have any problem with that?

7 **COMMISSION MEMBER B. PYLITT:** One question,
8 outside the quote, in order to make a person
9 ineligible?

10 **CHAIRMAN T. WHEELER:** Insert the word
11 White.

12 **COMMISSION MEMBER B. PYLITT:** Mr. White?

13 **CHAIRMAN T. WHEELER:** Right. That's what I
14 figured you were going to ask about, in order to
15 make Mr. White ineligible. With that amendment,
16 Commissioner Durnil?

17 **COMMISSION MEMBER G. DURNIL:** I agree.

18 **COMMISSION MEMBER B. PYLITT:** Fair enough.

19 **CHAIRMAN T. WHEELER:** All right, No. 6?

20 *(No response.)*

21 **CHAIRMAN T. WHEELER:** No. 7, I think it's
22 just a pagination issue. It needs to be slid up
23 about a half. No. 8, which is a quote from
24 State Election Board versus Bayh?

25 *(No response.)*

1 **CHAIRMAN T. WHEELER:** No. 9?

2 *(No response.)*

3 **CHAIRMAN T. WHEELER:** No. 10?

4 *(No response.)*

5 **CHAIRMAN T. WHEELER:** No. 11?

6 *(No response.)*

7 **CHAIRMAN T. WHEELER:** No. 12?

8 *(No response.)*

9 **CHAIRMAN T. WHEELER:** No 13?

10 *(No response.)*

11 **CHAIRMAN T. WHEELER:** No 14, and again,

12 these are basically quotes from case law or

13 statute?

14 *(No response.)*

15 **CHAIRMAN T. WHEELER:** No. 15?

16 *(No response.)*

17 **CHAIRMAN T. WHEELER:** No 16?

18 *(No response.)*

19 **CHAIRMAN T. WHEELER:** No 17?

20 *(No response.)*

21 **CHAIRMAN T. WHEELER:** No. 18?

22 *(No response.)*

23 **CHAIRMAN T. WHEELER:** No. 19?

24 *(No response.)*

25 **CHAIRMAN T. WHEELER:** No. 20?

1 (No response.)

2 **CHAIRMAN T. WHEELER:** I'm going to begin
3 reading the conclusions from 20 on down. 20
4 states the deadline for transferring
5 registration before a general is the close of
6 business on the twenty-ninth day before the
7 election is scheduled to occur. Citation I.C.
8 3-7-13-11. Any objection to that one?

9 **COMMISSION MEMBER B. PYLITT:** No.

10 **COMMISSION MEMBER G. DURNIL:** No.

11 **CHAIRMAN T. WHEELER:** 21, Mr. White
12 intended to abandon the Pintail apartment on
13 June 1st, 2009. Any objection to that?

14 **COMMISSION MEMBER B. PYLITT:** No.

15 **COMMISSION MEMBER G. DURNIL:** No.

16 **CHAIRMAN T. WHEELER:** 22, there is no
17 evidence that the Broad Leaf house was not Mr.
18 White's residence on June 1st, 2009.

19 (No response.)

20 **CHAIRMAN T. WHEELER:** No. 23, Mr. White
21 acted in accordance with his intent to abandon
22 the Pintail apartment and reside at the Broad
23 Leaf house on June 1st, 2009, by vacating the
24 Pintail apartment, moving into the Broad Leaf
25 house basement, changing his driver's license to

1 reflect the Broad Leaf address, and forwarding
2 his bills and mail to the Broad Leaf house --
3 anything?

4 **COMMISSION MEMBER G. DURNIL:** No.

5 **CHAIRMAN T. WHEELER:** 24, Mr. White changed
6 his voter address from the Pintail apartment to
7 the Broad Leaf house in November 2009.

8 *(No response.)*

9 **CHAIRMAN T. WHEELER:** 25, after June 1st,
10 2009, Mr. White did not intend to abandon the
11 Broad Leaf house until his marriage on May 28,
12 2010.

13 *(No response.)*

14 **CHAIRMAN T. WHEELER:** 26 -- there's a dash
15 or something got lost there. 26, there is no
16 evidence that Mr. White did not intend to make
17 the Overview condo his residence until after his
18 marriage on May 28, 2010, and I apologize for
19 the double negative.

20 *(No response.)*

21 **CHAIRMAN T. WHEELER:** 27, Mr. White's
22 intention not to abandon the Broad Leaf house
23 and make the Overview condo his residence until
24 after May 28, 2010, is evidenced by the fact
25 that prior to May 28, 2010, he did not move his

1 belongings into the Overview condo; he only
2 slept on the couch at the Overview condo one or
3 two times a week in accordance with his
4 agreement with Miss Quigley-White; he did not
5 change his voter's registration address for the
6 May 2010 primary election; he continued to
7 receive his mail at the Broad Leaf house; and he
8 used the Broad Leaf address on his May 11, 2010,
9 Declaration of Candidacy, his May 18, 2010,
10 Delegate Form, and his May 18, 2010, marriage
11 application. I did make one change, and that
12 was changing, quote, Michelle to Miss
13 Quigley-White. Anything on that?

14 *(No response.)*

15 **CHAIRMAN T. WHEELER:** No. 28, Mr. White's
16 residence from June 1st, 2009 until May 28,
17 2010, was at the Broad Leaf house because of his
18 immediate family, his son, resided at Broad
19 Leaf, and I removed the son's name from that.
20 Any objection to 28?

21 **COMMISSION MEMBER G. DURNIL:** No.

22 **CHAIRMAN T. WHEELER:** 29, after his
23 marriage on May 28, 2010, Mr. White intended to
24 abandon his residence at the Broad Leaf house.

25 *(No response.)*

1 **CHAIRMAN T. WHEELER:** 30, after his
2 marriage on May 28, 2010, Mr. White intended to
3 make the Overview condo his residence.

4 *(No response.)*

5 **CHAIRMAN T. WHEELER:** 31, Mr. White acted
6 in accordance with his intent to abandon the
7 Broad Leaf house and reside at the Overview
8 condo after his marriage on May 28, 2010, by
9 moving his belongings into the Overview condo,
10 forwarding his mail there, indicating the
11 Overview condo address on the June 19, 2010,
12 CAN-23, and listing the Overview condo as his
13 marital address on the May 18th, 2010 marriage
14 application.

15 *(No response.)*

16 **CHAIRMAN T. WHEELER:** No. 32, after his
17 marriage to, and I'm going to insert Miss
18 Quigley-White, on May 28, 2010, Mr. White's
19 residence was at the Overview condo because his
20 immediate family became Miss Quigley-White,
21 comma, who resided at the Overview condo.
22 Anything on 32?

23 *(No response.)*

24 **CHAIRMAN T. WHEELER:** 33, under Indiana's
25 election law, Mr. White could change his voter

1 registration from the Broad Leaf house to the
2 Overview condo up until twenty-nine days prior
3 to the 2010 general election, that is, October
4 4, 2010. Anything on that one?

5 (No response.)

6 **CHAIRMAN T. WHEELER:** So as a matter of
7 law, he had until October 4, 2010 to change his
8 voter registration. That was an editorial
9 comment. 34, Mr. White changed his voter
10 registration address from the Broad Leaf house
11 to the Overview condo on September 22nd, 2010,
12 well within the statutorily mandated time
13 period. Anything on that?

14 (No response.)

15 **CHAIRMAN T. WHEELER:** 35, Mr. White was
16 qualified to run for the office of Secretary of
17 State under I.C. section 3-8-1-1(b) because he
18 was "registered to vote in the election district
19 (he sought) to represent," namely, Indiana, "not
20 later than the deadline for filing the
21 declaration or petition of candidacy or
22 certificate of nomination," that is, July 15th,
23 2010. Anything on that?

24 (No response.)

25 **CHAIRMAN T. WHEELER:** 36, Mr. While was

1 eligible to be a candidate for the office of
2 Secretary of State in 2010. Anything on that?

3 *(No response.)*

4 **CHAIRMAN T. WHEELER:** I'll accept a motion
5 on the findings of fact and conclusions of law.

6 **COMMISSION MEMBER G. DURNIL:** So moved.

7 **CHAIRMAN T. WHEELER:** I would accept a
8 motion for purposes of discussion. Any
9 discussion on the motion?

10 *(No response.)*

11 **CHAIRMAN T. WHEELER:** All in favor, signify
12 by saying aye?

13 **THE COMMISSION:** Aye.

14 **CHAIRMAN T. WHEELER:** Those opposed, same
15 sign?

16 *(No response.)*

17 **CHAIRMAN T. WHEELER:** Motion carries 3-0.
18 There is a final order that is attached in your
19 packet. I can't find it right now. Thank you.
20 Final Order 2011-14 states, and I quote, having
21 reviewed Petitioner's Verified Petition for
22 Election Contest, hearing evidence regarding the
23 same, having adopted Findings of Fact and
24 Conclusions of Law, which are incorporated by
25 reference into this Order, the Indiana Recount

1 Commission, pursuant to I.C. 3-12-11-18(b),
2 makes the final determination that Respondent
3 Charlie White was eligible to run as a candidate
4 for Secretary of State in 2010. Therefore, the
5 relief requested in Petitioner's Verified
6 Petition for Election Contest is denied. That
7 is the proposed order, do I have a motion on the
8 order?

9 **COMMISSION MEMBER G. DURNIL:** So moved.

10 **CHAIRMAN T. WHEELER:** Second, any
11 discussion?

12 *(No response.)*

13 **CHAIRMAN T. WHEELER:** Hearing none, all in
14 favor, signify by saying aye?

15 **THE COMMISSION:** Aye.

16 **CHAIRMAN T. WHEELER:** Those opposed, same
17 sign?

18 *(No response.)*

19 **CHAIRMAN T. WHEELER:** Motion carries 3-0.

20 The commission members will be signing the order
21 and it will be circulated. The Findings of Fact
22 and Conclusions of Law will be attached.
23 Discussion from the commission members?

24 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
25 I have a nine-page written concurring opinion

1 that I will make available. I want to thank Ms.
2 Vitone. She and I spent about 10 hours on
3 Friday going through all the findings of facts
4 proposed by the parties, and the exhibits, there
5 are over 500 pages of stipulated exhibits. We
6 spent another 12 hours yesterday, until she
7 finally told me that she needed to go to bed,
8 working on whether it was appropriate to issue a
9 written opinion, and I think it's critical the
10 parties understand the reasoning behind my
11 ruling.

12 I met Mr. White in 2004 when I was on the
13 bench, and we met in a restaurant, and that was the
14 only time I have spoken to or seen Mr. White since
15 the hearing. I met Vop Osili in 2010 at a County
16 Jefferson/Jackson dinner and have not seen or
17 spoken with him since or made any political
18 contributions. So any suggestion that I had a
19 horse in this race, or that because of my political
20 affiliation, I was going to rule one way or the
21 other is pure nonsense.

22 The Chairman has made it very clear that this
23 proceeding is not about party politics. It's not
24 about Democrats or Republicans. It's not about a
25 pending criminal case, and any effort to try to

1 make that way is totally inappropriate.

2 The Indiana General Assembly has chosen to
3 couch a statute leaving a void about what a legally
4 registered voter is or isn't, references a legally
5 registered voter one statute, and the residency of
6 another. I think that in today's society, a large
7 number of resolved marriages and blended families,
8 they need to address this issue, and they need to
9 do it right away.

10 In the end, I was stuck with that statute and
11 those interpretations and my decision is based upon
12 the fact that there was not sufficient evidence
13 presented by the Petitioner. As Chairman Wheeler
14 pointed out, at the very end of a long hearing, a
15 well-respected lawyer, Doug Church's memo came to
16 light the first time.

17 The parties offered -- Respondent offered that
18 memo as Exhibit ZZ. The hearing was closed. The
19 evidence was closed. As we sit here today, there
20 were an awful lot of questions raised by Mr. Church
21 in that memo, including his finding that Mr. White
22 admitted that he did not live in the district that
23 he was serving.

24 Had Petitioner brought forth an explanation of
25 that memo or any additional evidence that Mr. White

1 concealed his residence for the purpose of
2 receiving the \$1,000 a month that he received from
3 the Fishers Council, this commissioner's vote would
4 have been different. I will make that opinion
5 available. Thank you, Mr. Chairman.

6 **CHAIRMAN T. WHEELER:** Mr. Durnil?

7 **COMMISSION MEMBER G. DURNIL:** No.

8 **CHAIRMAN T. WHEELER:** Just briefly. At the
9 beginning of this process I indicated that this
10 would be a bipartisan process. It has been a
11 bipartisan process. I think the result makes it
12 clear that it is.

13 I have certainly been a little bit distressed
14 to see the reports in the media accusing several
15 members of the commission because of political
16 contributions on both sides. My law firm made
17 political contributions to both Mr. White and
18 Mr. Osili. I did not make any contributions to
19 either individual in that race. It certainly
20 didn't affect my vote, just as Commissioner
21 Pylitt's involvement on the Democratic side didn't
22 affect his vote.

23 This is a bipartisan process. We are ruled by
24 the statutes and that's when why you see the
25 Findings of Fact and Conclusions of Law, most of

1 this was stipulated. The facts are not really in
2 question, even between the parties, nor is the law.

3 The problem here, as Commissioner Pylitt has
4 aptly discussed, is that these laws are antiquated.
5 They are -- they don't reflect our current society.
6 I have expressed concern over these laws.

7 During my five years as chairman of the
8 election commission, we heard dozens of these
9 literally, and we felt that our hands were tied
10 because of the use of the word "intent," and with
11 all due respect to the Petitioners in this case, I
12 have a little difficulty figuring how you counter
13 somebody's pure assertion of intent in this
14 particular case.

15 Since the word "intent" is used in the
16 statute, the Petitioner has to prove that Mr. White
17 did not intend to live, for example, at the Broad
18 Leaf house, did not intend for that to be his
19 residence. It's extraordinarily difficult to prove
20 that he did not intend because it goes to Mr.
21 White's state of mind, if Mr. White was going to
22 come and testify, it's nearly impossible to prove
23 the contrary, and we had a number of contests, when
24 I was chairman of the election commission, for the
25 same exact same situation.

1 We're bound by those statutes and I've got to
2 say, and the Supreme Court has made it very
3 clear -- you know, the Evan Bayh case, Evan Bayh
4 lived in Washington DC for a year and a half,
5 practiced law with the Hogan & Hartson firm, yet
6 the Indiana Supreme Court said under Indiana's law,
7 Evan Bayh remains a resident of Shirkieville,
8 because he intended to return.

9 I heard Commissioner Pylitt's call for changes
10 to the statute. I will certainly work with the
11 General Assembly to do that and encourage those
12 changes -- thus far, I've been fairly unsuccessful
13 in that regard, but will continue to ask that they
14 do that because it needs to be addressed, it is a
15 flaw in our system, and it disserves the people of
16 the State of Indiana.

17 My last comment, and I guess this is directed
18 to Mr. White, in particular, having chaired the
19 election commission for the last five years, I'm a
20 little disturbed to hear that the person who is the
21 chief election officer of the State of Indiana has
22 let himself get into this situation.

23 It is imperative on those of us who are
24 involved in administering these election laws that
25 we don't get chalk dust on us. We don't tread

1 close to the line. Mr. White, you were very close
2 to the line. I will tell you that, and I think
3 Commissioner Pylitt has reflected that. I think
4 you were treading on the line.

5 As candidate for Secretary of State, it
6 behooves at that time to understand those election
7 laws and -- and not tread on the edge. I
8 understand there was a personal situation that you
9 were dealing with -- I respect that, but you've got
10 to understand those election laws if you put
11 yourself up to be elected to that position.

12 Now that being said, the simple fact is the
13 voters of the State of Indiana had all of this
14 information in front of them when they went to the
15 polls, and they chose to elect Mr. White by a
16 whopping majority, 335,000 or so votes.

17 The Indiana Supreme Court has made it
18 absolutely clear that in a contest where you are
19 challenging a vote of that kind, the evidence has
20 to be explicit. There has to be specific evidence
21 of fraud. In the Burke case, they made that
22 absolutely clear -- that's why I started the
23 commission hearing with reading the Burke case, and
24 there is simply none of that evidence.

25 You'll see in the findings of fact there's a

1 lot of concerns related to what Mr. White did and
2 how he did it but I suspect that those would be
3 resolved in another forum. With that, if there's
4 any further comment from the commission members,
5 I'll accept a motion to adjourn?

6 **COMMISSION MEMBER G. DURNIL:** So moved.

7 **COMMISSION MEMBER B. PYLITT:** Second.

8 **CHAIRMAN T. WHEELER:** All in favor, signify
9 by saying aye.

10 **THE COMMISSION:** Aye.

11 **CHAIRMAN T. WHEELER:** Those opposed, same
12 sign?

13 *(No response.)*

14 **CHAIRMAN T. WHEELER:** Thank you very much.

15 *(At this time the proceedings were adjourned.)*

16 *(Time noted: 9:52 a.m.)*

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1 STATE OF INDIANA)
2 COUNTY OF MARION) SS:

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I, Rhonda J. Hobbs, RPR, and a Notary Public and Stenographic Reporter within and for the County of Hendricks, State of Indiana at large, do hereby certify that on the 28th day of June, 2011, I took down in stenograph notes the foregoing proceedings;

That the transcript is a full, true and correct transcript made from my stenograph notes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 15th day of July, 2011.

Rhonda J. Hobbs
NOTARY PUBLIC

My Commission Expires:
August 24, 2017
County of Residence:
Hendricks County