

1 Commission -- there are still two precincts
2 in Perry within Vanderburgh County -- that's
3 Perry 1 and Perry 6 -- in which there was no
4 tally. So I just wanted to alert the
5 Commission to that and -- and, obviously, the
6 Chair can direct us how to best proceed.

7 MR. CHAIRMAN: Thank you.

8 Respondent's case in chief.

9 MR. BROOKS: Can I do 6-13 first
10 since I have it on top?

11 MR. CHAIRMAN: We agreed to go in
12 order.

13 MR. BROOKS: Oh. Okay.

14 MR. CHAIRMAN: Robb 1.

15 MR. BROOKS: Okay. Remarkably
16 enough, Mr. Chairman, there's a situation in
17 Posey County -- wait a minute. Yeah -- in
18 Posey County that hasn't been discussed, but
19 I think everybody is quite aware of it,
20 including the State Board of Accounts, and
21 that was, they ran some test ballots for
22 their machine and mixed them in with ballots
23 that got sent out to voters, so some voters
24 received ballots that were already premarked.
25 What -- what the county did was send all of

1 those people a notice saying that, sorry, the
2 -- oh. In addition there was some mess up on
3 a school board race. So some were filled in.
4 All of them had the school board race wrong
5 and X number were sent out. So they sent
6 people the notice that they got an invalid
7 ballot, fill out this form, which is -- I
8 forget which ABS something it is. Maybe -- 5
9 saying I got a ballot. So -- so here's --
10 you got a bad ballot, here's this thing, fill
11 it out, send it back and we'll send you a new
12 good ballot. And what they did was, they --
13 when they remade the ballots that were all
14 right, there was a green stripe across the
15 top so the white ballots that came in they
16 know were not good and weren't counted.

17 In this particular case, there was a
18 ballot that was an absentee ballot from
19 Marian Effinger that was rejected. And I
20 think -- let me see if I can get these -- if
21 you'll look at Exhibit 1, I think these were
22 all together as a single exhibit.

23 MR. CHAIRMAN: Okay. Exhibit 1,
24 Robb 1, please.

25 And if you have exhibits for future

1 arguments, if you could, start collecting
2 those and get them to the State Board of
3 Accounts, the exhibit numbers, so we can --

4 MR. BROOKS: I think it's just
5 one. I've got to see. It should be a couple
6 of -- three privacy envelopes, a voter
7 registration from Thomas Effinger, a spoiled
8 ABS5 and two poll book pages. I think that's
9 all one exhibit, Exhibit 1.

10 MR. CHAIRMAN: For the -- for any
11 other arguments you make for future
12 precincts, if we can have the exhibit numbers
13 that you know you're going to produce --

14 MR. BROOKS: Oh, yeah.

15 (Off the record - Gathering
16 exhibits)

17 MR. CHAIRMAN: All right. Let's
18 go.

19 MR. BROOKS: Okay. This is an
20 absentee application and the corresponding
21 ballot and a privacy envelope. This is a
22 situation where we talked about before. If
23 you look on application, which is 14, you'll
24 see that there is either a squiggly line or
25 -- or no signature whatsoever. This

1 gentleman got a ballot, mailed it all back
2 in. You've been ruling that these votes
3 don't count, but I would like -- we would
4 argue that this should count and would like
5 to make a record of it. And that's all I
6 have to say.

7 MR. CHAIRMAN: Counsel.

8 MR. BROWN: It looks to me like
9 there's a difference -- it looks like the
10 person assisting was a different person on
11 the ballot; also, there's no signature on the
12 application, and that's the reasoning for
13 invalidating and the ruling of the County
14 Election Board. And there's nothing on the
15 secrecy envelope to show -- to -- to
16 determine that -- that the voter signed any
17 of these documents, Mr. James Boyd, because
18 there's no two alike signatures to compare.
19 So we would urge that you uphold the County
20 Election Board's ruling in invalidating this
21 ballot.

22 MR. BROOKS: Could I just make
23 one comment for the record, because I know
24 where you're headed with this.

25 You don't have to have the same person

1 assist you, but in one case, it's Adrien and
2 in this other, it's grouped as Mrs. James.
3 So that means it's a different person but it
4 doesn't have to. Thank you.

5 MR. CHAIRMAN: Thank you.

6 Questions from Commission first.

7 Discussion or motions.

8 MR. KUZMAN: I move we uphold the
9 county, the County Election Board.

10 MR. CHAIRMAN: Say it again in
11 the mic.

12 MR. KUZMAN: I move that we
13 uphold the County Election Board.

14 MR. CHAIRMAN. Second.

15 Discussion.

16 MR. DURNIL: It seems to me like
17 it's the same situation that we ruled on
18 several times before, and that is, everything
19 was done right by the voter other than the
20 signature. It's a clerical error.

21 MR. CHAIRMAN: Any other
22 discussion.

23 All in favor of the motion?

24 MR. KUZMAN: Aye.

25 MR. CHAIRMAN: Aye.

1 Opposed?

2 Hearing none.

3 Motion carries unanimously.

4 Anything else for, what, Robb 1?

5 MR. SKOLNIK: Are there any other
6 -- before we move to Robb 1 --

7 MR. CHAIRMAN: That was --

8 MR. SKOLNIK: That was
9 Vanderburgh County, Ward 6, precinct 13.

10 MR. CHAIRMAN: It did move.
11 Okay. Thank you. Ward 6, 13.

12 MR. SKOLNIK: It's my
13 understanding that the Commission upheld the
14 determination of the --

15 MR. CHAIRMAN: Local election.

16 MR. SKOLNIK: -- local officials.

17 Is there anything else from -- disputed
18 in Ward 6, precinct 13 in Vanderburgh County?

19 MR. BROOKS: No, sir.

20 MR. SKOLNIK: I'll then, unless
21 there's an objection, proceed to read the --
22 the tally. As I -- as I reflect it, it would
23 -- I show 167 votes tallied for Mr. Deig, 112
24 for Ms. McNamara and five no votes.

25 MR. CHAIRMAN: I move to certify

1 that tally.

2 MR. DURNIL: Yeah.

3 MR. CHAIRMAN: Second.

4 MR. KUZMAN: Second.

5 MR. CHAIRMAN: All in favor?

6 Aye.

7 MR. KUZMAN: Aye.

8 MR. CHAIRMAN: Opposed?

9 Hearing none.

10 Motion carries unanimously.

11 MR. SKOLNIK: I would ask the

12 State Board of Accounts, have we been

13 provided with the materials in Robb 1?

14 MR. CHAIRMAN: Mr. Brooks,
15 anything else in your case in chief? Is this
16 the last issue we're waiting on?

17 MR. BROOKS: Yes.

18 MR. CHAIRMAN: Okay. Robb 1.

19 Mr. Brooks, Robb 1.

20 MR. BROOKS: Yes. What -- what
21 we've got is -- what I'm just disputing is --
22 I'm going to argue to you that the privacy
23 envelope of Marian Effinger should have been
24 opened. That's the one that is marked with
25 Exhibit 1. You'll see that on the back in

1 handwriting it says: Received in the clerk's
2 office November 5th, 2010.

3 But let me walk you through this
4 process which you can only see by looking at
5 Thomas Leo Effinger's track record here. On
6 -- he signed his first request for an
7 absentee ballot -- well, the request on it is
8 the normal application for an absentee
9 ballot. That was done on September 23rd. On
10 October 3rd he signed his first privacy
11 envelope and sent that in. That being
12 received by the Election Board on
13 October 5th. He then got his ABS5 saying:
14 The ballot you just sent in is no good.

15 So he filled that out; he sent that in
16 and received another privacy envelope which
17 he signed on October 21st; and if you'll
18 notice on the back, it was received by the
19 Election Board on October 23rd and was -- his
20 vote was counted. But I'm walking you
21 through this because 86-year-old Mr. Effinger
22 is married to Marian. I have two affidavits,
23 one from Marian and one from Thomas, that the
24 exact same procedure was followed for Marian;
25 that is, she filled out her request for an

1 application the same day that Thomas did, her
2 husband, on September 28th. She filled it
3 out, gave it to her husband. Then she too
4 got a ballot which she sent back in, mailed
5 on the same day as her husband. Then she too
6 got the letter and the new envelope and she,
7 too -- now you see for the first time,
8 because they actually have these documents --
9 signed it on October 21st, gave it to her
10 husband, who mailed it at the same time as he
11 mailed his. His was received in plenty of
12 time on October 23rd. Hers would -- was not
13 received until November 5th. This document
14 showing that it is received November 5th is
15 different in -- well, her whole case is
16 different than -- than the rest, because if
17 you -- I don't know how many of these you've
18 seen. I can hand you a handful of them. But
19 all -- all Posey County privacy envelopes
20 have a stamp on them. If you look at
21 Mr. Effinger's, they're all like this with
22 the exception of one other late one that we
23 had. They're all received and file marked.
24 So we then went and said, okay, let's
25 go find Marian's paperwork. All of her

1 paperwork is missing from the file. So what
2 you've got is somebody who on November 5th
3 after the election, handwriting, not stamping
4 in like -- like is their normal procedure and
5 you've got no supporting documents to go
6 through this.

7 Now, I would suggest before I make my
8 more formal legal argument that --

9 MR. CHAIRMAN: I need you to
10 speed it up a little bit.

11 MR. BROOKS: I'm --

12 MR. CHAIRMAN: I appreciate it.

13 MR. BROOKS: I would suggest that
14 this handwritten notation, given that it was
15 -- that hers was mailed the same place, the
16 same day as the husband's that was received
17 October 23rd is more likely to be a -- this
18 is when we discovered it as opposed to when
19 it came in the mail because it didn't go
20 through the proper stamping proceeding. But
21 from a legal standpoint of view, I think what
22 -- what we really have here independent of
23 that argument and in addition to it, is an
24 error on the part of an election official.

25 She clearly filled out some application.

1 or she wouldn't have got her ballot and it
2 was returned in plenty of time, and the only
3 reason it didn't count was because of an
4 error, that is, sending out these invalid
5 ballots. So what I would like to do is
6 present to you the affidavits and ask you to
7 open this -- this ballot and have it counted.
8 Everything that she says is tracked, keeping
9 in mind they're 93 or 95, whatever, years
10 old. She's given everything to her husband,
11 did everything the exact same way. Her
12 paperwork is mysteriously missing and her --
13 and her privacy envelope arrives, what,
14 12 days after it was mailed. Had it not been
15 for the error on the clerk's part, she would
16 have had her first ballot in -- oh, I want to
17 put in one other thing. The reason that
18 you've not heard about these white envelopes
19 before is because what we tried to do -- and
20 I think Adam would tell you we were quite
21 surprised this all matched up. But whenever
22 we had a white ballot, there were double
23 privacy envelopes. So if you got two, you
24 knew that, okay, that added up.

25 In this precinct there were three white

1 ballots and only two double privacy
2 envelopes, which means there should be
3 another set of privacy envelopes, which I
4 would suggest to you, given the testimony and
5 the tracking, was Marian's. It's just gone.

6 MR. SKOLNIK: Mr. Chairman, I
7 have been -- or Mr. Brooks has submitted
8 exhibits that I've marked as Exhibits R1 for
9 Respondent, R1 and R2.

10 MR. CHAIRMAN: Thank you.

11 Counsel.

12 MR. BROWN: Thank you,
13 Mr. Chairman.

14 I won't take much of the Commission's
15 time. I thank you for your diligence today
16 if this is the last time I have to address
17 you today. So thank you for your service.

18 The statute is clear, 311.5-410. It's
19 on page 347. If it's received after noon on
20 Election Day, it's not to be counted. This
21 ballot was received after Election Day. It's
22 funny; we get to this point in Respondent's
23 case in chief and all of a sudden when things
24 are lost, it's mysterious. Well, when things
25 were lost in our case, oh, it happens all the

1 time. Well, apparently it happens all the
2 time. So I'm going to say you rule with the
3 County Election Board. It's clear. There's
4 no -- no way to -- I mean, I appreciate the
5 affidavit, but when the voter puts it in the
6 mail, it's not the -- if the legislature
7 wanted to intend that, they would say -- they
8 could say when it's stamped and mailed by the
9 voter, they could do that. They didn't.
10 They said it has to be received in the
11 Election Board office. I really don't think
12 there's any room for discretion here and I
13 would appreciate you --

14 MR. CHAIRMAN: Okay.

15 MR. BROWN: -- make a motion to
16 defeat the -- and uphold the County Election
17 Board's determination here. Thank you for
18 your time.

19 MR. CHAIRMAN: Questions for --
20 by Commissioners.

21 MR. BROOKS: I have one last
22 comment, please.

23 MR. CHAIRMAN: Ten seconds.

24 MR. BROOKS: Pardon?

25 MR. CHAIRMAN: Ten seconds.

1 MR. BROOKS: What we talked about
2 is what -- a difference between a standard
3 and a recount. You've mentioned that,
4 Mr. Chairman. And the difference between
5 this and some other late ballot is, the only
6 reason it's late is because of an error on
7 the part of election officials. She mailed
8 her ballot in early at the same time that she
9 mailed her husband's, and had she not
10 received an ABS5 because the ballot was
11 wrong, that ballot would have been in and it
12 would have counted. And that's where we get
13 to you've got a ballot now that is not
14 counted, but the only reason it's not counted
15 is because an error of sending out the wrong
16 ballots on the part of an election official.

17 MR. CHAIRMAN: Okay. Questions
18 by Commissioners.

19 Discussion or motions.

20 MR. DURNIL: Can I ask Counsel.

21 MR. CHAIRMAN: Yes.

22 MR. DURNIL: What leeway does the
23 Commission have on the deadline of receiving
24 an absentee ballot?

25 MR. KING: Mr. Chairman and

1 member -- or Commissioner, the statute is
2 explicit with regard to the deadline for
3 receiving absentee ballots by mail in a
4 central count county. It is noon on Election
5 Day. The Commission does have the discretion
6 to weigh the evidence presented by the
7 parties with regard to when the absentee
8 ballot was actually received either before
9 that deadline or after.

10 MR. CHAIRMAN: Counsel, anything
11 to add?

12 MS. BARNES: I agree with
13 Mr. King that the -- the deadline in the
14 statute indicates it has to be received by
15 noon on Election Day in order to be counted.

16 MR. CHAIRMAN: Questions and
17 discussion by Commissioners.

18 MR. DURNIL: I would move,
19 because there's an obvious error here -- two
20 people doing the same thing at the same time
21 -- an error on the part of the Election Board
22 of not stamping the envelope when it was
23 received, so I would move we count the
24 ballot.

25 MR. CHAIRMAN: Second for

1 discussion.

2 MR. KUZMAN: I think the County
3 Election Board spoke, and the ballot wasn't
4 here, and we can't -- we don't know what
5 happened to it and why it didn't get here, so
6 I don't think we can -- I support that
7 motion.

8 MR. CHAIRMAN: Other discussion.
9 Hearing none.

10 All in favor of the motion, "Aye."

11 MR. DURNIL: Aye.

12 MR. CHAIRMAN: All opposed.

13 MR. KUZMAN: Aye.

14 MR. CHAIRMAN: Aye.

15 Motion defeated.

16 Anything else, Mr. Brooks?

17 MR. BROOKS: That completes our
18 case.

19 MR. CHAIRMAN: Wonderful. Now --

20 MR. SKOLNIK: Mr. Chairman,
21 before we proceed, I am compelled to read the
22 -- the tally in Robb Number 1 if there's
23 nothing else from either party. The tally
24 reflects 121 votes for Mr. Deig, 179 for
25 Ms. McNamara, three invalid ballots tallied

1 for Ms. McNamara and there were five no
2 votes.

3 Mr. Chairman and members of the
4 Commission, it's my understanding now, as I'm
5 required to report, under the guidelines that
6 I'm unaware of any disputed ballots in any
7 precinct that have not been presented by
8 either of the parties in this matter.

9 MR. CHAIRMAN: Correct. Did we
10 close out Robb 1? Do we need to vote on
11 that?

12 MR. DURNIL: I move we accept the
13 tally.

14 MR. CHAIRMAN: Second.
15 All in favor?

16 MR. DURNIL: Aye.

17 MR. KUZMAN: Aye.

18 MR. CHAIRMAN: Aye.

19 Motion carries unanimously.

20 Now, we have two precincts in
21 Vanderburgh County, Perry 1 which consists of
22 two votes that we voted to have invalidated
23 and Perry 6, which we voted to -- which has
24 one vote that we voted to have invalidated.
25 So we cannot get a final tally tonight.

1 We'll have to meet again to certify tallying
2 the election.

3 The question is, do we want to get a
4 preliminary tally verifying the other
5 precincts -- we certainly would if this was
6 over -- right now or should we just stop here
7 and wait until we meet again?

8 MR. DURNIL: What is it we need
9 to look at in those?

10 MR. CHAIRMAN: We have to -- we
11 voted to --- to invalidate two votes, so
12 they're going to have to go to their vendors
13 and I ordered the Recount Director to -- to
14 be there to supervise that process.

15 MR. BROOKS: Mr. Chairman.

16 MR. CHAIRMAN: Yes.

17 MR. BROOKS: Could we get from
18 the State Board of Accounts what the vote
19 total is? I know you've got -- you've got
20 three, by our count, votes that you want to
21 look at somehow, but with those included,
22 what is the margin? Because I think the
23 margin is seven, and then even if those were
24 all Wendy McNamara votes and were taken out,
25 we would still be the winner, which it seems

1 to me why we would go through this process.

2 MR. CHAIRMAN: I think we have to
3 -- I'd like to certify an exact number,
4 number one. But there might be some value to
5 all of us here in the room after spending ten
6 hours to -- to know the fact that you're
7 looking for. So we could do that to get a
8 preliminary number so we can sleep tonight
9 better, some of us at least, namely the
10 candidates, but then go back and -- go get
11 those votes and we will certify this election
12 with an exact number.

13 MR. BROOKS: So we'll get a
14 number that -- tonight that includes those
15 three knowing that some three additional
16 votes might be --

17 MR. CHAIRMAN: I -- I intend to
18 get those three votes and -- and validate
19 them.

20 I assume you have to do this for
21 certification purposes?

22 MR. KING: Yes. Mr. Chairman and
23 members of the Commission, it's necessary to
24 complete the -- count all the votes.

25 MR. BROOKS: So we can't get a

1 total margin that includes those three votes
2 knowing that they're -- we are -- we are
3 doing that?

4 MR. CHAIRMAN: If it's the
5 pleasure of the other Commissioners, I'm
6 happy to have that done right now.

7 MR. KUZMAN: Yeah. I -- I think
8 we should get a number, but you're exactly
9 right; to certify the exact election, we have
10 to -- we have to pull those three votes.

11 MR. BROOKS: I -- I understand.
12 You don't know which votes they're going to
13 change, so --

14 MR. CHAIRMAN: Right. So
15 let's --

16 MR. BROOKS: -- you don't know
17 what the margin is before those votes change.

18 MR. DURNIL: Unless we just move
19 to -- to go ahead and waive those three votes
20 and turn them over to the other side. We had
21 a tally and he decides he wants to just give
22 those three votes to the other side.

23 MR. CHAIRMAN: I guess that would
24 be the certification then.

25 MR. KUZMAN: Yeah.

1 MR. DURNIL: Let's get a tally.

2 MR. BROOKS: Well, that's sort of
3 what I was --

4 MR. KUZMAN: You could give them
5 to us as well.

6 MS. BARNES: Come on. Be
7 generous.

8 MR. BROOKS: I think we should
9 confer to our -- with our clients on that.

10 MR. CHAIRMAN: I -- I think for
11 the process, the integrity of the process,
12 we're going to -- I'm going to ask the -- the
13 Recount Director to supervise the removal of
14 those three votes and report back to us and
15 we'll make a final vote and certify this
16 election.

17 MR. BROOKS: My -- my biggest
18 concern is how long that will take. You have
19 some guy from Texas who has got to come back
20 up here and reconstruct this stuff and we've
21 got to be done by what, the 20th?

22 MR. CHAIRMAN: Well, we'll meet
23 again before that, and if that's the case,
24 we'll deal with it then.

25 MR. BROOKS: Okay.

1 MR. CHAIRMAN: Okay? But if --
2 if you all would like a preliminary tally
3 outside --

4 MR. BROOKS: I would.

5 MR. CHAIRMAN: -- those two
6 precincts -- or those -- excuse me -- outside
7 those three votes, we can do that right now.

8 MR. BROOKS: Thank you.

9 MR. CHAIRMAN: Do I hear
10 agreement from the Commissioners?

11 MR. DURNIL: Yes.

12 MR. CHAIRMAN: Recount
13 Director --

14 MR. KUZMAN: I also agree with
15 you.

16 MR. CHAIRMAN: Mr. Skolnik, are
17 you ready?

18 MR. SKOLNIK: I -- I would ask
19 that the State Board of Accounts provide the
20 tally. Obviously, it cannot address those
21 three votes. I think their preliminary tally
22 in Perry 1 would reflect 231 votes for
23 Mr. Deig, 307 for Ms. McNamara, with ten no
24 votes. And we all realize that there's still
25 two -- that two of those votes there may

1 possibly be invalidated.

2 And then in Perry 6 --

3 MR. CHAIRMAN: They'll be
4 invalidated.

5 MR. SKOLNIK: Well, they may --
6 they may be, it's true and, of course, it may
7 be a no vote. We don't know.

8 MR. CHAIRMAN: Yeah. Right.

9 MR. SKOLNIK: We don't know
10 whether it's for any candidate.

11 And then in Perry 6, the tally,
12 preliminary tally shows 224 for Mr. Deig, 219
13 for Ms. McNamara and eight no votes. And
14 there's one vote there that the Chair has
15 indicated would -- would be invalidated.
16 Again, we don't know if it's for either of
17 these candidates or whether it's a no vote.

18 (Off the record - Discussion)

19 MR. CHAIRMAN: The Recount
20 Commission will come to order.

21 Mr. Skolnik:

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

24 I've been provided by the State Board
25 of Accounts with what I'm going to refer to

1 still as a preliminary tally because there
2 are three votes yet that may be invalidated.

3 The tally that has been provided to me
4 reflects that there are 9,369 votes for
5 Mr. Deig, 9,376 votes for Ms. McNamara.
6 There are 352 no votes. There were 24
7 invalid ballots for Mr. Deig, 18 invalid
8 ballots for Ms. McNamara.

9 MR. CHAIRMAN: Thank you.
10 Commissioners, any questions?

11 MR. DURNIL: So that means
12 there's a seven-vote difference and there's
13 three votes in contest.

14 MR. CHAIRMAN: Three votes left
15 to be invalidated. And I'm going to ask the
16 Recount Director to oversee that process this
17 week. Of course, the parties are welcome to
18 attend that.

19 Thank you very much.

20 (The hearing was concluded at
21 10:08 p.m.)

22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF INDIANA)
) SS:
COUNTY OF VANDERBURGH)

I, Faith Hurley, Court Reporter, Notary Public, County of Vanderburgh, State of Indiana, do hereby certify that the hearing before the State Board Recount Commission was taken on said date, at the time and place heretofore mentioned. Said hearing was taken by me in Stenograph and electronically recorded and afterwards reduced to the foregoing transcript.

I further certify that I am not an attorney or relative of either party or otherwise interested in the outcome of this cause of action.

IN WITNESS THEREOF, I have hereunto placed my hand and seal on this the 10th day of January, 2011.

Commission Expires 6-18-2017

Faith Hurley

Faith Hurley, Court Reporter
Vanderburgh County, Indiana

BEFORE THE INDIANA RECOUNT COMMISSION

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

This matter was reported by me, Faith Hurley, Court Reporter, Notary Public, County of Vanderburgh, State of Indiana, on the 12th day of December 2010, between the hours of 10:09 P.M. and 10:39 P.M., at the Hovey House, Mt. Vernon, Indiana.

HURLEY & ASSOCIATES, INC.

P.O. Box 3131

Evansville, Indiana 47731

812.479.(DEPO)3376

1.800.421.(DEPO)3376

www.hurleyandassoc.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

RECOUNT COMMISSION

- CHAIRMAN - Todd Rokita
- REPUBLICAN COMMISSIONER APPOINTEE - Gordon Durnil
- DEMOCRATIC COMMISSIONER APPOINTEE - Bob Kuzman
- REPUBLICAN COUNSEL - Brad King
- DEMOCRATIC COUNSEL - Leslie Barnes
- RECOUNT DIRECTOR - Bradley Skolnik

- COUNSEL FOR PETITIONER - Karen Celestino-Horseman
- COUNSEL FOR RESPONDENT - David Brooks

I N D E X O F E X A M I N A T I O N

| | |
|----------------------------|---------|
| PRESENTATION BY PETITIONER | 6 - 11 |
| PRESENTATION BY RESPONDENT | 12 - 16 |
| REBUTTAL BY PETITIONER | 16 - 18 |
| REBUTTAL BY RESPONDENT | 18 - 19 |

1 MR. CHAIRMAN: This is the matter
2 of contest for the election of Indiana
3 Secretary of State.

4 The Indiana Democratic Party by its
5 Chairperson, Daniel J. Parker versus Charlie
6 White, Respondent.

7 Counsel is setting up.

8 (Off the record - Counsel setting
9 up)

10 Counsel, please state your name for the
11 record.

12 MR. BROOKS: David Brooks for
13 Charlie White.

14 MS. CELESTINO-HORSEMAN: Karen
15 Celestino-Horseman for Dan Parker, Chairman
16 of the Indiana Democratic Party.

17 MR. CHAIRMAN: Thank you.

18 On November 19th, 2010, a verified
19 petition for election contest for the
20 election of Indiana Secretary of State was
21 filed with the Indiana Election Division by
22 Petitioner, the Indiana Democratic Party, by
23 its Chairman, Daniel Parker.

24 On November 23rd, 2010, a motion to
25 dismiss was filed with the Indiana Election

1 Division by Respondent, Charlie White.

2 On November 24th, 2010, the Recount
3 Director issued an order to convene a meeting
4 of the Indiana Recount Commission for
5 December 5th, 2010, to conduct a hearing on
6 the motion to dismiss.

7 On December 3rd, 2010, a response to
8 the motion to dismiss was filed with the
9 Indiana Election Division by Petitioner
10 Daniel -- Daniel J. Parker.

11 On December 5th, 2010, the Recount
12 Commission conducted a hearing on the motion
13 to dismiss that was filed on November 23rd
14 and the Recount Commission denied the motion
15 to dismiss.

16 On December 6th, 2010, a second motion
17 to dismiss was filed with the Indiana
18 Election Division by Respondent Charlie White
19 with respect to the verified petition for
20 election contest for the election of Indiana
21 Secretary of State.

22 On December 7th, 2010, the Recount
23 Director issued an order to convene a meeting
24 of the Indiana Recount Commission for
25 December 12th, 2010, at the Hovey House in

1 Mt. Vernon, Indiana, to conduct a hearing on
2 the motion to dismiss that was filed on
3 December 6th.

4 On December 8th, 2010, Petitioner
5 response to the Respondent's second motion to
6 dismiss was filed with the Indiana Election
7 Division by Petitioner Daniel Parker.

8 As we proceed on the motion to dismiss,
9 each party will be given a total of ten
10 minutes for a presentation of its arguments
11 before the Commission and five minutes for
12 rebuttal.

13 Before we proceed are there any matters
14 that either party wishes to address to the
15 Commission?

16 Mr. Brooks.

17 MR. BROOKS: No.

18 MR. CHAIRMAN: Ms. Horseman.

19 MS. CELESTINO-HORSEMAN: No.

20 MR. CHAIRMAN: As the moving
21 party Counsel for Charlie White, you may
22 proceed, Mr. Brooks.

23 PRESENTATION BY MR. BROOKS:

24 Thank you, Mr. Chairman.

25 I'm going to try to make this brief on

1 the assumption that having heard two-and-a-
2 half hours of this exciting argument which is
3 pretty much exactly the same as it is today,
4 that I need not repeat all that because it
5 was on the record, would that be fair,
6 Mr. Chairman, that you guys are cognisant of
7 the arguments that were already made?

8 MR. CHAIRMAN: Gordon?

9 I'm getting affirmations from my fellow
10 Commissioners.

11 MR. BROOKS: Okay.

12 MR. CHAIRMAN: And I agree.

13 MR. BROOKS: Well, let me just
14 run through what I think is the simplest way
15 to look at this.

16 The Petitioner selected IC3-12-11-3B4A
17 as the -- as the allegation necessary to get
18 special election. That requires that a
19 Petitioner state that the person declared
20 nominated or elected, which is in this case
21 Charlie White, does not comply with the
22 specific constitutional or statutory
23 requirements set forth in the petition that
24 is applicable to a candidate for the office.
25 No specific constitutional requirement was

1 alleged, so what that means is that they had
2 to do two things. They had to allege first
3 that Charlie White does not comply with
4 whatever specific statutory requirement they
5 allege, and, number two, they have to set
6 forth the specific statutory requirement in
7 the petition. Note that it says statutory
8 requirement set forth in the petition. It
9 does not say reference to a statute. You
10 actually have to say what that statutory
11 requirement is. Petitioners failed to do so
12 and, therefore, their petition should be
13 dismissed.

14 In particular the Petitioner has two
15 paragraphs in the petition that reference
16 some violation of a specific statutory
17 requirement. One is in section -- in
18 paragraph 6 and it is the section in the
19 paragraph which reads as follows: Petitioner
20 believes in good faith that Mr. White, who is
21 currently under investigation by two special
22 prosecutors on suspicion of voter fraud, be
23 convicted of, pleads guilty to or pleads nolo
24 contendere to a felony before taking office,
25 he would be ineligible to take office

1 pursuant to IC3-8-1-5.

2 Well, as we will say, you've got to
3 allege that you -- he does not comply with a
4 specific statutory requirement. They came up
5 with a specific statutory requirement, but
6 they did not allege that he does not comply.
7 This is a hope and a prayer that someday in
8 the future something might happen at some
9 later date. It does not -- does not meet the
10 state statutory criteria. So that element
11 should be dismissed.

12 The other reference is in paragraph 3
13 where Petitioner says that there's a
14 reference to the -- the contest requirement
15 section, that being 312-11-3B4A, because
16 White, quote, does not comply with the
17 specific statutory requirement set forth in
18 IC3-8-1-1B1, i.e., that he be legally
19 registered to vote at the address at which he
20 resided as of July 15th, 2010, the deadline
21 for the filing -- filing of the certificate
22 of nomination.

23 So there is a reference to a statute,
24 but a reference to a statute is not enough.
25 You must set forth the specific statutory

1 requirement. And when the specific statute
2 referenced is followed by i.e., that is --
3 that means that Mr. Parker is now telling you
4 what the specific requirement is set forth in
5 that statute. And that stated by Petitioner
6 is that he be legally registered to vote at
7 the address at which he resides as of
8 July 15th. The only problem with that
9 particular allegation is that specific
10 statutory requirement is not set forth in
11 that statute. And, in fact, there is no
12 statute -- specific statutory requirement
13 that has all of that as a requirement, that
14 he be legally registered to vote. You've
15 added -- she's added the legally and then
16 they've added the at the address at which he
17 resided. It's not part of the statute. The
18 statute merely requires that Mr. White be
19 registered to vote as of the deadline, which
20 is -- we're not arguing with the July 15th
21 issue.

22 Third, since the only real as opposed
23 to invented specific statutory requirement is
24 that Mr. White be registered, we note that
25 within the body of the petition itself,

1 Mr. Parker admits that, in fact, Charlie
2 White was registered to vote in the state of
3 Indiana at the time of the deadline. So in
4 addition to failing to cite a real specific
5 statutory requirement, they actually admit
6 that the requirement has been met.

7 I will not go into some of the other
8 arguments we had. I think I referenced the
9 fact that we believe that Birk v Bennett has
10 a substantial impact on this particular
11 situation. We talked about the fact that
12 when people move, they don't have a legal
13 requirement to reregister within a particular
14 time. We talked about -- about the fact that
15 this is a request to disenfranchise one
16 million Indiana voters and -- and declare a
17 guy that lost by 345,000 votes the winner
18 after having lost that election. But I'm not
19 going to go into detail. You heard argument
20 about that. Those arguments are all set
21 forth. We talked about the fact you can't
22 un-register anybody per the National Voter
23 Registration Act.

24 So with that, I would rest with what is
25 in the motion what I've tried to very briefly

1 summarize here this evening and ask if you
2 have any questions.

3 MR. CHAIRMAN: I think we'll take
4 questions after both presentations if we can.

5 Ms. Horseman.

6 PRESENTATION BY

7 MS. CELESTINO-HORSEMAN:

8 Thank you very much.

9 As we have maintained, this is all
10 about protecting the integrity of the
11 process. What it boils down to bottom line
12 is that we have someone here, Charlie White,
13 who apparently illegally registered to vote,
14 who apparently cast a vote illegally in May
15 and we are asking now that he be disqualified
16 based on Indiana statutes from serving as the
17 State's Chief Election Officer.

18 Now, in the interest of time, I
19 incorporated my prior written response and I
20 also tonight adopt our prior oral arguments
21 to save much time because we've been over it
22 all before.

23 This does include renewing our
24 objection to Secretary Rokita sitting as a
25 member of this board as it constitutes a

1 denial of due process, which promises a fair
2 and impartial tribunal, among other things.

3 In addition to the analysis which was
4 previously discussed which was done by
5 Secretary Rokita's office prior to this
6 election contest, I also want to say into the
7 record that Secretary Rokita endorsed
8 formally Charlie White as a candidate for
9 Secretary of State, that they ran on the same
10 ticket together and that coincidentally on
11 July 15th, the date by which Mr. White was to
12 be legally registered to vote, Mr. Secretary
13 Rokita made an in-kind contribution of
14 \$717.62 for refreshments. So we believe that
15 there is a definite bias and lack of
16 impartiality, and I think that was further
17 demonstrated tonight by making us wait over
18 ten hours to present what is, in essence, a
19 ten-minute argument. I think that shows that
20 this -- that there is certainly a bias
21 already pre-existing and established.

22 In addition, at the last hearing,
23 Secretary Rokita made it known to opposing
24 counsel that if he would make the change in
25 his petition, that that was the only thing

1 that he had a problem with on the motion to
2 dismiss and that he would rule for it. So
3 it's already been set in stone. Why this
4 couldn't have been brought up earlier, it's
5 just simply because, I believe, that this is
6 the lack -- a strong demonstration of a lack
7 of impartiality.

8 Now, as regards the specific statutory
9 requirement, there's only one requirement in
10 IC3-8-1-1 and that is that the candidate be
11 legally registered by July 15th, 2010, and
12 that is what we have stated in the petition.

13 You just sat here tonight in a precinct
14 where it was questioned and -- and Mr. Brooks
15 even used the words "invalid registration".
16 It was in your Perry 10 precinct on a voter
17 who did not provide a complete address. Here
18 we have an address, but it was a false
19 address.

20 Mr. Secretary Rokita asked the last
21 time we were together where I was giving the
22 reading that it had to be a legal
23 registration. I provided that authority in
24 my brief Pavey versus Pastrick. You'll
25 recall that case. It was a case of absentee

1 ballot fraud. The issue was interpreting by
2 the Supreme Court of the phrase the votes
3 legally cast are legally cast. And the
4 Indiana Supreme Court found that if you were
5 to count the votes, read into that statute
6 votes that had been illegally cast, it would
7 nullify the statute. And that's the same
8 thing here. There are no requirements for
9 Secretary of State other than that they be a
10 registered voter. To be a registered voter,
11 you have to be over the age of -- 18 or
12 older; you have to be a citizen and you have
13 to be a resident of the state of Indiana. If
14 we put in there that they don't have to be
15 legally registered, we are effectively
16 nullifying the intent of that statute.

17 Secondly, the Indiana Election
18 Commission has said that a voter must provide
19 their residence address, and they define
20 residence as being the primary residence
21 where a person lives. So if this board
22 tonight grants this motion to dismiss, what
23 it is essentially saying is that a voter
24 doesn't have to provide that information,
25 which would certainly then nullify and -- and

1 negatively impact our voter registration
2 system.

3 We have here a case where never before
4 as a Court or this body ever interpreted that
5 says that one can illegally register, provide
6 false information and that still constitutes
7 a registration to vote, so on those grounds,
8 we would ask that the motion to dismiss be
9 denied.

10 MR. CHAIRMAN: Thank you.

11 Questions from Commissioners.

12 Mr. Kuzman.

13 MR. KUZMAN: I just want to make
14 sure. We're not here on -- on the -- the
15 essence of the case; we're just here on a
16 motion to dismiss.

17 MS. CELESTINO-HORSEMAN: Yes.

18 MR. KUZMAN: So it sounds like we
19 made -- each party made more of a factual
20 issue than anything else. Today we're just
21 here to determine if this case should
22 proceed. I just want to make sure --

23 MR. CELESTINO-HORSEMAN: Yes.

24 MR. KUZMAN: -- we're all on the
25 same page. Okay. Thank you.

1 MR. CHAIRMAN: Other questions.

2 MS. CELESTINO-HORSEMAN: Oh. If
3 I -- I did want to -- to verify one thing and
4 it can be brought out later because this is
5 what higher courts are for, but if
6 Commissioner Durnil made a contribution to
7 Charlie White, I think that it should be
8 brought forward --

9 MR. DURNIL: I did not.

10 MS. CELESTINO-HORSEMAN: -- as a
11 potential conflict. Thank you very much.

12 MR. CHAIRMAN: You're not going
13 to ask Commissioner Kuzman?

14 MS. CELESTINO-HORSEMAN: I don't
15 think he did.

16 MR. CHAIRMAN: Okay.

17 MR. KUZMAN: I didn't.

18 MR. CHAIRMAN: Okay. I promised
19 a couple minutes of rebuttal for both sides.

20 Mr. Brooks.

21 REBUTTAL BY MR. BROOKS:

22 Just a couple things. I mean, what
23 this case is -- is about is a lot of
24 apparently, apparently, apparently, none of
25 which are relevant. We had some discussion

1 earlier about how I had to assume that all
2 these facts were true. All -- all of the
3 arguments we have made assume that the facts
4 alleged by Mr. Parker are true, and there's
5 no requirement to go further. Mr. Parker is
6 taking advantage of this inferent situation
7 to go way further than their petition so that
8 they could say apparently, apparently,
9 apparently on television and other places.

10 The comment on the invalid
11 registration, as my motion quite clearly
12 said, there were -- are -- are ways that one
13 can be removed from the registration rules.
14 They're just not applicable in this case. In
15 the earlier case in the McNamara recount, we
16 were talking about a specific statute in
17 which the registration was deemed invalid
18 from its start, and there's a statutory and
19 basis for that. I don't believe that's an
20 issue in this case.

21 I just think it's sort of odd and that
22 I think we ought to remember that they've
23 admitted that Charlie White was, in fact,
24 registered in the state of Indiana, and,
25 apparently, the big issue here is that he

1 should have been, if they had -- if Mr. White
2 would have done things the way that
3 Mr. Parker would have liked him to, he would
4 have been registered in the state of Indiana.
5 This is not a case where we're -- where
6 there's an allegation that Mr. White was
7 registered in Nicaragua or was living
8 somewhere else. Every place that's been
9 talked about is in the state of Indiana.
10 Regardless of where Mr. Parker thinks he
11 should have been -- he should have been
12 registered, he's always been in Indiana; he's
13 always been registered in Indiana, and if he
14 had done everything the way Mr. Parker thinks
15 he should have, which we don't think he
16 needed to, he still would have been
17 registered in the state of Indiana.

18 MR. CHAIRMAN: Thank you.

19 Rebuttal.

20 REBUTTAL BY

21 MS. CELESTINO-HORSEMAN:

22 Yes..

23 Counsel admits that we -- he is taking
24 the allegations as true, and that means that
25 the only inference that can be drawn was that

1 Charlie White is illegally registered to
2 vote, and if the motion to dismiss is
3 granted, then that would mean that this body
4 has taken the position that you do not have
5 to be legally registered to vote to be a
6 candidate for Secretary of State, and that I
7 don't think was the intention of the
8 legislature. I don't think it is a logical
9 interpretation of the statute and I think
10 that it opens the door to far worse things.
11 Thank you.

12 MR. CHAIRMAN: Questions.

13 Did the Democratic Party at any time
14 before now challenge the registration of
15 Mr. White?

16 MS. CELESTINO-HORSEMAN: They
17 called -- I know there was a call for a
18 special prosecutor. I know that there was a
19 letter sent over to the Secretary of State's
20 office.

21 MR. CHAIRMAN: As you know, at
22 the -- at the county level, there's
23 Democratic Party representatives who look at
24 voter registrations, and I haven't seen any
25 evidence that a challenge was made to the

1 registration of Charlie White at that time,
2 and at -- every time Charlie White voted
3 wherever he voted, I don't recall seeing any
4 challenges presented by you from the
5 Democratic Party or anyone else at that time.
6 Is that right?

7 MS. CELESTINO-HORSEMAN: Well --

8 MR. CHAIRMAN: It's a "Yes" or
9 "No". I mean, is there any --

10 MS. CELESTINO-HORSEMAN: -- we
11 haven't gotten to the evidentiary stage of
12 this, so, no, you're right. There's been no
13 evidence presented. This is a motion to
14 dismiss. Deny the motion to dismiss and then
15 we can get into the evidence.

16 MR. CHAIRMAN: Well, I'm asking
17 you if you know. I'll take judicial notice
18 that, no, I haven't seen or heard or -- or
19 I'm sure we would have by now if the
20 Democratic Party had challenged Charlie White
21 at the precinct or had challenged Charlie
22 White's voter registration in Hamilton
23 County.

24 MS. CELESTINO-HORSEMAN: Charlie
25 White --

1 MR. CHAIRMAN: You're saying you
2 don't know if that -- are you saying yes or
3 no?

4 MS. CELESTINO-HORSEMAN: I'm
5 saying that, no, I don't believe it's
6 appropriate to raise it on a motion to
7 dismiss to bring in new evidence and I'm also
8 saying the fact that, as alleged in the
9 petition, Charlie White concealed this.

10 MR. CHAIRMAN: Well, no. You
11 want us to -- you want us to agree with your
12 opinion that he's illegally registered to
13 vote and you want us to take that up, and my
14 question to you is, do you know of any time
15 that the Democratic Party when they had
16 opportunity like at the county level when
17 voter registrations were filed or at the
18 precinct level when Charlie White went to
19 vote numerous times over the last recent
20 months that the Democratic Party made the
21 challenges that you want us to take up now,
22 "Yes" or "No"?

23 MS. CELESTINO-HORSEMAN: I have
24 -- I -- I --

25 MR. CHAIRMAN: Or don't know.

1 MS. CELESTINO-HORSEMAN: -- do
2 not know if they did that --

3 MR. CHAIRMAN: Okay.

4 MS. CELESTINO-HORSEMAN: -- on the
5 local level.

6 MR. CHAIRMAN: Thank you.

7 MS. CELESTINO-HORSEMAN: However,
8 you just pointed out the problem with this
9 body handling a motion to dismiss. You're
10 talking about -- what we were --

11 MR. CHAIRMAN: I think I just --

12 MS. CELESTINO-HORSEMAN: --
13 talking about is taking allegations as true.

14 MR. CHAIRMAN: I think I just
15 pointed out the problem with this body
16 handling a challenge that should have been
17 made a long time ago by other parts of
18 government and that's -- I don't see --

19 MS. CELESTINO-HORSEMAN: By other
20 parts of government --

21 MR. CHAIRMAN: I don't see that
22 we're prepared to do that here tonight in
23 this form and this way. In fact, what I do
24 see in your motion to dismiss, and I'll just
25 ask you to verify it, is the fact that you do

1 admit that Charlie White was registered at
2 least by documents -- I know your opinion,
3 but the documents say that Charlie White was
4 registered in the state of Indiana -- your
5 petition says that -- on Broadleaf, correct?

6 MS. CELESTINO-HORSEMAN: I don't
7 believe that we say that.

8 MR. CHAIRMAN: You list a bunch
9 of addresses. All of them are in Indiana,
10 correct?

11 MS. CELESTINO-HORSEMAN: Yes.

12 MR. CHAIRMAN: Okay. That's what
13 I was getting at.

14 MS. CELESTINO-HORSEMAN: We say
15 that he formally registered the Broadleaf
16 residence as his residence for purposes of
17 voter registration.

18 MR. CHAIRMAN: Okay.

19 Any other discussion or questions by
20 the Commission?

21 Motions.

22 MR. DURNIL: I would move,
23 Mr. Chairman, that the Respondent's motion to
24 dismiss is in order, that it points out the
25 failures of the petition and it applies with

1 the statute and it should be granted.

2 MR. CHAIRMAN: Second.

3 Discussion.

4 MR. KUZMAN: Yeah. I just
5 believe under IC312-11-1B the State Party
6 Chairman is entitled to a contest election of
7 a statewide candidate if the petition
8 contains all the following elements: A, the
9 officer of the petition to contest state that
10 the chairman is entitled to contest the
11 election to the office pursuant to state law
12 the names and addresses of all candidates to
13 election of the office a statement that
14 Petitioner has good faith and reason to
15 believe that one of the candidates does not
16 comply with the specific statutory
17 requirement that is applicable to a candidate
18 for the office and a statement setting forth
19 the statutory requirement Petitioner believes
20 Respondent failed to comply with requires the
21 Commission to grant this motion -- to dismiss
22 and grant the petition here the contest if
23 Petitioner has met all of these above
24 requirements.

25 MR. CHAIRMAN: Okay. Thank you.

1 I made notes. My view on this matter
2 is that the Petitioner of the Democratic
3 Party seeks to overturn the will of the
4 voters as expressed by almost two million
5 Hoosiers at the election for this office held
6 last month. The state law certainly permits
7 a political party to seek this drastic remedy
8 in an election contest, but this -- this
9 Commission should make certain that anyone
10 asking this body to overturn the undisputed
11 result of an election strictly follow the law
12 before we do such a thing.

13 I don't like motions to dismiss. In
14 fact, as biased and as prejudiced as you --
15 as the Democratic Party thinks I am, I agreed
16 and denied the last motion to dismiss, so by
17 definition you need to call me bipartisan at
18 least.

19 As a general rule, I want a person with
20 a complaint to have a chance to make their
21 case here or in court, and perhaps one of the
22 parties will do just that and go to court.
23 And I think if -- you don't have to look
24 further than the last issue this Commission
25 took up to see that we were nothing, if not

1 thorough, and that you say -- you saw me
2 vote. Mr. Kuzman, you saw me vote along with
3 Mr. Durnil. I don't like activist judges,
4 Ms. Horseman. I don't like activist judges
5 who go beyond what the laws says to do what
6 they think is fair or they think is right
7 according to their own personal opinions
8 about what the law should be.

9 The Indiana Democratic Party makes two
10 alternative arguments in this petition. The
11 argument that because the candidate who won
12 the election is currently under investigation
13 on suspicion of having violated a law that
14 the Commission can act now to declare him
15 ineligible to take office. That's more than
16 just frivolous. It asks the Commission to
17 violate one of the most basic -- you are
18 asking this Commission to violate one of the
19 most basic principles of American justice,
20 that the government cannot take away our
21 lives, our liberty or our property just
22 because someone is suspicious that the law
23 may have been violated -- may have been
24 violated. And that's what Mr. Parker and
25 that's what the Democratic Party did in your

1 petition.

2 The Indiana Democratic Party also
3 argues to this Commission that we should take
4 an activist approach by going beyond what the
5 law actually says to interpret the law to
6 mean what they think the law should be. In
7 an election contest, the law requires that a
8 petition state the specific constitution --
9 constitutional or statutory requirement that
10 is applicable to the candidate for the
11 office. It is undisputed by you, by
12 Mr. White and anyone else that the state law
13 actually says that a candidate for a
14 statewide office must be, quote, be
15 registered to vote in the election district
16 the person seeks to represent, unquote, no
17 later than the deadline for filing the
18 applicable candidate papers.

19 It is undisputed that the election
20 district in this case is the entire state of
21 Indiana and it is undisputed that the name of
22 this -- of this candidate was on the list of
23 Indiana's registered voters on that deadline
24 date.

25 For the appointed members of this

1 Commission try to read more requirements into
2 a law so that it says what we think it should
3 say intrudes on the authority of the person
4 the voters have elected to make their laws;
5 in this case members of the General Assembly.

6 I also distinguish from the Pastrick
7 case. There was an adjudication about those
8 votes before the Supreme Court took up the
9 case. Here there's no such adjudication.

10 The Indiana Democratic Party has tried
11 before, and failed I might add, to convince
12 this Commission that this body should go
13 beyond what the law says to overturn the will
14 of the voters as expressed in an election.

15 In 1998 the then Chair of the State
16 Democratic Party challenged a candidate who
17 won by 51 percent of the votes, 51 percent of
18 the popular vote cast by the party's own
19 voters in the Democratic primary for
20 Congress. This challenge was based on the
21 ground that the candidate had not used his,
22 quote/unquote, legal name to run for office.
23 The counsel representative of the Democratic
24 Party at the time -- and I remember this
25 because I was in Mr. Skolnik's position at

1 the time -- argued that, quote, our case is
2 that the name on his voter registration is a
3 fraud and that if that is true, if I can
4 prove that, it's a domino. The registration
5 falls because it's a fraud and the
6 declaration of candidacy falls because the
7 registration falls, and that's our entire
8 case, unquote.

9 The -- the Commission granted the
10 motion to dismiss because, as my predecessor
11 as Chair put it, quote, under this limited
12 mandate, this Commission does not have the
13 direction to add or subtract only to enforce
14 the law. There's also a part of statutory
15 construction that says every word in the
16 statute has a particular meaning, and that
17 was the intent of the General Assembly, and
18 they did not put the word legally in there as
19 you did in your petition.

20 The Commission's dismissal of the
21 contest in 1998 was appealed to the courts
22 and the Democratic Party lost the appeal when
23 the Trial Court found that its petition had
24 not complied with the legal requirement that
25 the -- the petition be properly sworn to,

1 again, not adhering to the letter of the law.

2 However, the next year the Indiana
3 legislature considered and passed a new law
4 to add a specific requirement of what legal
5 name a candidate could use on a ballot.
6 Maybe the people elected to make our laws
7 should consider making changes to our laws
8 about the requirements candidates must meet,
9 but this body, again, is not the legislature
10 and it's not a court; instead it can only
11 determine whether a petition for a contest
12 has met the specific requirement set forth in
13 the law to begin a contest proceeding as
14 Ms. Horseman denotes; if not, the Commission
15 must grant a motion to dismiss. And that's
16 what I vote -- will vote to do.

17 All in favor of Commissioner Durnil's
18 motion signify by saying, "Aye."

19 MR. DURNIL: Aye.

20 MR. CHAIRMAN: Aye.

21 All opposed?

22 MR. KUZMAN: Aye.

23 MR. CHAIRMAN: The motion
24 carries. The contest petition against
25 Mr. White by the Democratic Party is

1 dismissed.

2 Any other issues to come before the
3 Recount Commission at this time?

4 MR. BROOKS: Yeah. Could we stay
5 and argue one more case? I'd like to.

6 MR. CHAIRMAN: No. We will be
7 meeting before the 20th, though, to finalize
8 District 76.

9 Thank you.

10 We stand in recess.

11 MR. BROOKS: I do want to thank
12 the Recount Director. Both attorneys have
13 been very helpful in doing what they do as
14 always and the Commission. All of you, thank
15 you very much for your time.

16 MR. KUZMAN: Thank you.

17 (The hearing was concluded at
18 10:39 p.m.)

19
20
21
22
23
24
25

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

3

4 I, Faith Hurley, Court Reporter, Notary
 5 Public, County of Vanderburgh, State of Indiana, do
 6 hereby certify that the hearing before the State
 7 Board Recount Commission was taken on said date, at
 8 the time and place heretofore mentioned. Said
 9 hearing was taken by me in Stenograph and
 10 electronically recorded and afterwards reduced to
 11 the foregoing transcript.

12

13 I further certify that I am not an attorney or
 14 relative of either party or otherwise interested in
 15 the outcome of this cause of action.

16

17 IN WITNESS THEREOF, I have hereunto placed my
 18 hand and seal on this the 10th day of January,
 19 2011.

20

21

22

23 Commission
 24 Expires
 24 6-18-2017

25

Faith Hurley
 Faith Hurley, Court Reporter
 Vanderburgh County, Indiana