

INDIANA STATE RECOUNT COMMISSION

MINUTES OF THE MAY 25, 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: Bradley W. Skolnik, Recount Director; J. Bradley King, Majority Counsel; Leslie Barnes, Minority Counsel

OTHERS ATTENDING: Mr. Carl Brizzi; Ms. Karen Celestino-Horseman; Mr. William Groth; Ms. Anita Woudenberg.

1. CALL TO ORDER:

The chair called the meeting of the Commission to order at 10: 00 a.m. at Indiana Government Center South, Conference Center Room C, 402 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:

Beginning on page 2, and in all references throughout the document, replace “Durnill” with “Durnil”.

Page 2, line 10, replace “INDIANA ELECTION DIVISION” with “RECOUNT COMMISSION”.

Page 2, line 11, replace “Co-Legal Counsel” with “Minority Counsel”.

Page 2, line 12, replace “Co-Director” with “Majority Counsel”.

Page 6, line 11, replace “Kieffer” with “Keefer”.

Page 20, line 21, after “legislature” insert “.”.

Page 24, line 6, replace “(D)” with “(d)”.

Page 32, line 25, replace “wheeler” with “Wheeler”.

Page 42, line 13, replace “Kieffer” with “Keefer”.

Page 48, line 12, replace “writes heard” with “rides herd”.

Page 48, line 14, replace “write heard” with “ride herd”.

Page 58, line 20, replace “precludes” with “preclude”.

Page 64, line 3, delete “(Phonetic)”.

Page 79, line 8, replace “Miss” with “Ms.”

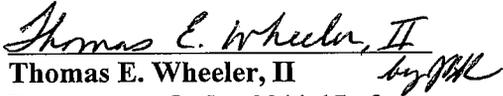
Page 79, replace lines 15 through 18 with “which address matters, such as ex parte communications, which the Commission does not have specific authority to address in its guidelines and to exercise its”.

Page 81, line 13, replace “Miss” with “Ms.”

3. ADJOURNMENT:

There being no further business before the Commission, the Commission adjourned at 1:33 p.m.

APPROVED:


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

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INDIANA RECOUNT COMMISSION
PUBLIC SESSION NOTICE

Conducted On: Wednesday, May 25, 2011

Location: Indiana Government Center South
Conference Center, Room C
402 West Washington Street
Indianapolis, Indiana 46204

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

Connor + Associates, Inc.
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Indianapolis, IN 46282
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A P P E A R A N C E S

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INDIANA RECOUNT COMMISSION:

- Mr. Thomas Wheeler - Chairman
- Mr. Bernard L. Pylitt - Commission Member
- Mr. Gordon Durnill - Commission Member
- Mr. Bradley Skolnik - Recount Director

INDIANA ELECTION DIVISION STAFF:

- Ms. Leslie Barnes - Co-Legal Counsel
- Mr. Bradley King - Co-Director

1 **CHAIRMAN T. WHEELER:** Good morning. I'm
2 going to call the meeting of the Indiana Recount
3 Commission to order. The meeting has been set
4 for Wednesday, May 25th at 10:00 a.m. We got
5 started slightly late because FSSA rolled a
6 little long in their presentation. I note that
7 I have a quorum of the members, both
8 Commissioner Durnill and Commissioner Pylitt are
9 here, as I am.

10 We are addressing basically one specific
11 issue. As you'll recall from the last meeting, we
12 gave the parties a period of time to resolve
13 discovery disputes, file preliminary contentions.
14 As I understand it, the parties have filed
15 preliminary contentions in the matter. However,
16 there remains the issue of some matters of
17 discovery; is that correct?

18 **MR. W. GROTH:** Stipulations.

19 **CHAIRMAN T. WHEELER:** Stipulations, I'm
20 sorry. With respect to the discovery matters,
21 I'm going to run through things that I think are
22 issues between the two of you guys, and you guys
23 tell me. 1) subpoena for a copy of the most
24 release on all records regarding occupancy of
25 6994 Pintail Drive, Apartment 107, Fishers,

1 Indiana for the years 2008, 2009, and 2010; is
2 that correct?

3 MS. A. WOUDENBERG: Yes.

4 CHAIRMAN T. WHEELER: And you dispute that?

5 MS. A. WOUDENBERG: Yes.

6 CHAIRMAN T. WHEELER: Subpoena of all
7 utility bills relating to 13086 Overview Drive,
8 Fishers, Indiana for 2010 -- 2009 and 2010. You
9 dispute that?

10 MS. A. WOUDENBERG: Yes.

11 CHAIRMAN T. WHEELER: Subpoena for the
12 deposition of Charlie White. That's at issue
13 between the two?

14 MS. A. WOUDENBERG: Uh-huh.

15 CHAIRMAN T. WHEELER: Subpoena for the
16 deposition of Nicole White-Mills. That's in
17 dispute between the parties?

18 MS. A. WOUDENBERG: Yes.

19 CHAIRMAN T. WHEELER: Subpoena for the
20 deposition of Michelle White. That's in dispute
21 between the parties?

22 MS. A. WOUDENBERG: Yes.

23 CHAIRMAN T. WHEELER: And then -- and those
24 are coming out of the initial discovery
25 requests. You had 15 discovery requests. It is

1 my understanding on May 17th, the Petitioners
2 asked for two additional -- one additional
3 deposition subpoena and one additional discovery
4 request.

5 As I understand it, on the May 17th request,
6 the Petitioners asked for the deposition of Nicole
7 Mills' current husband; is that correct?

8 **MS. K. CELESTINO-HORSEMAN:** Yes.

9 **CHAIRMAN T. WHEELER:** And you object to
10 that?

11 **MS. A. WOUDEBERG:** Yes.

12 **CHAIRMAN T. WHEELER:** And as I understand
13 it, in that same e-mail, there was a request for
14 leases that Mr. White entered into for an
15 apartment located at Pintail Drive or Fishers
16 Lane and the Overview Drive condominium, and
17 that's a dispute between the parties?

18 **MS. K. CELESTINO-HORSEMAN:** Uh-huh.

19 **MS. A. WOUDEBERG:** Uh-huh.

20 **CHAIRMAN T. WHEELER:** Is that all the --
21 are those all of the discovery disputes between
22 the two?

23 **MS. K. CELESTINO-HORSEMAN:** We submitted --
24 in our reply, we just went ahead and put
25 everything in there. There's some -- it had

1 some additional folks that we just went ahead
2 and added that were identified.

3 **CHAIRMAN T. WHEELER:** So these are this
4 Sean Keefer, Mark Snelson, and Robert Chilton?

5 **MS. K. CELESTINO-HORSEMAN:** Yes.

6 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
7 if I may, can you identify who these three
8 people are and what possible relevance they
9 might have to...

10 **MS. K. CELESTINO-HORSEMAN:** Sure. Shawn
11 Kieffer is the campaign manager of Charlie White
12 during the time in question and was the deputy
13 secretary -- deputy secretary of state or chief
14 deputy, whatever, in the office -- when Mr.
15 White took office. Robert Chilton lives on --
16 as best as I can tell, lives on Broad Leaf, and
17 I think for Dr. Snelson.

18 Now all three are identified in the
19 indictments as witnesses so we -- and we have not
20 talked with them, so we're not for certain what
21 they're going to say or whose witnesses they might
22 be, but we thought in the interest of putting
23 everything out there, just to go ahead and list
24 everything that we know of at this time.

25 **CHAIRMAN T. WHEELER:** So you have no idea

1 if they even have relevant information. You're
2 just throwing them out there?

3 **MS. K. CELESTINO-HORSEMAN:** They may --
4 they may not. Mr. -- I mean, they may not.
5 They may say -- all three of them may say I have
6 no idea, in which case then, it's a very quick
7 deposition and we're done.

8 **COMMISSION MEMBER B. PYLITT:** If the
9 Commission were to grant your request to allow
10 those three depositions, would it be your intent
11 to contact these people to see if they have any
12 relevant information?

13 **MS. K. CELESTINO-HORSEMAN:** Certainly. You
14 know, and part of the other problem here is that
15 we haven't sat for an exchange of witness
16 exhibits so we don't know -- like I said, I
17 don't know whose benefit these witnesses might
18 testify to, so if they're going to testify to
19 the benefit of Mr. White, then we would like to
20 take their deposition, but I don't know.

21 **CHAIRMAN T. WHEELER:** All right. And I
22 think that'll come to a discussion that we're
23 going to have in a couple of minutes. Let me --
24 let me see if I can kind of cut to the chase on
25 two of the things. As I read the statute, the

1 Commission has the ability to issue discovery
2 orders and subpoenas. I'll break your two
3 requests.

4 You talk about subpoenaing some of these
5 records. I guess my inclination is with respect to
6 the records, which would bring the leases, utility
7 bills, I'm certainly inclined to go ahead and issue
8 a discovery order permitting those documents.

9 I'm going to have a subpoena be issued from
10 this commission for those documents because I think
11 that's -- that's necessary in order to prepare the
12 case. I'm trying to cut down on things a little
13 bit and I'm certainly open to comments by the other
14 commissioners.

15 **COMMISSION MEMBER B. PYLITT:** I -- I tend
16 to agree with you.

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

18 **CHAIRMAN T. WHEELER:** All right. With
19 that, I'll accept a motion on the issuing a
20 discovery order directing the Director of the
21 Recount Commission to issue a subpoena for a
22 copy of the most recent lease and all records
23 regarding occupancy of 6994 Pintail Drive,
24 Apartment 107, Fishers, Indiana for the years
25 2008, 2009, 2010, and the Overview Drive

1 condominium, as well as a subpoena of all
2 utility bills to 13086 Overview Drive in
3 Fishers, Indiana for 2009 and 2010.

4 **COMMISSION MEMBER G. DURNILL:** So moved.

5 **CHAIRMAN T. WHEELER:** Do I have a second?

6 **COMMISSION MEMBER B. PYLITT:** I have point
7 of clarification. On the utility bills, that
8 these also include the Pintail apartment.

9 **CHAIRMAN T. WHEELER:** As well, all right.
10 Do you want...

11 **COMMISSION MEMBER B. PYLITT:** Can I just
12 ask counsel for the Petitioners the question?
13 Your reply that was filed said that you were
14 contemplating asking for a subpoena that Mr.
15 White produce these, and if not...

16 **MS. K. CELESTINO-HORSEMAN:** If he -- if --
17 obviously, that would be the easiest course, if
18 he has them, to produce them, and if he doesn't
19 have them, then we'll go to a third party or the
20 order to give a consent, whatever is the easiest
21 most expeditious.

22 **COMMISSION MEMBER B. PYLITT:** And I guess
23 my question to both of you is: Are we
24 subpoenaing these from the owner or the
25 landlords, the utilities, rather than Mr. White?

1 It may be cleaner. I know there's been a lot of
2 discussion about the Fifth Amendment and Mr.
3 White's rights. It seems that I'd rather have
4 the original business record from the company
5 than Mr. White.

6 **CHAIRMAN T. WHEELER:** I hate to -- I hate
7 to practice law from parties, but it strikes me
8 that that's a much cleaner thing, particularly,
9 if you're going to admit these documents. As I
10 understand it, would you accept a friendly
11 amendment to your motion?

12 **COMMISSION MEMBER G. DURNILL:** Yes.

13 **COMMISSION MEMBER B. PYLITT:** And I second
14 it.

15 **CHAIRMAN T. WHEELER:** That a subpoena be
16 directed from the -- Mr. Skolnik to -- in this
17 case. Do you know who the utility bills would
18 be; who we should direct the subpoena to?

19 **MS. K. CELESTINO-HORSEMAN:** We can find
20 that out.

21 **CHAIRMAN T. WHEELER:** All right. Within 24
22 hours would you provide that information to
23 Director of the Recount Commission. He'll place
24 them on the subpoena with respect to both
25 properties, as well as the utilities.

1 **COMMISSION MEMBER B. PYLITT:** Utilities.

2 **CHAIRMAN T. WHEELER:** Now, let me ask an
3 additional question. The Overview Drive
4 condominium, is that your understanding it was a
5 leased condominium?

6 **MS. K. CELESTINO-HORSEMAN:** It's our
7 understanding that there was a lease that was
8 entered into sometime in 2009.

9 **CHAIRMAN T. WHEELER:** Okay, fair enough.
10 So you'll provide that information within 24
11 hours?

12 **MS. K. CELESTINO-HORSEMAN:** Well, and --
13 and may I -- I know for the Overview Drive, I
14 have a copy of the warranty deed which has -- it
15 was signed by a Pierce Management Company, and
16 then there is the owner of record, but the owner
17 of record, which is 131 Townhomes, LLC, I don't
18 find in the Secretary of State's database, so as
19 to how to contact, so if we have a problem as to
20 who should be contacted on that, I'll -- I'll
21 even go over there and ask.

22 **CHAIRMAN T. WHEELER:** If you can find that
23 out and give it to the director. The director
24 understands what we're looking for, I think,
25 what the motion is, Director Skolnik?

1 **MR. B. SKOLNIK:** Yes.

2 **CHAIRMAN T. WHEELER:** I've got a motion
3 that's been made and seconded. Any further
4 discussion?

5 *(No response.)*

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

8 **THE COMMISSION:** Aye.

9 **CHAIRMAN T. WHEELER:** Those opposed, same
10 sign?

11 *(No response.)*

12 **CHAIRMAN T. WHEELER:** Motion carries, all
13 right. So the sole issue that we have in front
14 of us is the propriety of conducting discovery
15 depositions in a recount commission proceeding.
16 I would note that the Respondent has filed an
17 objection to that pursuant to our prior
18 direction. The Petitioner has filed a response,
19 which I believe that Commissioner Pylitt has
20 read and I have read as well, and we have that
21 information before us.

22 What we're going to do is give each party 15
23 minutes to present their side. As the moving
24 party, you may kind of split your time, if you
25 like, into initial presentation and then rebuttal,

1 if you'd like, and let me -- you and I know each
2 other, but could you introduce yourself for the
3 record?

4 **MS. A. WOUDEBERG:** Certainly. My name is
5 Anita Woudenberg.

6 **CHAIRMAN T. WHEELER:** And Miss Woudenberg
7 is here. Mr. Bopp indicated that he had a
8 medical procedure this morning. Unfortunately,
9 as you can see, the facilities here are a little
10 bit difficult to get scheduled, and as a
11 consequence, we were forced to keep it on this
12 morning, and I appreciate your willingness to
13 come in Mr. Bopp's stead. Offer him my best
14 wishes, and again, my apology that we couldn't
15 accommodate his request to move the hearing.

16 Let me add one additional thing. I want to
17 make a notation for the record. I don't think it's
18 a secret to everybody that the Indiana Supreme
19 Court in an order dated May 20th, 2001 denied
20 the --

21 **COMMISSION MEMBER B. PYLITT:** 2011.

22 **CHAIRMAN T. WHEELER:** Didn't Barack Obama
23 write 2008?

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

25 **CHAIRMAN T. WHEELER:** At least I was closer

1 by a year. On May 20th, 2011, they issued an
2 order denying the Respondent's petition for
3 review of Judge Rosenberg's decision. They also
4 denied the Commission's request.

5 Very frankly, we had joined in the appeal
6 because we had hoped that the Supreme Court would
7 provide us some direction. And in fact, I know we
8 have representatives of the Attorney General's
9 office here, we had hoped -- we had -- I think the
10 Commission had joined in the appeal for the purpose
11 of asking the Supreme Court to provide us some
12 direction on issues like this specific issue; do
13 you get discovery in this; what's the nature of the
14 proceedings and what's the latest standard?

15 Unfortunately, the Indiana Supreme Court
16 declined to do that and indicated that they were
17 much interested, and I quote, they were
18 interested -- and I quote, in light of the benefits
19 to be obtained by a prompt resolution of all
20 matters now pending, close quote.

21 So with that direction from the Indiana
22 Supreme Court, we don't have any direction, other
23 than we need to move quickly, and I think that goes
24 to what Judge Rosenberg has said.

25 So with that, you've got 15 minutes. Would

1 you like to reserve time or divide your time?

2 **MS. A. WOUDENBERG:** Yes, please, if I could
3 reserve five minutes of my time.

4 **CHAIRMAN T. WHEELER:** Yes, ma'am. I
5 designate Commissioner Pylitt as the official
6 timekeeper. All right.

7 **MS. A. WOUDENBERG:** Thank you,
8 Commissioners, for your time this morning. As
9 was indicated in our response to the discovery
10 request that was provided to you, it was our
11 position that the Commission's powers to
12 initiate -- to authorize depositions is outside
13 of the scope of the statutes that governs this
14 commission; specifically, Indiana Code 3-12-10-5
15 indicates that the state recount commission may,
16 to comply with Section 4 of this chapter:
17 Impound, take possession of, transport or
18 otherwise protect election records. It could
19 issue subpoenas, discovery orders, and
20 protective orders, and the list continues.

21 Significant to that language is this -- to
22 comply with Section 4, which refers to 3-12-10-4,
23 which indicates that the state recount commission
24 shall conduct contest proceedings. It is our
25 position that these contest proceedings do not

1 include full on discovery, but rather, contemplate
2 a hearing conducted by the recount commission to
3 determine whether or not there is, as in this case,
4 an eligibility problem with Secretary White's
5 candidacy.

6 **CHAIRMAN T. WHEELER:** Let me ask you a
7 quick question. So as I understand -- I think I
8 know where you're going, your position is you
9 don't get to do prehearing discovery but you
10 don't have any objection with subpoenas being
11 issued for these same individuals to testify at
12 the hearing itself?

13 **MS. A. WOUDEBERG:** That is absolutely
14 correct, absolutely, and indeed -- and in terms
15 of documents, you can, obviously, subpoena them
16 duces tecum to attend that hearing with any
17 documents that you think that any party would
18 believe would be relevant for that testimony
19 before the commission.

20 **COMMISSION MEMBER B. PYLITT:** Why then do
21 the trial rules in 28(f) say that discovery
22 proceedings before administrative agencies
23 provide that any party shall be entitled to use
24 discovery Rules 26 through 37, which includes
25 depositions.

1 **MS. A. WOUDEMBERG:** Well, I believe that
2 Trial Rule 28 is directed to administrative
3 agencies that I believe the commission is
4 excluded from being included in that definition.

5 **COMMISSION MEMBER B. PYLITT:** We're
6 excluded under AOPA. Where does it say we're
7 excluded from being an administrative agency?

8 **MS. A. WOUDEMBERG:** It does not say that in
9 Trial Rule 28, no. I would -- I would just
10 point this commission to read the Statute
11 3-12-10-16, which expressly indicates that the
12 Administrative Operating Procedures Act does not
13 apply to the state recount commission.

14 And moreover, if you look at the -- the way
15 the rules are set up for this commission to handle
16 contest procedures, it does not appear that the
17 legislative intent of this recount commission in
18 conducting contest proceedings was designed to
19 allow for compliance with the trial rules, as
20 articulated, in 2_ -- Rule 26 through 37.

21 **COMMISSION MEMBER B. PYLITT:** So in the
22 response filed by the Petitioner yesterday, we
23 attached order of the Indiana Recount
24 Commission, June 18, 1992, ordering the
25 depositions, subpoenas and depositions in

1 congressional dispute, that order was illegal?

2 **MS. A. WOUDENBERG:** Yes. I would -- I
3 would contend it is, at least as the statutes
4 are written today.

5 **CHAIRMAN T. WHEELER:** It isn't the fact --
6 the Indiana Supreme Court Walpole address that
7 specific issue with respect to schools, and
8 said, look, the administrative agency, in terms
9 of 28(f), No. 1, generally applies to AOPA sorts
10 of administrative agencies, No. 1; and No. 2,
11 they also said very specifically it applies when
12 the agency is acting, quote, as a regulator
13 setting rates or issuing licenses or otherwise
14 affecting members of the public, and that that
15 coming from the Walpole case.

16 And I guess my concern is that with respect to
17 the order that was attached, and I believe there's
18 probably been a fairly diligent review of the
19 recount commission, and that was the only order for
20 depositions that anybody could come up with,
21 certainly, given the date of that order, which
22 was -- does anybody have that?

23 **COMMISSION MEMBER G. DURNILL:** 1992.

24 **COMMISSION MEMBER B. PYLITT:** 1992.

25 **CHAIRMAN T. WHEELER:** It's 1992. I don't

1 think the statutes changed, but I think do think
2 the Indiana Supreme Court decision, at least
3 from my standpoint, in the Walpole case in 1994,
4 was issued after that, particularly, from this
5 recount commission.

6 So I guess I'm going to disagree with your
7 contention that the recount commission order was
8 illegal. I think it was prior to the Walpole case,
9 and therefore, felt, given the Supreme Court's
10 action to the Walpole case, so I guess I'm
11 disagreeing with you in that regard.

12 But could you address the impact of the
13 Walpole analysis on this particular case and where
14 we are at this point?

15 **MS. A. WOUDENBERG:** Certainly. And I think
16 what is most significant from the Walpole case
17 is the discussion that it has regarding
18 legislative intent, in looking at what was
19 before then, which was the Tenure Act. And the
20 Tenure Act, as I'm sure the chairman has
21 indicated, was not, or rather, let me -- let me
22 back up a little here.

23 The entity that was being challenged or was
24 being -- the school board that was reviewing this
25 matter was not subject to the administrative

1 operating procedures under AOPA.

2 **CHAIRMAN T. WHEELER:** Same as us?

3 **MS. A. WOUDENBERG:** Correct.

4 **CHAIRMAN T. WHEELER:** By statute, we're
5 not?

6 **MS. A. WOUDENBERG:** Correct. And in
7 confirming that, what was significant to them
8 was looking at the statutes that establish the
9 procedures for the school board. There was a
10 time line of maximum 40 days to resolve the
11 matter, and obviously, I'm inclined with the
12 trial rules, 40 days is surely not enough
13 opportunity to have the full-blown discovery
14 that one would anticipate, in terms of
15 interrogatories, request for documents,
16 depositions, and then moving forward there to
17 the final hearing for trial.

18 And I think we have a similar situation here
19 where there are very short deadlines that are
20 contemplated in contest proceedings that have been
21 established by our legislature For example, in
22 3-12-11, there are very short deadlines given,
23 December 20th -- of course, the date itself may not
24 be relevant now, but it's indicative of the intent
25 of the legislature to have these proceedings move

1 expeditiously and resolved very promptly.

2 **CHAIRMAN T. WHEELER:** And it's not just the
3 legislature. In fact, that's what Judge
4 Rosenberg -- in his order, which was appealed by
5 everybody, Judge Rosenberg made it very clear
6 that he was upset that this was not moving as
7 expeditiously as he wanted, and in fact, set
8 some very specific deadlines for us; is that
9 correct?

10 **MS. A. WOUDENBERG:** That is correct, and
11 indeed, the depositions that have been requested
12 here, since we're not certain what it is exactly
13 they will be divulging, may in turn open up our
14 desire to have further depositions of additional
15 people that have been revealed through the
16 process of those depositions. And again --

17 **CHAIRMAN T. WHEELER:** Have you guys
18 discussed that issue, I mean -- Petitioner's
19 counsel said, you know, they just added these
20 four new people or three new people that
21 Commissioner Pylitt asked about and they
22 indicated there may be additional people once
23 there's a witness and exhibit list exchanged.
24 Have you guys discussed potential witnesses or
25 who else might be added to this list of

1 discovery?

2 **MS. A. WOUDEBERG:** We have not at this
3 point. Obviously, if we were discussing a list
4 of witnesses for the hearing itself, we would,
5 obviously, be amenable to that, but at this
6 juncture, for purposes of a broad -- opening the
7 door for a broad discovery, our position is that
8 we would object to those witnesses to be
9 deposed.

10 And I think, moreover, a consideration is, of
11 course, we do not represent these individuals
12 either. So we can only assert what we believe is
13 proper for this commission to do, and of course,
14 what is in the interest of our client.

15 **COMMISSION MEMBER B. PYLITT:** I have an
16 interesting question for you. Since I'm keeping
17 track of the time, I'll add your time back in.
18 There is some discussion or request to depose
19 Mr. White -- a proposal, if your side; in other
20 words, maybe Mr. Bopp, but if you all would
21 stipulate to -- that Mr. White would take the
22 Fifth Amendment and reserve his rights and
23 forego trying to ask for taking his deposition;
24 do you have a response to that -- I hate to put
25 you on the spot but...

1 **MS. A. WOUDENBERG:** And the difficulty with
2 that is just having seen this suggestion, I --

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

4 **MS. A. WOUDENBERG:** We're not in a position
5 and have not had an opportunity to dialogue with
6 the criminal attorney that represents Charlie
7 White to determine, --

8 **COMMISSION MEMBER B. PYLITT:** I appreciate
9 that.

10 **MS. A. WOUDENBERG:** -- you know, how we --
11 how we would handle that.

12 **CHAIRMAN T. WHEELER:** So at this point in
13 time, I guess for our purposes, that's kind of
14 off the table, and we need to just address
15 whether or not we're going to order his
16 deposition take place, or --

17 **MS. A. WOUDENBERG:** Yes.

18 **CHAIRMAN T. WHEELER:** -- maybe you guys can
19 work out some alternative, and that's -- that's
20 where we are right now?

21 **MS. A. WOUDENBERG:** That's correct.

22 **COMMISSION MEMBER B. PYLITT:** You have 4
23 more minutes before your five so I apologize for
24 interrupting.

25 **MS. A. WOUDENBERG:** I believe -- I believe

1 I've communicated what it is that our position
2 is in two of these statutes that do govern
3 contest proceedings, reflecting a short window
4 of time to get these matters resolved
5 expeditiously, and indeed, there is actually in
6 the statute, if you look at 3-12-11-17(D), this
7 commission could actually have a contest
8 proceeding within 3 days of granting that
9 contest so...

10 **CHAIRMAN T. WHEELER:** But the core of your
11 argument is this is -- this is supposed to be an
12 expeditious legal -- it grants in circuit court
13 jurisdiction to force us to act expeditiously,
14 if we're not acting expeditiously, which is in
15 fact has taken place in this case; correct?

16 **MS. A. WOUDEBERG:** That is correct.

17 **CHAIRMAN T. WHEELER:** And -- and you
18 believe that that falls along the lines of what
19 the Supreme Court looked at in the Walpole case
20 and you find that there was no right to
21 discovery during a teacher termination
22 proceeding?

23 **MS. A. WOUDEBERG:** Correct.

24 **CHAIRMAN T. WHEELER:** And the teacher
25 termination proceeding, I guess, would

1 involve -- we're both talking about people
2 losing their jobs; right -- your client, whether
3 he loses his job as Secretary of State, a
4 teacher would lose their tenured teaching
5 position, so it's a significant impairment on
6 the individual's...

7 **MS. A. WOUDENBERG:** That's correct.

8 **COMMISSION MEMBER B. PYLITT:** You weren't
9 here at the last hearing, but the question came
10 up about how much time should we set aside for
11 this hearing, and I think it was my
12 recommendation that each side have a half day.
13 The Chair made it pretty clear that if one side
14 is consuming one side's cross-examination, that
15 he would cut off that party.

16 As an experienced trial lawyer, you'll agree
17 with me that if depositions are taken, and I'm not
18 asking you to commit to the list here, but that
19 certainly will expedite and help us resolve this
20 matter one day to hear it -- I mean, I -- I don't
21 want to sit here for three days and listen to
22 depositions when there's some pretty narrow issues
23 that we have to make a decision on.

24 **MS. A. WOUDENBERG:** Well, and I -- and I
25 think you've hit on something there with the

1 fact that these are narrow issues. I do believe
2 that this matter can be resolved simply by
3 having that hearing, by calling those witnesses
4 at that hearing, and that would adequately
5 address those, or at least, you know, everyone
6 believes, the parties believe would address
7 those issues, and I think would be sufficient.

8 **CHAIRMAN T. WHEELER:** In a way, that, of
9 course is -- rather than simply take depositions
10 of people, and you don't what they're going to
11 say, you're going to talk with people and find
12 out what they're going to say and see if they
13 have relevant information.

14 **MS. A. WOUDEBERG:** Certainly.

15 **COMMISSION MEMBER B. PYLITT:** Thank you.

16 **CHAIRMAN T. WHEELER:** All right.

17 **COMMISSION MEMBER B. PYLITT:** I have one
18 question before you get -- I've already started
19 by asking the questions. Nicole Mills is the
20 ex-wife of Charlie White; correct?

21 **MS. K. CELESTINO-HORSEMAN:** Yes.

22 **COMMISSION MEMBER B. PYLITT:** And you want
23 to depose her current husband, is that -- he's
24 listed as No. 2 here in the summary of...

25 **MS. K. CELESTINO-HORSEMAN:** Yes, that is

1 correct.

2 **COMMISSION MEMBER B. PYLITT:** And what
3 possible information could that person offer
4 that Nicole, Michelle, Mr. White, and all these
5 documents can't offer other than hearsay?

6 **MS. K. CELESTINO-HORSEMAN:** Well, Mr.
7 Mills, we do not know whether he was residing in
8 the home or not. Mr. Mills is -- does not share
9 a child with Charlie White, is not dependent
10 upon Charlie White for child support or any
11 other benefits for his child. He has no
12 incentive to do anything but tell the truth. So
13 we just feel like that presents a potential
14 objective factual relationship.

15 **COMMISSION MEMBER B. PYLITT:** So you think
16 Nicole Mills, because she's worried about
17 getting child support, maybe Mr. White happens
18 to -- is going to lie and say that Mr. White was
19 living there with her current husband and --

20 **MS. K. CELESTINO-HORSEMAN:** I don't --

21 **COMMISSION MEMBER B. PYLITT:** -- all of his
22 kids and...

23 **MS. K. CELESTINO-HORSEMAN:** I don't know.
24 As a litigator -- as you know, as a litigator,
25 you have to consider all possibilities, and so

1 if you can take your -- if you think that you
2 may have a problem with evidence -- I mean, Mr.
3 White has stated to the news media in an
4 interview he gave in March that both his wife
5 and Nicole would come out and talk about things
6 in his favor.

7 Now sitting here today, we have to presume
8 that is what is going to happen. I know people
9 don't want us to talk to Charlie White but -- and
10 we're willing to waive the deposition part of it
11 and call him to testify at the hearing itself. The
12 Walpole case in no way --

13 **COMMISSION MEMBER B. PYLITT:** Okay. Well,
14 let's -- let's --

15 **MS. K. CELESTINO-HORSEMAN:** I'm sorry.

16 **COMMISSION MEMBER B. PYLITT:** I'll -- I'll
17 let you make your argument.

18 **MS. K. CELESTINO-HORSEMAN:** Okay.

19 **COMMISSION MEMBER B. PYLITT:** Let's talk
20 about -- counsel, are they willing to accept
21 your proposal, that they stipulate that he'll
22 take the Fifth in the deposition. They're not
23 in a position today to give you that. We're
24 coming back here every other day, I don't think,
25 the Chairman is, to talk about every deposition

1 and every document. Is it your intent -- let's
2 take that as a no, that they're not willing to
3 stipulate, or they're certainly not willing to
4 stipulate to it right now, and if today, this
5 morning gives you time to ask for depositions,
6 are you asking for the deposition of Mr. White?

7 **MS. K. CELESTINO-HORSEMAN:** Absolutely, if
8 they're not going to be take that. However, I
9 do think that there is a solution to that. Brad
10 Skolnik the recount director and in the past has
11 been given the authority to, as I understand...

12 **COMMISSION MEMBER B. PYLITT:** I understand
13 that argument. Okay, I'll let you go ahead and
14 make your argument.

15 **MS. K. CELESTINO-HORSEMAN:** Okay.

16 **THE COMMISSION:** And the time to start
17 and...

18 **MS. K. CELESTINO-HORSEMAN:** Well, and I was
19 just going to say he has the discretion. He's
20 an experienced counsel. Certainly, he can
21 handle it.

22 **CHAIRMAN T. WHEELER:** I think -- I think
23 you answered -- the Commissioner's question was
24 simply, do you want Charlie White's deposition?
25 At this point, the answer yes?

1 **MS. K. CELESTINO-HORSEMAN:** Yes.

2 **COMMISSION MEMBER B. PYLITT:** Yes, in light
3 of their...

4 **MS. K. CELESTINO-HORSEMAN:** In light of
5 their response.

6 **CHAIRMAN T. WHEELER:** Okay.

7 **MS. K. CELESTINO-HORSEMAN:** If I have to
8 decide it right now -- now later, will I decide
9 to call him if they come back to us and say we
10 agree with your situation and we can work it
11 out, then no, we won't answer today.

12 Walpole is not applicable to the present
13 situation because Walpole stands for the
14 proposition that when there is a ministerial
15 proceeding, Rule 28(f) of the trial rules does not
16 apply, so there is no discovery.

17 **CHAIRMAN T. WHEELER:** What's a -- what's a
18 ministerial proceeding?

19 **MS. K. CELESTINO-HORSEMAN:** A ministerial
20 proceeding is a proceeding such as in Walpole
21 where they said it was a managerial decision as
22 to whether the school board was going to fire
23 this teacher under the contract. Now if the
24 teacher --

25 **CHAIRMAN T. WHEELER:** But the teacher lost

1 the job?

2 **MS. K. CELESTINO-HORSEMAN:** The teacher
3 lost the job, but the teacher wasn't without
4 recourse.

5 **CHAIRMAN T. WHEELER:** But the -- but the
6 ministerial portion of the school board's action
7 in this case was firing the teacher; correct,
8 and Walpole said that's -- that's like an HR
9 function; right?

10 **MS. K. CELESTINO-HORSEMAN:** So human --
11 yeah, a human resources function and there's no
12 public interest. That's not the case here.

13 **CHAIRMAN T. WHEELER:** I don't know that
14 they said there's no public interest. There's
15 no public interest in who serves as the teacher?

16 **MS. K. CELESTINO-HORSEMAN:** There's no
17 public -- they say there was no issue in public
18 interest in Walpole, and that was one of the
19 reasons why they found that it was ministerial.
20 What they -- in this case, obviously, there is a
21 huge public interest in determining --

22 **CHAIRMAN T. WHEELER:** All right. Let me --
23 let me -- let me go back. A ministerial, I want
24 to -- explain to me why -- explain to me why
25 this is not a ministerial function of the State

1 of Indiana, all right? I -- I spent five years
2 as the chairman of the Election Commission, and
3 we determined as a routine matter who sat on the
4 ballot and who didn't. I think Mr. Groth was
5 probably in front of us on more than one
6 occasion. I know Mr. Bopp's office on who was
7 on the ballot, and that's -- that's simply what
8 you're asking in this case; right, as to whether
9 or not Mr. White should have been the ballot;
10 correct?

11 **MS. K. CELESTINO-HORSEMAN:** That is whether
12 he should be allowed to be in office, yes,
13 but --

14 **CHAIRMAN T. WHEELER:** The issue was whether
15 he was properly on the ballot; correct?

16 **MS. K. CELESTINO-HORSEMAN:** And whether
17 he's qualified to take office, whether he's
18 eligible to be in office, whether -- and -- and
19 part of that is being on the ballot.

20 **COMMISSION MEMBER B. PYLITT:** Well, break
21 that -- break that into two segments.

22 **MS. K. CELESTINO-HORSEMAN:** Yes.

23 **COMMISSION MEMBER B. PYLITT:** I'm not a
24 very smart guy. I go a little slow. Mr.
25 wheeler, the Chairman's question is: Is it your

1 position that Mr. White should not have been on
2 the ballot -- yes or no?

3 **MS. K. CELESTINO-HORSEMAN:** Yes.

4 **THE COMMISSION:** Yes?

5 **MS. K. CELESTINO-HORSEMAN:** Yeah, that's
6 part of our position.

7 **CHAIRMAN T. WHEELER:** Now why is that --
8 why is that any less than a ministerial function
9 than the school board's decision to terminate
10 that teacher?

11 **MS. K. CELESTINO-HORSEMAN:** Well, for one
12 thing, when you have the two teacher termination
13 going on there, the public's interest is not
14 that great, and then once the teacher is
15 terminated terms, the teacher can then turn back
16 around, and under the terms of the contract,
17 bring an action and has recourse.

18 In this particular situation, it's not a case
19 of firing someone because they're not qualified or
20 perform -- qualified, in terms of they lied on
21 their resume or they're not performing the job
22 properly. What we're talking about is protecting
23 the integrity of the electoral system.

24 **CHAIRMAN T. WHEELER:** I understand that.
25 Don't you have the same review -- in fact,

1 you've already exercised your right of review at
2 least once with Judge Rosenberg; correct -- is
3 that the exact same right of review that a
4 teacher would have?

5 **MS. K. CELESTINO-HORSEMAN:** No.

6 **CHAIRMAN T. WHEELER:** Why not?

7 **MS. K. CELESTINO-HORSEMAN:** I mean, A
8 teacher can also get into like breach of
9 contract and additional damages and all that,
10 but that -- that review process has nothing to
11 do with it.

12 **CHAIRMAN T. WHEELER:** I thought you just
13 said -- I thought you were -- that was your
14 distinguishing factor. You told me that the
15 teacher has the ability to seek review of the
16 school board's decision and...

17 **MS. K. CELESTINO-HORSEMAN:** I said that the
18 teacher can -- has further relief.

19 **CHAIRMAN T. WHEELER:** Right, and they do.
20 They have the right of review, according to the
21 Teacher Tenure Act, you agree with me; correct?

22 **MS. K. CELESTINO-HORSEMAN:** But to
23 analogize, Charlie White's position to being
24 that of a teacher and in a private contract
25 study.

1 **CHAIRMAN T. WHEELER:** It's not -- it's
2 not -- hold on. A teacher is a public employee,
3 you would agree with me; correct?

4 **MS. K. CELESTINO-HORSEMAN:** A teacher is a
5 public employee as well.

6 **CHAIRMAN T. WHEELER:** The Indiana State
7 Teacher's Association.

8 **MS. K. CELESTINO-HORSEMAN:** And -- but it's
9 a local school board. That's the other part of
10 this.

11 **CHAIRMAN T. WHEELER:** But they're a public
12 employee, just like Mr. White is a public
13 employee; correct?

14 **MS. K. CELESTINO-HORSEMAN:** If I could
15 present the whole argument, that would probably
16 make it a little bit easier.

17 **CHAIRMAN T. WHEELER:** I've read your
18 argument. I really want to focus on this issue,
19 because as I understand it, you're trying to
20 distinguish the Walpole case in saying that --
21 in that case a teacher termination proceeding is
22 a ministerial function, and this is not --
23 that's your argument; correct, that's -- that's
24 No. 1; correct?

25 **MS. K. CELESTINO-HORSEMAN:** Yes.

1 **CHAIRMAN T. WHEELER:** Okay. And what I
2 want to understand is they both involve public
3 employees, both involve an administrative
4 decision that is entitled to some deference on
5 appeal, but they're both subject to judicial
6 review, you would agree with me on that;
7 correct?

8 **MS. K. CELESTINO-HORSEMAN:** No, I would
9 not.

10 **CHAIRMAN T. WHEELER:** Which one is not
11 subject to judicial review?

12 **MS. K. CELESTINO-HORSEMAN:** You said --
13 you've named three things there. The judicial
14 review, I agree.

15 **CHAIRMAN T. WHEELER:** Both -- both
16 proceedings. A teacher termination proceeding
17 in Walpole.

18 **MS. K. CELESTINO-HORSEMAN:** That was your
19 third point, but you went through three things.

20 **CHAIRMAN T. WHEELER:** Well, hold on, let me
21 rephrase it so you understand what I'm asking.
22 In Walpole, that's a teacher termination
23 proceeding that's subject to judicial review;
24 correct?

25 **MS. K. CELESTINO-HORSEMAN:** Yes.

1 **CHAIRMAN T. WHEELER:** All right. In this
2 case, this is subject to judicial review as
3 well; correct?

4 **MS. K. CELESTINO-HORSEMAN:** Yes, but I
5 don't -- it's not the same type of judicial
6 review, no.

7 **CHAIRMAN T. WHEELER:** What's different?

8 **MS. K. CELESTINO-HORSEMAN:** Well, in this
9 particular proceeding, for example, we're
10 probably going to go straight from here to the
11 Supreme Court, given the public interest of it.
12 That's why the public -- that's why the Supreme
13 Court took jurisdiction of it.

14 **CHAIRMAN T. WHEELER:** But the statute gives
15 you the right to appeal to Judge Rosenberg,
16 which you've exercised once already; correct?

17 **MS. K. CELESTINO-HORSEMAN:** Yes.

18 **CHAIRMAN T. WHEELER:** Go ahead, that
19 answers my question.

20 **MS. K. CELESTINO-HORSEMAN:** Okay, yeah, but
21 a public employee -- you're talking about
22 this -- Charlie White being a public employee.
23 He wasn't privately hired by the people of
24 Indiana. He had to go through an election
25 process, an election process that is rigorously

1 governed, and -- and -- and all of this, and
2 then had to -- and to become Indiana's chief
3 elections officer and so...

4 **CHAIRMAN T. WHEELER:** So he was hired
5 through the election process?

6 **MS. K. CELESTINO-HORSEMAN:** No.

7 **CHAIRMAN T. WHEELER:** Okay. Maybe I
8 misunderstood that that...

9 **MS. K. CELESTINO-HORSEMAN:** He was not
10 hired by the election process. People did not
11 go into the ballot box and say I'm going to hire
12 this person. They went in based on coming in to
13 exercise a Constitutional right to vote, and
14 it's the Constitutional right to vote that is
15 also involved here, whereas with the teacher --
16 I mean, they didn't recognize a property
17 interest in Walpole, whereas in this case, we
18 have a Constitutional right that we are
19 protecting for the people of Indiana.

20 So to say that this is not an a judicatory
21 position proceeding, that this body is merely
22 acting in a managerial, three people that have been
23 pointed, really certainly demeans what the whole
24 process represents.

25 **CHAIRMAN T. WHEELER:** What do you mean

1 demean; what -- what demean the process?

2 **MS. K. CELESTINO-HORSEMAN:** I think to say
3 that this is not an adjudicatory proceeding
4 demean what is involved here, because this
5 is -- what this is is involving the integrity of
6 the electoral system. That is what this body is
7 intended, or so -- I mean, I suppose the recount
8 commission, one of its obligation and
9 responsibilities was intended to do.

10 So to say that this is a ministerial thing,
11 that just as if -- you know, a teacher being filed
12 by a local -- not a state body but a local school
13 board is the same thing as coming in and evaluating
14 whether Charlie White was qualified and whether he
15 was eligible and whether he complied with Indiana
16 laws to be a candidate for statewide office is --
17 that's two entirely different things, and this is a
18 adjudicatory proceeding, and I dare say that it
19 probably will be determined to be an adjudicatory
20 proceeding at some point.

21 **CHAIRMAN T. WHEELER:** And let me ask you
22 this, in --

23 **COMMISSION MEMBER B. PYLITT:** The Chair
24 is -- the Chair is going to give you three more
25 minutes.

1 **CHAIRMAN T. WHEELER:** Additional time, at
2 least -- at least, because I know I'm asking
3 this. I just want to understand. Now as I
4 understand, you distinguish Walpole case -- as I
5 heard what you just said, another reason for
6 distinguishing the Walpole case is you indicated
7 while here there is a very real Constitutional
8 interest with respect to Charlie White, you said
9 there was no property interest on behalf of the
10 teacher; is that correct?

11 **MS. K. CELESTINO-HORSEMAN:** They -- I
12 understand that a contract can be a property
13 interest, but in this particular case, they did
14 not find a significant property interest or
15 Constitutional interest to justify to say that
16 it became an adjudicatory proceeding.

17 **CHAIRMAN T. WHEELER:** But as I understand
18 it, that's one of your basis for distinguishing
19 Walpole, was that there wasn't a property
20 interest in that case?

21 **MS. K. CELESTINO-HORSEMAN:** One of many,
22 yes.

23 **CHAIRMAN T. WHEELER:** Okay. I'm going to
24 have to just disagree with you that --

25 **MS. K. CELESTINO-HORSEMAN:** I kind of

1 gathered that was coming from -- when she made
2 her arguments.

3 **CHAIRMAN T. WHEELER:** I realize -- well,
4 no, the property issue -- I mean, the case law
5 absolutely says a teacher has a property
6 interest and due process rights.

7 **MS. K. CELESTINO-HORSEMAN:** Well, and I
8 agree, and I'm surprised by -- in Walpole, but I
9 think what they were saying is that the nature
10 of the property interest is not significant
11 enough to raise it from something being more
12 than managerial/ministerial to adjudicatory.

13 Now the depositions in this case will not
14 delay anything. We filed this back on April 15th
15 trying to get the process started. Mr. Bopp,
16 this -- this whole -- we had represented to the
17 circuit court that if we could go forward, we would
18 be ready to have the hearing by, I think it was
19 May 21st, if we could go forward with our
20 discovery. Mr. Bopp told the circuit court he
21 needed 90 days to do discovery. He didn't tell the
22 circuit court that he couldn't do discovery. He
23 didn't say he can't go in there and answer the
24 depositions, so that is the reason --

25 **CHAIRMAN T. WHEELER:** Let me ask this

1 question then. If you were ready to go on
2 May 17th, you didn't even identify --

3 **MS. K. CELESTINO-HORSEMAN:** May 21st.

4 **CHAIRMAN T. WHEELER:** -- Sean Keefer, Mark
5 Snelson and Robert Chilton until when, last
6 night?

7 **MS. K. CELESTINO-HORSEMAN:** This was when
8 we were talking about, if we were allowed to go
9 forward back when we were over in Judge...

10 **CHAIRMAN T. WHEELER:** Well, when did these
11 names come up, these three names, when did you
12 identify them to Mr. Bopp as somebody you wanted
13 to depose -- Mr. Kieffer, Mr. --

14 **MS. K. CELESTINO-HORSEMAN:** Yesterday.

15 **CHAIRMAN T. WHEELER:** Because I never heard
16 those names.

17 **MS. K. CELESTINO-HORSEMAN:** Right. Well,
18 we don't --

19 **CHAIRMAN T. WHEELER:** They weren't here
20 when.

21 **MS. K. CELESTINO-HORSEMAN:** We don't have a
22 deadline for discovery so -- I mean, we don't
23 have anything on discovery contrary to the
24 circuit court's order.

25 **CHAIRMAN T. WHEELER:** Here's my secondary

1 consideration. My concern is that there's some
2 very specific deadlines. The Recount Commission
3 is certain statutorily required to move very
4 rapidly. We've been told that again and
5 again -- most recently, in the Supreme Court
6 pending, yet, you've identified three people
7 yesterday that you want to depose -- I mean, I'm
8 concerned with how that impacts the process when
9 these things keep getting thrown out as we want
10 depose these people, and then you said, once we
11 get their witness list, we'll want to depose
12 some more people, if I understood what you said.

13 **MS. K. CELESTINO-HORSEMAN:** No, I did not
14 say that. I said we need to see their witness
15 list and take a look at that, you know, and do
16 an exchange of witness list and exhibits -- I
17 mean, this is -- we were given 60 days to do
18 this. It is not my client's fault that it has
19 come down to this point for the decision to be
20 made.

21 **CHAIRMAN T. WHEELER:** But you -- in those
22 60 days, you didn't identify these three people
23 until yesterday.

24 **MS. K. CELESTINO-HORSEMAN:** We didn't even
25 know after the last one where the circuit court

1 ordered this body to set a schedule for
2 discovery, which has never been done -- we
3 weren't sure what was going on, so we -- that's
4 why we put everything in here, and I don't think
5 that necessarily -- I mean, you have the ability
6 to do discovery orders. The 1992 is a -- just
7 one subpoena that we attached. If you want me
8 to go back and trace down the whole file and
9 every other thing that's been done, I will do
10 that, if it's necessary.

11 **CHAIRMAN T. WHEELER:** Subpoenas for
12 depositions -- subpoenas for depositions.

13 **MS. K. CELESTINO-HORSEMAN:** Subpoenas for
14 depositions.

15 **CHAIRMAN T. WHEELER:** Because as I
16 understand your position, you have no objections
17 to subpoenas -- for all of these people to
18 appear at the hearing?

19 **MS. A. WOUDEBERG:** No, absolutely not.

20 **CHAIRMAN T. WHEELER:** All right.

21 **MS. K. CELESTINO-HORSEMAN:** Which issuing
22 subpoenas for people to appear at the hearing is
23 not discovery -- I mean, a -- a litigator knows
24 that. That is not discovery. You don't take
25 your depositions during a hearing.

1 **CHAIRMAN T. WHEELER:** But you would agree
2 with me that the statute doesn't give a right
3 for the parties to conduct discovery; correct?

4 **MS. K. CELESTINO-HORSEMAN:** No, 28(f)
5 certainly does.

6 **CHAIRMAN T. WHEELER:** Okay.

7 **MS. K. CELESTINO-HORSEMAN:** 28(f) does.

8 **CHAIRMAN T. WHEELER:** Okay, but the Recount
9 Statute does not; correct?

10 **MS. K. CELESTINO-HORSEMAN:** And the Recount
11 Commission says that you have the authority to
12 issue discovery orders?

13 **CHAIRMAN T. WHEELER:** It says we may -- it
14 uses the word, "may" --

15 **MS. K. CELESTINO-HORSEMAN:** Right.

16 **CHAIRMAN T. WHEELER:** -- issue a discovery
17 order or subpoenas; correct?

18 **MS. K. CELESTINO-HORSEMAN:** Correct, which
19 is more than the Teacher -- under the Teacher
20 Tenure Act. In the Teacher Tenure Act in
21 Walpole, they didn't have any of that language
22 like that.

23 **CHAIRMAN T. WHEELER:** The Teacher Tenure
24 Act doesn't give the school boards the right to
25 conduct discovery?

1 **MS. K. CELESTINO-HORSEMAN:** At that time,
2 it did not -- no, it did not have the right for
3 discovery.

4 **CHAIRMAN T. WHEELER:** It doesn't -- no, it
5 doesn't give the school board the right to issue
6 subpoenas?

7 **MS. K. CELESTINO-HORSEMAN:** Right, or do --

8 **CHAIRMAN T. WHEELER:** I suggest --

9 **MS. K. CELESTINO-HORSEMAN:** -- discovery.

10 **CHAIRMAN T. WHEELER:** I suggest you go back
11 and read the statute because it does, all right.
12 You're incorrect.

13 **MS. K. CELESTINO-HORSEMAN:** It can actually
14 issue subpoenas for maybe the day of the hearing
15 or whatever, but it cannot do -- it doesn't
16 involve -- it doesn't have the authority to do
17 broad discovery orders which was given to this
18 commission by the statute. It is definitely...

19 **CHAIRMAN T. WHEELER:** They have the
20 authority to issue subpoenas the same way we
21 have the authority to issue subpoenas; correct?

22 **MS. K. CELESTINO-HORSEMAN:** And you have
23 the authority to issue discovery orders. It
24 doesn't limit you to subpoenas.

25 **COMMISSION MEMBER B. PYLITT:** I think your

1 time is up.

2 **CHAIRMAN T. WHEELER:** Go ahead, if you'd
3 like some additional time.

4 **MS. K. CELESTINO-HORSEMAN:** Thank you very
5 much. As I said, we do not believe that Walpole
6 applies because this is an adjudicatory
7 decision, that to simply say you call the
8 witnesses at the day of the hearing is not a
9 discovery order, that we had this additional
10 time because of Mr. White's counsel.

11 He is the one who stood there in front of the
12 circuit court and said I need 90 days to do
13 discovery and never told the circuit court that I
14 don't believe that you're allowed to do prehearing
15 discovery, and that's why it was extended out and
16 the judge sat there and said okay, well, then
17 I'm -- I'm not going to give you the full 90 days
18 but I will give you until July 6th.

19 So they've taken two inconsistent positions in
20 this matter, and we don't think that they should be
21 able allow -- I mean, not only does Walpole not
22 support them, but she shouldn't be allowed to do
23 that. They shouldn't be allowed to make one
24 representation to the circuit court and then come
25 into this body and make another representation.

1 **CHAIRMAN T. WHEELER:** Do you believe that
2 we have -- this commission has the right to pick
3 and choose -- for example, can we say look, you
4 know, I don't think you need the depositions of
5 Mr. Keefer and Mr. Snelson and Mr. Chilton, but
6 maybe you do need Nicole Mills's deposition.

7 Do you -- do you have an unlimited right to --
8 do you have a right to discovery or are we able to
9 say, as I think Commissioner Pylitt's question
10 implied, what are -- what's the point of these
11 three people -- I mean, do we -- do we -- is it the
12 Recount Commission writes heard on discovery -- you
13 come to us and say I need to do these people, and
14 we write heard on that, or do you think you have a
15 right to discovery, and if you ask for it, we give
16 it to you?

17 **MR. W. GROTH:** If you're going to allow us
18 one deposition, Nicole Mills is the one we would
19 want to do.

20 **MS. K. CELESTINO-HORSEMAN:** You have the
21 right to do protective orders, certainly. So
22 if -- if someone were to come to you and say
23 that this witness doesn't, you know, have
24 anything to offer or to do something or
25 whatever, certainly, you can do that and...

1 **CHAIRMAN T. WHEELER:** So do you -- you
2 foresee the process being different -- I mean,
3 you're a litigator. I think most everybody
4 sitting here is a litigator. We're used to
5 self-effectuating discovery -- you know, I send
6 you a letter and say look, I want to depose
7 these four people. You tell me yes or no, and
8 then if we can't agree, then I go get a
9 protective order -- you subpoena my guy for a
10 deposition and I go and get a protective order;
11 do you see the commission process as being
12 exactly the same as that or do you see it as
13 being different?

14 **MS. K. CELESTINO-HORSEMAN:** I think in this
15 particular case that --

16 **CHAIRMAN T. WHEELER:** Let me talk -- let
17 me --

18 **MS. K. CELESTINO-HORSEMAN:** I this is all
19 going to be resolved. I think you're right, in
20 the sense that I think this all can be resolved,
21 if they would just give us an idea. They
22 won't -- they argue the Fifth Amendment for
23 Charlie White repeatedly, but they haven't told
24 us whether he's going to exercise it.

25 We don't have any idea who they're going to

1 call as witnesses. Mr. White has indicated various
2 people in interviews, that's why we need to talk
3 with them. Mr. -- you know, and these other folks,
4 if he's not going to call them as a witness, I can
5 pick up the telephone and contact them and see if
6 they'll talk to me, but as you know, many times as
7 a litigator, people won't -- won't do that for all
8 different reasons.

9 **CHAIRMAN T. WHEELER:** Let me -- let me ask
10 you this -- I want to step aside -- I'm
11 concerned -- with all due respect to the Charlie
12 White situation, leave that aside, I'm concerned
13 with the recount commission process, and my
14 concern, for example, you've asked to depose
15 Charlie White's campaign manager, and I'm
16 concerned that we're setting up a precedent that
17 every time we have a recount, somebody going to
18 depose -- I'll give you another example.

19 There's a recount in Boone County right now.
20 It's a 1-vote recount, all right. Under what
21 you're telling me, if we adopt the position and the
22 local recount commissions adopt the state recount
23 commission guidelines in the statute, what you're
24 saying is that those people would have the right to
25 come in and depose the campaign manager? I can see

1 people deposing each person who signed an absentee
2 ballot and saying is that your signature and doing
3 all of these depositions on each of those
4 individuals, and it strikes me that that's
5 inconsistent with the speedy recount process; in
6 fact, it gums up the works.

7 And it strikes me that your argument actually
8 runs counter to what you seem to want to happen,
9 because as you indicated, Mr. White's counsel has
10 said I'm going to start deposing people. If you
11 buy the argument you made last time we were here,
12 which is Mr. White has tried to delay these
13 proceedings, slow down these proceedings, it
14 strikes me that if we give an unlimited right to
15 discussion, as you're suggesting, that's precisely
16 what's going to happen.

17 If Mr. White's counsel wants to slow down this
18 process, he starts deposing all sorts of people --
19 each of the election officials, let's look at the
20 each of the precinct chairs, let's look at how
21 they've -- how they've handled this. Let me give
22 you another example. Mr. White has said, and you
23 quoted the press several times, there's certainly
24 been an indication in the press that he's not the
25 only one that's done it, that's in this position.

1 Now Mr. White -- what we're turning this
2 process, should Mr. White be allowed to depose 36
3 other public officials, Republican and Democrat,
4 call them as witnesses and ask them whether they
5 live at the address where their ballot is going and
6 voting? That's the concern I have with the process
7 that you're suggesting, both in this case, and then
8 generally.

9 It seems -- that seems to run directly counter
10 to 1) the recount statutes, all right, the speedy
11 recount, particularly, in this case, where it's the
12 Secretary of State's race which is supposed to be
13 done before the end of the year, but No. 2, with
14 respect to all of these other races, it invites
15 litigations, it invites lawyering up, and it
16 invites delays in the process, massive delays in
17 the process, and I'm not sure how -- at least your
18 suggestion, as to how discovery should proceed,
19 avoids that situation -- tell me how it does?

20 **MS. K. CELESTINO-HORSEMAN:** Well, these
21 people have been identified as having personal
22 knowledge regarding the situation. If we find
23 out --

24 **COMMISSION MEMBER B. PYLITT:** How do you
25 know that? Their names are listed in an

1 indictment that says that they're potential
2 State's witness. They could be talking about
3 totally different things than what we're here
4 for. You -- you can't make that statement.

5 **MS. K. CELESTINO-HORSEMAN:** I mean, if --
6 if there -- if I can have assurances that
7 they're not going to -- here's my only concern
8 about saying don't depose them, we won't depose
9 them. Like I said, I have no idea whose people
10 they are, what they're going to say.

11 If we can get assurances that Snelson and
12 Chilton are not going to be called as witnesses,
13 fine, or even Keefer, that's fine. I have no
14 problem with that. And as far as the other three,
15 Michelle Quigley-White very well may be asserting
16 the Fifth. I don't know whether she's going to
17 testify or not in favor of Mr. White -- certainly,
18 he has indicated that.

19 And as far as I know, Nicole Mills and William
20 Mills are not subject, or a target. No one has
21 said anything about them being a target of any kind
22 of grand jury investigation so -- I mean, as my
23 co-counsel said, if you're going go leave us with
24 one, let us have Nicole Mills.

25 **CHAIRMAN T. WHEELER:** Let me ask this:

1 Would you agree that we have the right to limit
2 you to one or two or whatever we choose to do,
3 or do you have a due process right to depose
4 anybody you want?

5 **MS. K. CELESTINO-HORSEMAN:** No, I don't
6 think we have a due process right to depose
7 anybody we want. I think there are constraints
8 on that, most certainly, and we're willing to
9 work with you and with them, but we haven't had
10 any kind of guidance or anything to this point.

11 We would like to depose Nicole Mills. We'd
12 like to depose Michelle Quigley-White, or if she's
13 taking the Fifth, or -- you know, or if we get
14 reassurances, a stipulation that Michelle
15 Quigley-White is not going to be called to testify,
16 I would -- we would consider not taking her
17 deposition at all.

18 I mean, we -- typically, in litigation, that's
19 what you do, is you work back and forth with all of
20 that, and we haven't had, up til now -- with the
21 Supreme Court order, now there's an incentive for
22 persons to start talking and start getting this
23 going and moving, and I think from that
24 perspective, that's certainly what we can try and
25 work out here.

1 **CHAIRMAN T. WHEELER:** Anything else?

2 **COMMISSION MEMBER B. PYLITT:** I think...

3 **MS. K. CELESTINO-HORSEMAN:** Oh, yes, and
4 I'm sorry, and because -- if we have to go into
5 it today, Charlie White is going to tell us...

6 **CHAIRMAN T. WHEELER:** I assume you're
7 modifying Mr. Groth's statement, which is, No.
8 1, I assume you want Charlie White?

9 **MR. W. GROTH:** Right.

10 **MS. K. CELESTINO-HORSEMAN:** Right.

11 **CHAIRMAN T. WHEELER:** I mean, that seems
12 like a necessary thing, and then No. 2, would be
13 Nicole Mills.

14 **MR. W. GROTH:** Right.

15 **MS. K. CELESTINO-HORSEMAN:** No. 2 would be
16 Nicole Mills.

17 **CHAIRMAN T. WHEELER:** In that order?

18 **MR. W. GROTH:** In that order.

19 **MS. K. CELESTINO-HORSEMAN:** In that order,
20 and then No. 3 would be...

21 **CHAIRMAN T. WHEELER:** Michelle White?

22 **MS. K. CELESTINO-HORSEMAN:** Michelle White
23 and William Mills. And -- and I --

24 **CHAIRMAN T. WHEELER:** And who?

25 **MS. K. CELESTINO-HORSEMAN:** And William

1 Mills.

2 CHAIRMAN T. WHEELER: Oh, okay.

3 MS. K. CELESTINO-HORSEMAN: And -- and --
4 and you know, like I said, Michelle
5 Quigley-White, I know her attorney is present
6 here today to watch these proceedings, so she
7 may intend to take the Fifth as well, which
8 again, then it'll very short, --

9 CHAIRMAN T. WHEELER: Does she --

10 MS. K. CELESTINO-HORSEMAN: -- but she
11 doesn't even have to go through that if...

12 CHAIRMAN T. WHEELER: I don't know anything
13 about the criminal proceedings. Is she -- is
14 she under...

15 MS. K. CELESTINO-HORSEMAN: Mr. White --
16 Mr. White, in that same interview, stated that
17 his wife was a target of the grand jury.

18 CHAIRMAN T. WHEELER: I'll defer to the
19 only criminal lawyer, basically is what that
20 means, but let me just --

21 MS. K. CELESTINO-HORSEMAN: And she was
22 appointed a PD.

23 MR. C. BRIZZI: I can -- I can...

24 MS. K. CELESTINO-HORSEMAN: Yeah.

25 CHAIRMAN T. WHEELER: Let me -- just to --

1 let me just leave it because I don't know that
2 it's relevant to discussion. Let me ask this
3 question: With respect to -- what harm is there
4 to you because I think we all agree that you can
5 call all those people and we'll subpoena these
6 people after the hearing -- other than the fact
7 that the commission members may not want to sit
8 here for three days, all right, then we'll have
9 an extended commission hearing, what other harm
10 is there to you in questioning them at that
11 point in time versus doing depositions?

12 **MS. K. CELESTINO-HORSEMAN:** Well,
13 obviously, there's the preparation and the right
14 to be able to prepare our case. I do think
15 there is -- there is some constitutional
16 promises regarding how you prepare -- your
17 ability to be able to prepare your case and
18 knowing, you know, who you're going to call as a
19 witness and all of that.

20 I mean, as far as I know, Nicole Mills may say
21 Mr. White was not living there at Broad Leaf, in
22 which case, I want to talk with her about that.

23 **CHAIRMAN T. WHEELER:** But I guess my
24 question is: What's the harm to you asking her
25 that question on, I believe, the 21st versus

1 doing it in a deposition?

2 **MS. K. CELESTINO-HORSEMAN:** Well, I don't
3 want to call her on the 21st if she's going to
4 sit there and say I -- he did live with us.
5 I'll let them call her.

6 **CHAIRMAN T. WHEELER:** Well, I understand,
7 but I want to -- I'd like to hear either one, I
8 mean, for the Commission.

9 **MS. K. CELESTINO-HORSEMAN:** But that's not
10 my job, and I have a case to prepare. As a
11 litigator representing a party, my job is to
12 advocate for my client. I don't have the job to
13 act as an impartial party. I'm here to
14 zealously advocate on behalf of my client so,
15 you know, to make me have to call people that I
16 don't know what they're going to say under
17 circumstances like this -- no, I -- I -- I don't
18 think that's permissible.

19 **CHAIRMAN T. WHEELER:** But there's nothing
20 that would precludes you from going to talk to
21 her; right?

22 **MS. K. CELESTINO-HORSEMAN:** Right, if she
23 will talk to me.

24 **CHAIRMAN T. WHEELER:** Which you have not --
25 which you have not tried to do yet?

1 **MS. K. CELESTINO-HORSEMAN:** Which I've not
2 tried to do.

3 **CHAIRMAN T. WHEELER:** Or any of these
4 people?

5 **MS. K. CELESTINO-HORSEMAN:** I know some
6 folks have. She has not been willing to. And
7 Miss White, I have not tried because Mr. White
8 has counsel and I know it's not the same
9 counsel, but I have been a little bit careful in
10 that.

11 **CHAIRMAN T. WHEELER:** But you've got --
12 apparently, she has her counsel here and perhaps
13 you can talk with her counsel afterwards and see
14 what extent she's willing to talk to you guys.

15 **MS. K. CELESTINO-HORSEMAN:** And she might
16 be more willing to talk to me if she knows
17 there's a possibility, you know, of deposition
18 or being called.

19 **CHAIRMAN T. WHEELER:** Well, if she -- if
20 she knows she's going to get -- she's going to
21 testify at some point, whether she does a
22 deposition or at the hearing. I presume -- I
23 would hope that the commission would hear from
24 her on this issue, which it sounds like she's
25 one of the important witnesses. She knows who

1 was doing what, when and where; particularly, if
2 Mr. White does choose to invoke his Fifth
3 Amendment -- I mean, you know, you're going to
4 have a problem making the case if he's not
5 testifying and hear what she says so I --

6 **MS. K. CELESTINO-HORSEMAN:** Which is
7 exactly --

8 **CHAIRMAN T. WHEELER:** I just hope that we
9 would hear what she says.

10 **MS. K. CELESTINO-HORSEMAN:** Which is
11 exactly the reason why we need to take her
12 deposition, for the reasons that you just
13 stated.

14 **CHAIRMAN T. WHEELER:** But you can do that
15 at the hearing. You just...

16 **MS. K. CELESTINO-HORSEMAN:** No, that's
17 not -- that's not taking her deposition at the
18 hearing. That doesn't not allow us to properly
19 prepare for what she might say.

20 **CHAIRMAN T. WHEELER:** I -- I guess what I'm
21 just saying is I'd like to...

22 **MS. K. CELESTINO-HORSEMAN:** I guess it's an
23 ambush, is what I would say it is, and that's
24 what we typically try to avoid in litigation,
25 are those situations where parties are ambushed.

1 **CHAIRMAN T. WHEELER:** Let me -- I guess
2 from my standpoint, as a fact finder, I just
3 want to hear what she has to say either way, all
4 right.

5 **COMMISSION MEMBER B. PYLITT:** Five minutes
6 rebuttal.

7 **CHAIRMAN T. WHEELER:** Okay.

8 **MS. A. WOUDEBERG:** I do have two
9 observations to -- to make. The first is, and
10 it's a little concerning to me, that this list
11 of deponents seems to be derived from the
12 indictment papers. As you may know, there is a
13 law that proscribes such witnesses from
14 discussing their testimony before a grand jury
15 and the concern then, of course, would be that
16 perhaps there would be a risk of breaking the
17 law by compelling those witnesses to now engage
18 in depositions here.

19 But I think more telling or more relevant here
20 even than that is that the issue before this
21 commission is a very --

22 **CHAIRMAN T. WHEELER:** Let me -- let me stop
23 you.

24 **MS. A. WOUDEBERG:** Sure.

25 **CHAIRMAN T. WHEELER:** I just asked

1 Commissioner Pylitt, who is a former U.S.
2 attorney and understands criminal stuff, but as
3 I understand it, there's absolutely nothing that
4 prohibits those individuals who have given grand
5 and correct me if I'm wrong, from giving
6 testimony as to the underlying facts. They just
7 can't say I told the grand jury this.

8 **COMMISSION MEMBER B. PYLITT:** Or the grand
9 jury asked me this.

10 **CHAIRMAN T. WHEELER:** Right, and so that
11 eliminates your first point, doesn't it?

12 **MS. A. WOUDENBERG:** It certainly does, and
13 if that's the case, then -- then I'll withdraw
14 that concern. The second -- the second issue, I
15 think, is that the issue that's before this
16 commission is a very narrow one, and it is
17 focused on the residency of Charlie White, at
18 least as -- as Petitioners have presented it.

19 And under the statute, and I'm looking at
20 3-5-2-42.5, "Residence" means the place where a
21 person has the person's true, fixed, and permanent
22 home and principal establishment; in -- and to
23 which the person has, whenever absent, the
24 intention of returning.

25 And so this notion that Petitioners would be

1 prejudiced or ambushed in presenting a matter that
2 they themselves initiated, I might -- I might
3 highlight, by being precluded from presenting
4 depositions and to -- to address this very narrow
5 issue before this commission does not add traction
6 to this.

7 **COMMISSION MEMBER G. DURNILL:** I think the
8 issue is residence as opposed to whether or not
9 he was registered at the time of certificate of
10 nomination -- response?

11 **MS. A. WOUDENBERG:** That's a -- that's a
12 fair question. In terms of the registration,
13 though, registration, proper registration, as I
14 understand it, is in turn determined based on
15 the residency of the individual voter that is
16 seeking to register, and so to determine whether
17 or not that registration is proper, we need to
18 look behind that to see if that residency
19 requirement is met.

20 I would also indicate insofar as depositions
21 are -- are permitted by this commission, we
22 would -- we would request that we have the same
23 opportunities afforded to us to seek depositions,
24 whether it is the Petitioner, the Indiana
25 Democratic Party and its chairman, Chairman Parker,

1 or insofar as third-party depositions are
2 permitted, we would request that he would be able
3 to depose Mr. Purvis (Phonetic), and Candidate
4 White or Charlie White's opponent, Vop Osili.
5 Thank you for your time.

6 **CHAIRMAN T. WHEELER:** Thank you.

7 **MS. K. CELESTINO-HORSEMAN:** Mr. Chairman,
8 may I just add one thing, in the spirit of
9 compromise?

10 **CHAIRMAN T. WHEELER:** All right.

11 **MS. K. CELESTINO-HORSEMAN:** We would be --
12 we would be willing to accept, we'd say -- call
13 it three depositions, one of which would be
14 Charlie's -- they call us and put a stipulation
15 that he's going to assert the Fifth, then we
16 don't want -- we would agree to limit it to two
17 depositions. And as far as...

18 **CHAIRMAN T. WHEELER:** Who are your -- who
19 are your -- who are those three -- I assume
20 Charlie, who are the other two?

21 **MS. K. CELESTINO-HORSEMAN:** The other two
22 would be Nicole -- well, we can -- can we decide
23 those later between Nicole and Michelle, because
24 then I can talk to Michelle's counsel?

25 **COMMISSION MEMBER B. PYLITT:** Let's decide

1 this morning.

2 **CHAIRMAN T. WHEELER:** Yeah, we've got --
3 we've got...

4 **MS. K. CELESTINO-HORSEMAN:** Okay. Well,
5 then is that going to also apply then, because
6 Mr. White's counsel just said now that they're
7 going to do depositions.

8 **COMMISSION MEMBER B. PYLITT:** You're not
9 suggesting that they don't have a right to take
10 depositions --

11 **MS. K. CELESTINO-HORSEMAN:** No, not at all.

12 **COMMISSION MEMBER B. PYLITT:** -- but you
13 have a right?

14 **MS. K. CELESTINO-HORSEMAN:** -- but we have
15 to decide this morning, are they going to have
16 to decide this morning, I mean...

17 **CHAIRMAN T. WHEELER:** I -- I think -- let
18 me jump to discussion at this point. I think
19 you're making my -- at least the point that I'm
20 making, which is we're going to turn this
21 process -- I do not believe there is a right of
22 discovery under the recount statute and under
23 the Walpole case, and particularly given the
24 nature of these proceedings and what has just
25 been described, which is exactly why I don't

1 think there's a right of discovery.

2 I agree 100 percent you can call -- within
3 reason we can control who you're going to call in
4 the hearing itself, and I certainly appreciate your
5 willingness. Where I am is -- is -- you know, what
6 I'd like to say is the commission issue subpoenas
7 to Charlie White, Nicole Mills, Michelle
8 Quigley-White and William Mills to attend the
9 hearing and testify in the hearing.

10 I am not inclined to allow either party to do
11 discovery -- to do depositions in this case because
12 I think it -- it violates the spirit of the
13 statute. It also creates all the problems, and I
14 have a concern, not about this case, but about
15 having -- having spent five years on the election
16 commission and doing contests -- doing ballot
17 placement, if we had had depositions in those, we
18 would lock up candidates like -- it just -- it
19 makes no sense in this process, in my opinion.

20 That being said, I actually went out of order.
21 Typically, the Chair lets the other parties talk
22 and then gets to say the last word, but I'll do it
23 in reverse order.

24 **COMMISSION MEMBER B. PYLITT:** I -- I
25 appreciate what the Chair is saying and I hear

1 what both parties are both saying. Here's my
2 position, to the point that residency is a
3 narrow issue that you have deal with -- I'm
4 looking at I.C. 3-5-5-15, which nobody wants to
5 seem to talk about.

6 And anyway -- anyway, it says the residency of
7 an unmarried person is where that person usually
8 sleeps, and generous -- in general, somebody would
9 say where a person usually sleeps, but in my mind,
10 we need the information that is being sought to
11 determine that.

12 We've got the commission issuing the
13 deposition, the subpoenas in 1992. I realize that
14 the Chair may disagree with what happened there or
15 has happened since, but I think they have the
16 authority, and I think the statute 3-12-10-5(2)
17 gives us the ability to issue subpoenas and
18 discovery orders, and (6) exercise any other
19 necessary power to perform its functions.

20 I somewhat disagree with the Chair. I don't
21 want to sit here and listen to three days of
22 depositions because it's very painful. At the end
23 of hours people say there's nothing new that's
24 going to be offered and I think that the idea of
25 using depositions will resolve that.

1 I have been involved in the last six months
2 with three cases where parties have claimed the
3 Fifth. I think that, in my opinion, that has to be
4 done on a question-by-question basis. I spent six
5 hours two Fridays ago in my office listening to a
6 person claiming the Fifth other than their name.

7 The Supreme Court has made it clear that there
8 are inferences that are given for someone who
9 claims the Fifth, and I'm not the least offended as
10 a criminal lawyer that someone may want to try to
11 depose Mr. White for charges.

12 So having said of all of those things, I
13 have -- and let me agree with the Chair, that your
14 question to the Petitioners, can we pick and choose
15 who's going to be depose -- I think if someone were
16 to say I want to depose Governor Daniels about
17 this, I would be the first to agree that that's
18 unreasonable and unnecessary and not allow that to
19 happen, and likewise, if there are published lists
20 of 36 or so public officials that someone thinks
21 maybe violated the same statute, I think it has
22 absolutely to do with what our task is. My three
23 separate motions --

24 **CHAIRMAN T. WHEELER:** You're going to make
25 it three, huh?

1 **COMMISSION MEMBER B. PYLITT:** Yeah, and
2 I'll -- I'll summarize them so -- then I can
3 make them one at a time, because I think -- I
4 appreciate the Chair's -- I think the Chair's
5 already addressed this. I would first recommend
6 that we issue a subpoena for the deposition of
7 Nicole Mills, the second would be to issue a
8 subpoena for a deposition of Michelle
9 Quigley-White, and third, that we issue a
10 subpoena for the deposition of Secretary of
11 State White.

12 I think that those will help us stream line.
13 If people choose to take the Fifth Amendment,
14 that's one thing, but given the constraints of
15 3-5-5-15, I'd like to know where Mr. White lived,
16 and the parties have already stipulated to a whole
17 variety of election forms. I think we'll then be
18 in a position to have a very prompt hearing to
19 resolve and figure out what law applies at that
20 stage.

21 **CHAIRMAN T. WHEELER:** Let me stop -- let me
22 stop you there. I want to do it one at a time.

23 **COMMISSION MEMBER B. PYLITT:** Sure, no,
24 I...

25 **CHAIRMAN T. WHEELER:** Okay.

1 **COMMISSION MEMBER B. PYLITT:** And I my last
2 comment is there have been some suggestions that
3 we allow Mr. Skolnik to have the discretion or
4 the authority to decide what's reasonable or not
5 reasonable.

6 I don't think it's fair to Mr. Skolnik, and
7 I'm not speaking for Mr. Skolnik, but I've
8 practiced law with him and have known him for a
9 very long time -- I don't think it's fair in a case
10 with this publicity with the Supreme Court passing
11 it back in our lap within a short time frame to say
12 Mr. Skolnik, forget about the Open Door Law, call
13 the commissioners and find out what they think or
14 don't think.

15 I don't think we should be meeting here every
16 day deciding what's reasonable and what's not
17 reasonable, so -- so that's kind of my thought
18 process. So my first motion would be that the
19 Commission issue a subpoena for the deposition of
20 Nicole Mills.

21 **CHAIRMAN T. WHEELER:** Can we make them all
22 three together or not?

23 **COMMISSION MEMBER B. PYLITT:** There may be
24 some distinction.

25 **CHAIRMAN T. WHEELER:** Okay, that's fine.

1 **COMMISSION MEMBER B. PYLITT:** I don't want
2 to throw Mr. White into that because there are
3 additional arguments and potential reasons not
4 to issue that.

5 **CHAIRMAN T. WHEELER:** Fair enough.

6 **COMMISSION MEMBER G. DURNILL:** I'll second
7 the motion just for purpose of discussion.

8 **CHAIRMAN T. WHEELER:** All right. Motion's
9 made and seconded -- further discussion,
10 Commissioner Durnill?

11 **COMMISSION MEMBER G. DURNILL:** I don't have
12 anything.

13 **CHAIRMAN T. WHEELER:** I'll say -- I'll make
14 my comments, and these go to all of the
15 depositions, which is 1) -- far be it for me to
16 express disappointment from our Supreme Court.
17 I had hoped that the Supreme Court would give
18 us, and I think each of the commission
19 members -- and a basis for our appeal was to try
20 to get some guidance on these issues, the
21 election laws -- whether it's this election law,
22 about what its discovery powers are or the
23 underlying ones that you're going to be
24 disputing in a couple of weeks are less than
25 clear, and we had hoped that the Supreme Court

1 would give us some guidance, they did not.

2 The only guidance they gave us was they wanted
3 "the prompt resolution of all matters now pending."
4 I don't believe that allowing discovery deposition
5 in these proceedings promotes the prompt resolution
6 of all matters now pending, so to the extent we got
7 guidance from the Supreme Court, it was to hurry up
8 to get this done, and therefore, I will vote
9 against the motion. Any further commentary from
10 the commissioners?

11 *(No response.)*

12 **CHAIRMAN T. WHEELER:** The motion to take
13 the -- issue a subpoena for the deposition of
14 Nicole S. Mills has been made and seconded, all
15 in favor, signify by saying aye?

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

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

19 **COMMISSION MEMBER G. DURNILL:** Nay.

20 **CHAIRMAN T. WHEELER:** Nay -- nay or aye?

21 **COMMISSION MEMBER G. DURNILL:** Nay.

22 **CHAIRMAN T. WHEELER:** Strike that --
23 besides that, I did say same sign. Let me
24 modify my vote to an aye.

25 **COMMISSION MEMBER B. PYLITT:** The second

1 motion then would be the --

2 **CHAIRMAN T. WHEELER:** Let me change it just
3 for the record. The motion has been defeated 2
4 to 1. Commissioner Pylitt?

5 **COMMISSION MEMBER B. PYLITT:** The second
6 motion then that we issue a deposition and
7 subpoena for Michelle Quigley-White.

8 **CHAIRMAN T. WHEELER:** Motion's made, do I
9 have a second?

10 **COMMISSION MEMBER G. DURNILL:** Second, for
11 purposes of discussion.

12 **CHAIRMAN T. WHEELER:** Motion's made and
13 seconded, any further discussion?

14 *(No response.)*

15 **CHAIRMAN T. WHEELER:** I'm going to take the
16 same position I took with the prior one. All in
17 favor of the motion, signify by saying aye?

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

19 **CHAIRMAN T. WHEELER:** Those opposed, same
20 sign -- aye?

21 **COMMISSION MEMBER G. DURNILL:** Aye.

22 **CHAIRMAN T. WHEELER:** The motion is
23 defeated 2 to 1. Commissioner Pylitt?

24 **COMMISSION MEMBER B. PYLITT:** And the third
25 motion would be that we issue a subpoena for the

1 deposition of Secretary of State White.

2 **CHAIRMAN T. WHEELER:** Motion made, do I
3 have a second?

4 **COMMISSION MEMBER G. DURNILL:** Second, for
5 purposes of discussion.

6 **CHAIRMAN T. WHEELER:** Motion's made and
7 seconded, any further discussion?

8 *(No response.)*

9 **CHAIRMAN T. WHEELER:** There's a distinction
10 between this one and the other ones because I
11 know you wanted to...

12 **COMMISSION MEMBER B. PYLITT:** I really
13 don't. I realize that the pleadings are replete
14 with a whole lot of discussion about the fact
15 that he is under indictment, that there are
16 assertions that he may claim the Fifth.

17 As you know or I've heard and I think it's in
18 the public record, that the grand jury was extended
19 and will expire on June 3, I believe, so we may on
20 June 4 have some other information or we may have
21 no further information, I have no knowledge.

22 **CHAIRMAN T. WHEELER:** All right. The
23 motion's been made and seconded, all in favor of
24 the motion, signify by saying aye?

25 **COMMISSION MEMBER B. PYLITT:** Aye.

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

3 **COMMISSION MEMBER G. DURNILL:** Aye.

4 **CHAIRMAN T. WHEELER:** Aye. The motion is
5 defeated 2 to 1.

6 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
7 the colloquy of counsel, I think, and I'm sure
8 both of you will agree with me, it sounds like
9 there's a need for a witness and exhibit list
10 discovery cut-off so that we can keep this ball
11 moving and make the Supreme Court happy.

12 **CHAIRMAN T. WHEELER:** And Judge Rosenberg.

13 **COMMISSION MEMBER B. PYLITT:** And Judge
14 Rosenberg.

15 **CHAIRMAN T. WHEELER:** Let me do this, what
16 I would solicit from the commissioners, since I
17 think the Chair makes the motion generally, it
18 would strike me in order to keep this moving
19 along, I would certainly solicit the motion for
20 subpoenas to attend the hearing for the -- at
21 least the four primary individuals that have
22 been identified -- Nicole S. Mills, William
23 Mills, Michelle Quigley-White and Charlie White.

24 **COMMISSION MEMBER B. PYLITT:** Are you
25 including -- the second one was...

1 **CHAIRMAN T. WHEELER:** I included the
2 husband, too, or not..

3 **COMMISSION MEMBER G. DURNILL:** So moved.

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

5 **CHAIRMAN T. WHEELER:** Motion's made and
6 seconded, any further questions?

7 *(No response.)*

8 **MS. K. CELESTINO-HORSEMAN:** Mr. Chair?

9 **CHAIRMAN T. WHEELER:** All in favor --

10 **MS. K. CELESTINO-HORSEMAN:** In whose -- on
11 whose behalf are those being issued because
12 we're certainly are not asking for those people
13 to be here at the hearing.

14 **CHAIRMAN T. WHEELER:** You don't want those
15 people to testify at the hearing?

16 **MS. K. CELESTINO-HORSEMAN:** I may -- I
17 don't know what they're going to say.
18 Certainly, I want Charlie White. I think we
19 have to sit back and think about the other
20 three.

21 **CHAIRMAN T. WHEELER:** Let me ask -- I going
22 to ask legal counsel. Does the Commission have
23 the right to direct people to appear before us
24 and testify even if the parties do not call
25 them?

1 **MR. B. KING:** Yes, on its own motion.

2 **CHAIRMAN T. WHEELER:** Has the Commission
3 done that in the past?

4 **MR. B. KING:** I'm not aware of any case
5 where they have.

6 **CHAIRMAN T. WHEELER:** The AG or...

7 **MR. B. KING:** No.

8 **CHAIRMAN T. WHEELER:** They don't have any
9 interest in providing anyone at this point in
10 time, whether or not he's needed.

11 **COMMISSION MEMBER B. PYLITT:** Certainly, we
12 have a right, Counsel, Counsel, Mr. Skolnik, Mr.
13 Durnill -- from your past experience, certainly,
14 we have the right to ask questions of the
15 witnesses, whether we call them or not call
16 them.

17 **CHAIRMAN T. WHEELER:** So if either party
18 doesn't question them, certainly, we could
19 question them, and I -- certainly, it's my
20 understanding in these proceedings that even if
21 they call somebody, we can go beyond the scope
22 of whatever their direct examination is and ask
23 those individuals questions that we feel may be
24 relevant to our final determination; is that
25 correct?

1 **MR. B. KING:** Yes, Mr. Chairman.

2 **CHAIRMAN T. WHEELER:** Leslie?

3 **MS. L. BARNES:** Mr. Chairman, thank you.

4 While I'm not aware -- there's no statute that
5 would prohibit the Commission from calling
6 witnesses, there's no statute that allows you to
7 call witnesses, and as a matter of fact --

8 **CHAIRMAN T. WHEELER:** Call -- we're allowed
9 to subpoena witnesses; correct?

10 **MS. L. BARNES:** Right, to issue subpoenas
11 for witnesses at the request of a party.

12 **CHAIRMAN T. WHEELER:** Well, does the
13 statute --

14 **MS. L. BARNES:** State statute puts the
15 burden --

16 **CHAIRMAN T. WHEELER:** Does the statute say
17 that, at the request of a party?

18 **MS. L. BARNES:** But the burden is -- what I
19 was going to say, is the burden is on the party
20 to make their case and to persuade the
21 commission. There's nothing in state law that
22 allows the commission to take over the case to
23 call witnesses.

24 **COMMISSION MEMBER B. PYLITT:** So your
25 argument is the Petitioner would call their case

1 and rests, and if we believe that would resolve
2 the matter -- the witnesses would be subpoenaed
3 to be here, but we wouldn't have a right to call
4 them -- we don't step in the shoes of the
5 Petitioner to try to save them from having their
6 case dismissed, once they've rested.

7 **MR. B. KING:** Mr. Chairman, I'll just add
8 that I disagree with Miss Barnes, to the extent
9 that under 3-12-10-5, the Commission has both
10 the authority to issue subpoenas, and further,
11 to exercise any other necessary power to perform
12 its functions.

13 The Commission in the past has adopted the
14 guidelines pursuant to Section 8 of that chapter,
15 which specify a matter, such ex parte
16 communications, and you know, case law would
17 indicate that the Commission does not have the
18 authority to conduct guidelines and exercise its
19 powers in the context of that.

20 **MS. K. CELESTINO-HORSEMAN:** May I ask a
21 question on clarification on how...

22 **CHAIRMAN T. WHEELER:** Hold on. Let me --
23 let me -- I want to hear from the other
24 commissioners.

25 **COMMISSION MEMBER B. PYLITT:** Well, the

1 statute says that we may issue the subpoenas,
2 and I agree.

3 **CHAIRMAN T. WHEELER:** And it doesn't -- it
4 doesn't condition --

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

6 **CHAIRMAN T. WHEELER:** -- on the party
7 asking for it; correct?

8 **COMMISSION MEMBER B. PYLITT:** Right, so I
9 think we have that ability. The question is
10 then can we call them as a witness, if not for
11 the other side?

12 **CHAIRMAN T. WHEELER:** I guess this goes
13 back to my concern, the express about
14 depositions as well, which is there -- I hate to
15 quote Judge Posner from the conference, but his
16 quote was the adversarial system is overrated.
17 I don't know that I agree with that, having
18 practiced in the adversarial system, but he made
19 that quote and he said it several times.

20 I think the role -- in my opinion, the role of
21 this commission is not -- well, not akin to the
22 European investigative judge, I think our role and
23 our role to the public is slightly different, and I
24 guess I'm going to disagree slightly, that if
25 the -- we serve a public function, and I think

1 that's why the general assembly wrote the statute
2 that way, which is to say if somebody's -- let's
3 say we get a counsel that's grossly incompetent,
4 yet they fail to raise a blatant issue which might
5 knock somebody off the ballot.

6 I think -- I think the commission has an
7 independent duty to review say the absentee
8 ballot -- let's say somebody does a challenge, take
9 their absentee ballot, and the commission members
10 in their review of absentee ballots sees an
11 absentee ballot that is clearly deficient; does the
12 Commission have the ability to act directly on that
13 particular ballot -- I mean, wouldn't we, Miss
14 Barnes?

15 **MS. L. BARNES:** I still say that it's --
16 it's up to the Petitioner to make their case,
17 not up to the Commission to step in the shoes of
18 either party and...

19 **CHAIRMAN T. WHEELER:** I guess my question
20 is: Don't we owe -- don't we owe the duty to
21 the public, okay, independent of the advocacy of
22 the parties, to ensure that the right decision
23 is made, the right result is made?

24 **MS. L. BARNES:** The general assembly does
25 not -- that may be a good policy, and if you'd

1 like to have policy discussion, maybe that
2 should be, but the general assembly has not
3 given you that authority, I don't see anywhere.

4 **CHAIRMAN T. WHEELER:** Well, didn't they say
5 that in the reservation clause that Mr. King
6 just mentioned.

7 **MS. L. BARNES:** Any other necessary?

8 **CHAIRMAN T. WHEELER:** Yeah. I mean,
9 basically they said not only shall you do this,
10 okay. They didn't say subpoenas issued at the
11 request of either party, they said you shall,
12 and then they go on to say other -- Brad, read
13 it again? I don't...

14 **MR. B. KING:** This is subdivision 6 of
15 Section 5(a) exercise --

16 **CHAIRMAN T. WHEELER:** Exercise...

17 **MR. B. KING:** -- any other necessary power
18 to perform its function under this article.

19 **CHAIRMAN T. WHEELER:** I mean, it seems to
20 me, at least from my reading of that, that gives
21 us some broad discretion to deal with that
22 situation. I think the general assembly would
23 be -- if they look at the State Recount
24 Commission that -- that turned blinders on and
25 ignored some fairly factual stuff, I think that

1 they would be -- they would be upset, and I
2 think the public would have a right to be upset
3 at us if we didn't look at that information and
4 come to the right result, regardless of whether
5 legal counsel are playing, you know, hide the
6 flag or something like that.

7 And I guess that's where I -- that's where I
8 come -- these proceedings differ from -- are
9 slightly different from, you know, straight legal
10 proceedings, that the recount commission is
11 independently charged to come out with the right
12 result for the public as a whole, which may not be
13 the right result for the two political parties -- I
14 mean, we had cases when I was on the -- and you
15 were there, but we've had the Libertarian Party or
16 other -- other small parties where the two major
17 parties aren't interested in -- in their rights,
18 and it strikes me that the Commission under this
19 charge has the ability to look at those issues,
20 when necessary, to ensure that the public is
21 protected, independent of what the two parties come
22 up with, and that's -- I guess that's where I part
23 ways.

24 **MS. L. BARNES:** I appreciate your concern,
25 Mr. Chairman, and thank you for allowing me to

1 weigh in. The Commission does have the
2 authority to adopt rules through a promulgation
3 process. This commission has never adopted
4 rules before. I guess I would ask are you
5 proposing to adopt some rules that allows the
6 Recount Commission to call witnesses on their
7 own? I think that...

8 **CHAIRMAN T. WHEELER:** I'm not sure we need
9 to as I read that provision under (6). I don't
10 think we have to adopt a rule. I think we --
11 and I think that's broad -- we have the powers
12 that take the actions necessary to resolve the
13 matter, and I assume -- presume that resolves
14 the matters in the public's interest. So I
15 guess I'm going to disagree with you slightly on
16 that. I know we have adopted rules in the past
17 from the recount commission, etc.

18 **MS. L. BARNES:** Guidelines but not rules.

19 **CHAIRMAN T. WHEELER:** Guidelines, sorry.
20 Anything else from this side -- Mr. King?

21 **MR. B. KING:** No, Mr. Chairman.

22 **CHAIRMAN T. WHEELER:** Director Skolnik?

23 **MR. B. SKOLNIK:** I will give the parties a
24 little admonition about a housekeeping matter.
25 I believe we have the room til noon.

1 **MR. B. KING:** We can keep it til 1:00
2 actually.

3 **MR. B. SKOLNIK:** Til 1:00. We're -- we're
4 doing fine then, until 1:00.

5 **CHAIRMAN T. WHEELER:** I would note that
6 FSSA did not leave us...

7 **MR. B. SKOLNIK:** Yeah, that's right. We do
8 get we -- should get some kind of...

9 **MS. K. CELESTINO-HORSEMAN:** Mr. Chairman, I
10 need to put something on the record, please.

11 **CHAIRMAN T. WHEELER:** All right. I'll give
12 you a minute.

13 **MS. K. CELESTINO-HORSEMAN:** Thank you. We
14 would object to this, to the extent that it is
15 the commission coming in and advocating on one
16 side or the other. I don't think that these
17 witnesses -- I don't think anyone really
18 believes that these witnesses, if they're going
19 to come in and say anything, are going to
20 necessarily be to our benefit, and certainly, if
21 we have the opportunity to depose them in
22 advance, then the parties would know whether it
23 would be necessary and you'd have the benefit of
24 a transcript to be able to determine whether you
25 need to call them that day.

1 I don't think that -- you use the example that
2 if there was a blatant issue that a party had
3 missed -- no, I don't think it is the job of this
4 board, just like a court, to sit there, and
5 certainly, there's certain issues that you can pick
6 up, but to bring in new things and to bring in
7 evidence and then to take the position of advocacy,
8 I think is something entirely different, so on that
9 basis...

10 **COMMISSION MEMBER B. PYLITT:** So -- so let
11 me make sure we get your objection. Are you
12 suggesting that the three of us seasoned lawyers
13 might not have something to ask of one of these
14 witnesses that you depose for eight hours, --

15 **MS. K. CELESTINO-HORSEMAN:** Certainly.

16 **COMMISSION MEMBER B. PYLITT:** -- or are you
17 that smart that you're going to think of
18 everything that the three of us want to do to
19 apply the law to reach a decision?

20 **MS. K. CELESTINO-HORSEMAN:** No. What I'm
21 saying is that if there's -- if I depose someone
22 for eight hours, certainly, someone is going to
23 have an idea whether they have information that
24 is relevant to the issues raised by this
25 contest.

1 **COMMISSION MEMBER B. PYLITT:** Right, but
2 you're suggesting that you can offer up a
3 deposition transcript and I can call a person,
4 and what if one of three of us has a question,
5 then...

6 **MS. K. CELESTINO-HORSEMAN:** No, no, no --
7 no, I'm not saying to offer up a deposition
8 transcript, no. What I'm saying is that --

9 **CHAIRMAN T. WHEELER:** Let me ask this
10 question: Would you agree that we as commission
11 members, during the hearing itself, we have the
12 right to ask witnesses questions; you would
13 agree with that?

14 **MS. K. CELESTINO-HORSEMAN:** Certainly.

15 **CHAIRMAN T. WHEELER:** All right. And you
16 would agree that we have a right to ask
17 questions that you may not have asked; correct?

18 **MS. K. CELESTINO-HORSEMAN:** Certainly.

19 **CHAIRMAN T. WHEELER:** And we can go into an
20 area that you may not have asked; isn't that
21 taken over your case as well?

22 **MS. K. CELESTINO-HORSEMAN:** No.

23 **COMMISSION MEMBER B. PYLITT:** Or that we
24 may ask questions that are in a different area
25 that you would not even broach --

1 **MS. K. CELESTINO-HORSEMAN:** No, I --

2 **COMMISSION MEMBER B. PYLITT:** -- and you
3 object to our asking those questions?

4 **MS. K. CELESTINO-HORSEMAN:** No, I don't
5 think that that's a problem either. What I have
6 a problem with it is that no one has asked that
7 these witnesses be call. So if they're going to
8 be propounded as witnesses, as we sit here
9 today, the only person, the only entity that's
10 going to propound these witnesses would be the
11 board, which means the board then takes the lead
12 and starts going through. Now --

13 **COMMISSION MEMBER B. PYLITT:** Well, you
14 brought it to our attention yesterday in a
15 pleading. You said issue subpoenas for these
16 people's depositions. We didn't even know who
17 some of these people were. Mr. William Mills'
18 name has never been mentioned in any of the
19 pleadings.

20 **MS. K. CELESTINO-HORSEMAN:** Certainly, and
21 I'd love for you to issue subpoenas for their
22 depositions, but for this --

23 **COMMISSION MEMBER B. PYLITT:** So why the
24 motion?

25 **MS. K. CELESTINO-HORSEMAN:** That's why --

1 and that's why I have -- I'm making the
2 objection for the record on that, and I presume
3 that if that happens, that we will then have the
4 opportunity to do a full and fair
5 cross-examination of the witness.

6 **CHAIRMAN T. WHEELER:** I would certainly
7 expect both parties to. All right, the motion's
8 been made and seconded, any further discussion?

9 *(No response.)*

10 **CHAIRMAN T. WHEELER:** Hearing none, all in
11 favor of the motion that the executive director
12 be directed to issue subpoenas for the
13 attendance of Nicole S. Mills, William Mills,
14 Michelle Quigley-White and Charlie White at the
15 hearing in this matter, signify by saying aye?

16 **THE COMMISSION:** Aye.

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

19 *(No response.)*

20 **CHAIRMAN T. WHEELER:** Motion carries 3-0.
21 I believe that's all the business here, and
22 before we get thrown out, I'll accept a motion
23 to --

24 **MS. K. CELESTINO-HORSEMAN:** Witness and --

25 **COMMISSION MEMBER B. PYLITT:** What about

1 the witness and exhibit list?

2 **CHAIRMAN T. WHEELER:** Oh, I'm sorry, yea.
3 What do you guys think -- I mean, I -- whatever
4 is reasonable for you guys?

5 **MS. K. CELESTINO-HORSEMAN:** If we could
6 have an exchange say 14 days before.

7 **CHAIRMAN T. WHEELER:** Which would be
8 June 7th?

9 **MS. K. CELESTINO-HORSEMAN:** Okay, June 7th.

10 **CHAIRMAN T. WHEELER:** Are you comfortable
11 with that, both parties?

12 **MS. A. WOUDEBERG:** Yes.

13 **MS. K. CELESTINO-HORSEMAN:** And would we
14 need another final pretrial, so to speak?

15 **CHAIRMAN T. WHEELER:** I hope not. If
16 something comes up, let the director know and
17 then he'll consult with the commissioners.
18 You'll issue an order encompassing all of
19 these --

20 **MR. B. SKOLNIK:** Yes, Mr. Chairman.

21 **CHAIRMAN T. WHEELER:** -- and circulate
22 everything. I thought Mr. Pylitt had a
23 question?

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

25 **CHAIRMAN T. WHEELER:** Okay.

1 **MR. B. SKOLNIK:** One question, Mr.
2 Chairman, does the -- I see that there will be a
3 witness and exhibit list deadline of June 7th.
4 Does the Commission want to set down any
5 deadline for discovery, in terms that there may
6 be a request for an additional subpoena or
7 additional documents from either of the parties
8 and I didn't know if you wanted some type of
9 deadline established for that?

10 **CHAIRMAN T. WHEELER:** That's fair enough.
11 If there's an item, if there are documents -- I
12 think we made our position clear on the
13 depositions, but if there are documents that
14 either party needs that they cannot come to
15 agreement on, bring that back to the director,
16 and if we need to hold a final pretrial
17 conference as was mentioned or something to
18 resolve this issue.

19 But I trust the parties -- I think we've made
20 it pretty clear that if you've got documents that
21 are relevant, those documents ought to be produced
22 between the parties. When you exchange witness
23 exhibit lists, exchange copies of exhibits as well.
24 So if you're going to take an exhibit and you're
25 going to call it, please exchange the copy and

1 attach the copies as well, because it is my hope
2 that you will also be able to stipulate those
3 exhibits.

4 I would ask the parties to discuss stipulating
5 to those exhibits and creating a joint exhibit
6 binder because that will make this go a lot
7 quicker.

8 **MR. C. BRIZZI:** Mr. Chairman, I merely want
9 to -- I don't think have my name on the record.

10 **CHAIRMAN T. WHEELER:** Yeah, you need to get
11 on the record.

12 **MR. C. BRIZZI:** Okay. Carl Brizzi. I'm an
13 attorney for Michelle Quigley-White. Just -- I
14 just have a couple of clarification questions.
15 These subpoenas -- I mean, you said that
16 subpoenas are going to go out for these
17 individuals -- when are they going to go out?
18 What are the deadlines for filing motions for
19 protective orders? Who should they be directed
20 to?

21 **CHAIRMAN T. WHEELER:** If you've got -- if
22 they've got motions for protective orders, we'll
23 issue the subpoenas now, but motions for
24 protective orders will be filed by June 7th as
25 well.

1 **MR. C. BRIZZI:** Fair enough, commission
2 members.

3 **CHAIRMAN T. WHEELER:** All right, anything
4 else -- going once, going twice -- I'll accept a
5 motion to adjourn.

6 **COMMISSION MEMBER B. PYLITT:** So moved.

7 **COMMISSION MEMBER G. DURNILL:** 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.

15 *(Time noted: 1:33 p.m.)*

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

3

4 I, Rhonda J. Hobbs, RPR, and a Notary Public
5 and Stenographic Reporter within and for the County
6 of Hendricks, State of Indiana at large, do hereby
7 certify that on the 25th day of May, 2011, I took
8 down in stenograph notes the foregoing proceedings;

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

11 IN WITNESS WHEREOF, I have hereunto set
12 my hand and affixed my notarial seal this 13th
13 day of June, 2011.

14

15

16

Rhonda J. Hobbs
NOTARY PUBLIC

17

18 My Commission Expires:
19 August 24, 2017
20 County of Residence:
21 Hendricks County

22

23

24

25