

INDIANA RECOUNT COMMISSION MINUTES OF THE MAY 21, 2004 MEETING

MEMBERS PRESENT: Todd Rokita, Chair of the Indiana State Recount Commission (“the Commission”); Gordon Durnil, Member; John Griffin, Member.

MEMBERS ABSENT: None

STAFF ATTENDING: Heather Willis, Recount Director; J. Bradley King, Majority Counsel; Kristi Robertson, Minority Counsel; Phil McGovern, State Board of Accounts; and Lt. Colonel Michael Medler, Indiana State Police.

1. CALL TO ORDER AND DOCUMENTATION OF MEETING NOTICE:

The Chair called the May 21, 2004 meeting of the Indiana State Recount Commission to order at 2:00 p.m. in State House Room 233, 200 West Washington Street, Indianapolis, Indiana.

2. APPROVAL OF MINUTES OF MAY 11, 2004 MEETING

The Chair recognized Ms. Robertson, who presented the minutes of the May 11, 2004 Meeting. There being no discussion, the chair called the question, and declared that with three members voting “aye” (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting “nay” the motion was adopted.

3. ADOPTION OF ORDER 2004-02 APPOINTMENT OF RECOUNT DIRECTOR

The chair recognized Ms. Robertson, who presented Order 2004-02 to the Commission. Ms. Robertson stated that this Order rescinds the previous Order 2002-02 and establishes Heather Willis as the Recount Director. There being no discussion, the chair called the question, and declared that with three members voting “aye” (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting “nay,” the motion was adopted.

4. ADOPTION OF ORDER 2004-03: AMENDMENT TO GUIDELINES OF RECOUNTS AND CONTESTS

The chair recognized Mr. King, who presented Order 2004-03, which proposed amendments to the guidelines previously adopted by the Commission, and highlighted some of the changes the order made. First, Mr. King noted that the definition of “candidate” has been changed to reference nominations and elections, as well as recounts and contests. Secondly, Mr. King pointed out that the order clarifies some language in the guidelines to better reflect the process that the commission had used in 1998 and 2002. Mr. Durnil moved, seconded by Mr. Griffin, that this order be adopted. There being no discussion, the chair called the question, and declared that with three members voting “aye” (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting “nay,” the motion was adopted.

5. REPORT OF INDIANA STATE POLICE & DOCUMENTATION OF IMPOUNDMENT AND PROOF OF SERVICE

The chair recognized Lt. Col. Medler of the Indiana State Police, who reported on the impoundment. Lt. Col. Medler stated that all documents and materials in Marion and Johnson counties subject to the impoundment order had been impounded and secured at their respective locations. There was no further discussion.

6. ADOPTION OF VERIFIED PETITION FOR RECOUNT FOR REPUBLICAN PARTY NOMINATION IN INDIANA SENATE DISTRICT 36

The chair recognized Mr. King and Ms. Robertson, who presented the verified petition to the commission. A short discussion ensued amongst the members and their counsel regarding whether a petition for a recount can be served upon the opposing candidate's attorney. The commission determined that the verified petition had been properly served in this case. Secondly, the chair noted a typographical error in petitioner's verified petition. Petitioner's attorney, Mr. Brooks, with consent of the Commission, verbally amended the petition to make clear that only a recount was sought—not a contest to the election, was stated at two points in the petition and to correct the ZIP code of the respondent listed in the petition to 46142.

Mr. Durnil moved, seconded by Mr. Griffin, that the verified petition, as verbally amended, be granted. There being no discussion, the chair called the question, and declared that with three members voting "aye" (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting "nay," the motion was adopted.

7. REJECTION OF VERIFIED CROSS-PETITION FOR RECOUNT FOR REPUBLICAN PARTY NOMINATION IN INDIANA SENATE DISTRICT 36

The chair recognized Mr. King, who presented the verified cross-petition to the commission and the subsequent motion to dismiss the cross-petition. A ten minute time limit was set for each candidate to present arguments regarding whether the motion to dismiss should be granted.

Petitioner's attorney, Mr. Brooks, raised two issues in advocating that the cross-petition should be dismissed. First, the verification of the petition was not verified by the candidate, but by his attorney, and was therefore defective under IC 3-12-11-4. Second, strict compliance to satisfy the time requirement was required. Mr. Brooks argued that both faxing the cross-petition for filing failed to comply with the statute and alternatively that since the cross-petition was time stamped at 12:01pm, one minute after the deadline, it failed to comply with the statute.

Respondent's attorney, Mr. Bopp, argued that the statute was silent in regard to the counting of ballots outside of the district. Since Perry 23 is not in State Senate District 36, the votes cast by Perry 23 voters should not be counted whether through the cross-

petition or otherwise. Mr. Bopp indicated that since the statute does not require verification by the candidate, counsel's signature should suffice. Furthermore, Mr. Bopp suggested that the statute, by using the term "may," allows the commission to proceed with a recount in the precinct on its own initiative.

After a short rebuttal by each candidate, the commissioners directed questions at each party for clarification. Discussion on the motion to dismiss focused upon the consequences of voting to dismiss the cross-petition.

The chair moved, seconded by Mr. Durnil, that the motion to dismiss the cross-petition be granted. There being no discussion, the chair called the question, and declared that with two members voting "aye" (Mr. Rokita and Mr. Durnil), and one member voting "nay" (Mr. Griffin), the motion to dismiss the cross-petition was adopted, and the cross-petition was dismissed.

8. REPORT OF RECOUNT DIRECTOR

The chair recognized Ms. Willis, who indicated that certain administrative tasks had been accomplished since the previous meeting, including work on logistics for the examination of the voting materials with State Board of Accounts, the Indiana State Police, the respective county officials, and the parties. She requested that all communication come through one channel, to the recount director, and that information would be disseminated through that same channel.

The chair then recognized Mr. King and Ms. Robertson who reviewed the guidelines for recount and contests. Upon completion of the review, the floor was opened for questions, of which there were none.

9. REPORT OF STATE BOARD OF ACCOUNTS

The chair recognized Mr. McGovern, who stated that the State Board of Accounts Manual had been distributed and offered to answer any questions. Ms. Willis raised the issue of provisional ballots, which followed with a discussion regarding procedure for disputing provisional ballots.

Ms. Robertson noted that Order 2004-04, which amended the guidelines to adopt the 2004 edition of the State Board of Accounts Manual, had been distributed to Commission members.

The chair moved, seconded by Mr. Durnil, that Order 2004-04 be adopted. There being no discussion, the chair called the question, and declared that with three members voting "aye" (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting "nay," the motion was adopted.

10. REVIEW OF PROPOSED BRIEFING SCHEDULE, EXAMINATION SCHEDULE, AND COMMISSION MEETING SCHEDULE; ADOPTION OF PLAN TO CONDUCT RECOUNT.

The chair recognized Ms. Willis, who presented a timeline and schedule for the recount of State Senate District 36. Ms. Willis indicated that a pre-recount inspection would take place on May 24, 2004, and the examination of the voting materials would start the following day. Ms. Willis noted that briefs, though not required, would be due on June 4 at noon and that response briefs would be due on June 7 at noon. The final commission meeting was tentatively scheduled for June 9 at 9 A.M. at a location to be determined in Johnson County.

11. ORDER 2004-05 DESIGNATION OF AUTHORITY TO RECOUNT DIRECTOR.

The chair recognized Mr. King, who noted that Order 2004-05 had been distributed to Commission members. He stated that under Order 2004-05, Ms. Willis would be designated to exercise the powers of the Commission concerning the recount, including rescheduling and planning of meetings for the recount in State Senate District 36.

The chair moved, seconded by Mr. Durnil, that Order 2004-05 be adopted. There being no discussion, the chair called the question, and declared that with three members voting “aye” (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting “nay,” the motion was adopted.

12. OTHER BUSINESS AND ADJOURNMENT

The chair inquired whether there was any additional business to come before the commission at this time. The chair recognized Mr. King who asked the commission to formally grant approval for to the pre-recount inspection. The chair moved, seconded by Mr. Griffin, that the pre-recount inspection be approved. There being no discussion, the chair called the question, and declared that with three members voting “aye” (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting “nay,” the motion was adopted.

There being no further business, Mr. Durnil moved, seconded by Mr. Griffin, that the commission do now adjourn. There being no discussion, the chair called the question, and declared that with three members voting “aye” (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting “nay,” the motion was adopted. The chair adjourned the meeting at 3:30 pm.

APPROVED,

Todd Rokita, Chair