INDIANA STATE RECOUNT COMMISSION

MINUTES OF THE DECEMBER 7, 2008 MEETING

MEMBERS PRESENT: Todd Rokita, Chairman of the Indiana State Recount Commission ("the Commission"); Gordon Durnil, Member; John Fernandez, Member

MEMBERS ABSENT: None

STAFF ATTENDING: Bradley W. Skolnik, Recount Director; J. Bradley King, Majority Counsel; Leslie Barnes, Minority Counsel; Bruce Hartman, Sara Bellamy, Kerry Fleming, Paul Lottes, Michael J. Rogina, and Michael Williams, State Board of Accounts; Major Turner, Indiana State Police

1. CALL TO ORDER:

The chair called the reconvened meeting of the Commission to order at 12:00 noon in the Tippecanoe Room, Tippecanoe County Building, 20 North Third Street, Lafayette, Indiana.

2. COMMISSION BUSINESS:

The Commission transacted the business and took the official actions set forth in the Transcript, which is incorporated by reference into these minutes.

The Commission approves the Transcript, with the following corrections:

On page 2, Mr. Bradley W. Skolnik, Mr. J. Bradley King and Ms. Leslie Barnes are incorrectly identified as members of the Commission. The Transcript is amended to identify Mr. Skolnik as the Recount Director, Mr. King as Majority Counsel to the Commission, and Ms. Barnes as Minority Counsel to the Commission.

On pages 20 through 53, each reference to "COMMISSIONER SKOLNIK" is amended to read "DIRECTOR SKOLNIK"; on pages 21 through 53, each reference to "COMMISSIONER KING" is amended to read "MR. KING"; on pages 38 through 53, each reference to "COMMISSIONER BARNES" is amended to read "MS. BARNES".

On page 53, line 14, delete "[sic]".

3. ADJOURNMENT:

There being no further business before the Commission, the Commission adjourned at 1:50 p.m.

APPROVED:

[Signature]

Bradley W. Skolnik,
Recount Director
INDIANA STATE RECOUNT COMMISSION

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APPROVED:

Bradley W. Skolnik,
Recount Director
BEFORE THE
INDIANA RECOUNT COMMISSION

IN THE MATTER OF THE RECOUNT
AND CONTEST FOR THE ELECTION OF
INDIANA STATE REPRESENTATIVE,
DISTRICT 26,

JOHN POLLES,

Petitioner,
Cross-Respondent

-vs-

RANDY TRUITT

Respondent,
Cross-Petitioner

Sunday, December 7, 2008
Tippecanoe Room
Tippecanoe County Building
20 North Third Street
Lafayette, Indiana

A STENOGRAPH RECORD BY:
Jenny L. Reeve, RPR-CSR No. 00-R-3006
Notary Public
Certified Stenographic Reporter

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THE COMMISSION:

Mr. Todd Rokita
Secretary of State and Commission Chairman
Mr. Bradley W. Skolnik
Mr. J. Bradley King
Mr. Gordon Durnil
Mr. John R. Fernandez
Ms. Leslie A. Barnes

THE STATE BOARD OF ACCOUNTS:

Mr. Michael J. Rogina
Mr. Kerry Fleming
Ms. Sara Bellamy
Mr. Bruce Hartman
Mr. Paul Lottes
Mr. Michael Williams

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[REPORTER NOTE: All exhibits retained by counsel]
CHAIRMAN ROKITA: Good afternoon, and welcome to this reconvened session of the Indiana State Recount Commission. I'm pleased you could all attend.

My name is Todd Rokita. I'm the Indiana Secretary of State and Chair of this Recount Commission. I'm joined by two very good attorneys and friends of mine. First, to my left is the Democratic appointee to the Recount Commission, Mr. John Fernandez, and to my right is the Republican appointee to the Recount Commission, Gordon Durnil.

We will be hearing matters today in the order of the agenda that's been prepared for us.

Before we go further, though, I would like to have everyone rise and pledge our allegiance to the flag.

(WHEREUPON, the Pledge of Allegiance is recited.)

CHAIRMAN ROKITA: Again, the Commissioners and I thank you for being here today.

Before we get into the substantive matters, I want to introduce the two elected officials in the room that I know of. If there are others, please identify yourselves.
First, from Warren County we have clerk of the
circuit courts, Ms. Jackie Brier. Jackie, thank you
for being here. And from Tippecanoe County, we have
the clerk of the circuit courts, Ms. Linda Phillips.
Thank you for being here.

I also want to thank our partners in state
government at the different agencies who helped
prepare for today. First of all, Major Mike Turner
of the state police and the troopers that are here
today, thank you.

And also, the State Board of Accounts. First,
Bruce Hartman, the head of the State Board of
Accounts. Thank you, Bruce, for being here, as well
as Mike Rogina, Mike Williams, Kerry, Paul Lottes,
and your whole team here. I know that you put a
whole lot of work into this, and we now thank you
very much as well.

Any statements from the other two before we
move forward?

COMMISSIONER FERNANDEZ: No.

COMMISSIONER DURNIL: No.

CHAIRMAN ROKITA: Thank you.

We are reconvened. We are called to order.

We have in our packets documentation of a meeting
notice. And now we'll go to consideration of
matters pending before the Recount Commission.

First would be the petitions for recount in House District 26, the Polles vs. Truitt race.

Is the petitioner here?

MR. REUBEN: Yes, sir.

CHAIRMAN ROKITA: Is the cross-petitioner here?

MR. BOCK: Yes, Your Honor.

CHAIRMAN ROKITA: The Commissioners and all parties have been given guidelines for the conduct of an election recount contest, as they've been amended, December 3rd, 2008. I'm going to, in terms of going through precinct by precinct, try to follow these guidelines as best as humanly possible. They start on page 3, basically, at section 20.

Have the parties agreed on an order for the precincts in terms of the counties, in terms of which county they want to start with first?

MR. BOCK: We would request, Mr. Chairman, that the first county be Warren County, given that they only have three precincts. And that might then permit the clerk and her husband to leave earlier than everyone else, who obviously will have to stay for the precincts in Tippecanoe County.

CHAIRMAN ROKITA: Thank you. Does Mr. Polles agree with that?
MR. REUBEN: That's fine, Your Honor -- or Judge -- or, sorry -- Mr. Chairman.

However, I would like to address a matter before such time as we take up either the recount or the contest petitions, if I might, please.

CHAIRMAN ROKITA: Okay. How much time do you need for this?

MR. REUBEN: Five minutes.

CHAIRMAN ROKITA: Any objection from the petitioners?

MR. BOCK: No.

CHAIRMAN ROKITA: Go ahead, sir.

MR. REUBEN: Mr. Chairman, this is a matter that I bring with a great deal of consideration before having done what I'm about to do because of the nature of the seriousness of my remarks which will follow.

I must move at this time for your recusal or your disqualification to sit on the Commission at this time.

The basis for my motion for you to be recused or be disqualified is that we're challenging the designation of Tippecanoe County as a Voter Center pilot county for this process. Our challenge is based upon your approval of the application dated
July 31, '06. Your approval is based upon IC 3-11-18-2.

The application which you approved, Mr. Chairman, the application itself that you approved and the system which was implemented in this election based upon that application do not meet the statutory requirements for a Vote Center county election, as required by statute. I'm referring specifically now to 3-11-18-1, et seq.

I would first draw your attention to 3-11-18-4, if you have the statute, subsection 10.

I beg your pardon. 3-11-18-4(10) provides that the -- referring now to the application -- for a Vote Center county, it requires that a detailed description of any hardware, software -- I'm sorry -- hardware, firmware, or software used, and it goes on to identify what it should be.

In the application which was presented by Tippecanoe County, again, on July 31 of '06, or dated July 31 of '06, I refer you to section 8, pages 1 through 3. In there, it refers to the software for electronic poll list, and I quote now this application. "Larimer County, Colorado, has been kind enough to offer their software to us free of charge. Since we have not yet seen this
hardware, it is difficult to judge if it is suitable for our environment. Should it not be suitable, MITS believes that it would be very easy to write an electronic poll book database in SQL that would contain the following data elements." And then it proceeds to identify what they would put in there.

The statute requires that it be a detailed description, again, of any hardware, firmware, or software used. The -- the part of their application doesn't even give detail, let alone a detailed description. They haven't seen it. They didn't know whether it would operate here or not. And it goes on to say even it doesn't operate here, what they would do.

Well, with all due respect, their application and the statute are about as polar as two sides of a coin can be.

You approved of that application. You approved of Larimer County having been kind enough to offer.

We don't know whether or not the offer was accepted. We don't know whether the offer was rejected. We don't know anything.

We certainly don't have a detailed description of the hardware, firmware, or software used.

So that's our first point of contention, is
that part of the statute was not going to be covered.

Next we refer you to 3-11-18-7, which provides that the -- again, I'm referring to 3-11-18-7, subpart capital B. That particular provision requires that, "Precinct election officials, watchers, challengers, and poll book holders," it requires that they be able to exercise their rights and perform their duties within the Voter Center.

I direct your attention to the definition of precinct election officials, which is contained back on 3-6-6-1, to include one inspector and two judges.

What inspectors, what a judge is supposed to do is to be able to challenge or not challenge a voter based upon signatures in the poll book.

Well, there were no signatures in the poll book. So by statute here, the variability of the judges, or, in this case, within the body of precinct election board, they can't do what they're being -- what the statute requires them to do.

The statute here again requires that they be able to carry out their function. They can't carry out their function because among their function, the judge, that is, is to be able to challenge the poll worker -- I mean the voter, based upon the voter's
signature in the poll book.

There are no signatures in the poll book.
Therefore, the judges cannot do what the law
requires that they do, and that is exactly what
3-11-18-7 requires of them.

Now, moreover, again, Mr. Chairman, that's
within the application. And it's something that you
approved. And I think that to the extent that the
issue about the conduct of the election, based upon
the application that you approved, is very much at
issue here. And I think, because you've already
approved, and we're challenging your own approval, I
think you've got to stand down.

Now, moreover, if you turn to 3-11-18-13 --

CHAIRMAN ROKITA: Let's find that quickly,
because your five minutes is up. Make your point
quickly so I can allow the other side to respond.

You asked for five minutes. Five minutes is
up. Please move forward.

MR. REUBEN: I beg your pardon. 3-11-18-13
requires that -- and this may be as important as
anything we're dealing with. That statute requires
that the electronic poll book used at each Vote
Center must be capable of capturing an electronic
image of the signature of a voter on the list, and
may be formatted by -- by you -- I'm sorry. Must be approved by you.

There was not -- that capacity was not within the ability of these particular Vote Centers. And I refer you to, again, their application, section 9, page 2.

Section 9, page 2. And, if I may quote, in paragraph no. 8, "In a perfect world, we would purchase signature pads to connect the Diebold electronic poll book that automatically programs the correct voter access card.

"However, it is not likely that our county council will fund the purchase of this equipment for a two-year pilot program." And they didn't fund it.

So what we have is a poll book, an electronic poll book without any signatures, and a system at the Vote Centers that did not have the electronic pad that would allow the transfer of that signature to that electronic poll book.

The system -- again, with all due respect, Mr. Commissioner, you approved a system, knowing from their application they had -- they could not, under the law, and they didn't intend to, and they didn't.

If you look down next, please, to 3-11-18-16,
there it refers to how the Voter Center must maintain a precinct identification of the vote tally with -- separate from other precincts. It didn't do that. It had one lump identification process within the Vote Center. It wasn't separate, as the statute requires.

Now, without signatures and electronic poll book, as we all know were not in there as required, the voter identification cannot be verified. If a voter walks in, even with their driver's license or their passport or their other state-issued identification, that does not allow the poll official to recognize that voter.

The identification statute allows the poll worker only to look at the picture and name. It's not allowed for comparison of signatures.

Therefore, the -- there's no way to identify the voter with any kind of identification such as their signature in the poll book, which is required by statute, not only in this type of election, but in, should I say, the hard book poll book. Which, again, we're not worried about that here because it's not applicable.

What is applicable is the electronic e-poll book. It is void of any signatures. Therefore, it
cannot be compared -- or signatures cannot be
compared to anything because it's blank.

CHAIRMAN ROKITA: Okay. What else do you have?
Anything?

MR. REUBEN: Yes, sir, I do.

The Indiana constitution, article 3, section 1,
requires that -- and I'm quoting -- "all elections
shall be free and equal."

Now, there's no question about this election
being free. But it is not equal.

In every other county, as in Marion, where --
at least where I vote, you must present your ID, but
you also must present -- there must be a signature
to compare it against. There are two steps there.

Here, there's one step. And that's it. The
constitutional provision contains the word "equal."
It means uniform. It means the same. And it's not,
because of the way the system was maintained here.

And with all due respect, Mr. Rokita, you,
having approved of that application, having -- must
having recognized that not only did they not intend
to comply with the statute, they've told you in
there they weren't going to. And, to their credit,
they didn't.

The system is flawed. It's flawed from not
only the election day itself, but it's flawed from 2006, when they applied to you.

You approved it. You're just as much in error as they are. You could have stopped it.

You didn't stop it then. You didn't stop it now. I think because of that, the whole thing that's at issue, with all due respect, sir, I think you must step down because of the nature of your involvement in the process.

CHAIRMAN ROKITA: Is there a response from the other side?

MR. BOCK: There is. Thank you. I'd like to have the amount of time that's been allotted to Mr. Polles's counsel.

Apparently -- I had planned on giving an opening statement that referenced the pilgrims and the Mayflower Compact, and the cherished heritage of voting in our country and protecting the right to vote. And I guess we're pretty quickly right into partisan politics.

This is a completely improper motion. And Mr. Reuben knows, as well as each of the members of the Commission do, the role of this Commission is not a judicial body. It has no authority to set aside a statute. It has no authority to rule on the
constitutionality of the Vote Center Statute.

And the approval of Vote Centers is not a
ground for an election contest under the Recount
Commission Statute.

And because this motion and its substance is
so far outside the possible basis upon which this
Commission is authorized by statute to act is why I
say that this is nothing more than a partisan
political ploy, because the Recount Commission
simply doesn't have the authority to even address
the issues that are being raised by Mr. Reuben.

And I'd be happy to cite a number of cases
which reflect that an administrative body is not the
proper body to consider the constitutionality of the
statute. And rather than take up a lot of time,
right now I'll just cite a couple of them.

One is Stytle vs. Angola Die Casting Company,
783 N.E.2d 316, at page 321. "An administrative
body cannot determine the constitutionality of a
statute."

There are numerous Indiana Supreme Court cases
which state that the Recount Commission is not a
judicial body, one of which is the 1938 decision of
the Indiana Supreme Court in Lord vs. Sullivan,
where the Supreme Court said, "The Recount Statute
involves the exercise of ministerial functions and not judicial ones."

Another case -- Indiana Supreme Court case to the same effect is *Williams vs. Bell*, 1110 N.E. 753, at page 755, in 1915.

Each of you know that your authority is confined, no. 1, to recounting the votes, and no. 2, to the five enumerated grounds for an election contest and the Contest Statute. You can't go beyond that. And none of the issues that are raised by Mr. Reuben fall within the grounds for an election contest.

And, in fact, Mr. Reuben knows that the only ground that he's raised for an election contest is a voting system malfunction. He has not identified a single voting system malfunction in the district. The machines tabulated accurately. They allowed the accurate recordation of votes.

And because he's unable to find any evidence within the statute to submit to this Commission, he's, instead, resorted to an attack on the Chairman.

I find it unfortunate. I find it completely improper, and the Chairman should not recuse himself.
CHAIRMAN ROKITA: Okay. Thank you both. Any comments --

MR. REUBEN: Mr. Chairman --

CHAIRMAN ROKITA: No, no more. Any comments from the Commissioners?

MR. REUBEN: May I now respond?

CHAIRMAN ROKITA: No. Are there any comments from the Commissioners? Any motions from the Commissioners?

COMMISSIONER FERNANDEZ: I'll make a quick comment.

CHAIRMAN ROKITA: Go ahead.

COMMISSIONER FERNANDEZ: Thank you, Mr. Chairman.

You know, it's interesting. As I thought about the proceedings and some of the issues that have been raised, there's certainly an interesting connection as far as reviewing the plans that were, by law, required to be approved by the Secretary of State, and the unique role of serving as administrator of elections, but also Chair of this Commission.

You know, I think it's an interesting issue. But I've got to say, based on my limited reading of the statute, that it creates and sets outs the
powers and roles of the Commission. The best that
I can understand this argument, it's really a
voluntary request to the Chairman, because I don't
see any authority in the statute for the Commission
to make that kind of decision.

So, you know, I guess that's just the way I see
it. I don't think we really have a vote on this.
It's just really up to the Chairman of whether or
not he would agree with the argument as put forth by
Mr. Reuben.

COMMISSIONER DURNIL: I agree with that.

CHAIRMAN ROKITA: To the extent -- thank you,
Commissioner Fernandez and Commissioner Durnil.

To the extent that it was a voluntary request,
it's denied for a couple of reasons. It's denied by
statute. And I would direct Mr. Polles's counsel to
3-12-10-2.1. For the benefit of Mr. Polles, I'll
now read the statute.

"Except as provided in this section, the
Secretary of State and the designee of the State
Chairman of each of the major political parties of
the state shall serve as members of the State
Recount Commission." And then it goes on to provide
one or two exceptions.

And I may not serve for this position, as
Secretary of State may not serve, when he's a candidate or when he's otherwise on the ballot.

So I don't think there's -- to agree with Commissioner Fernandez, I don't think there is any statutory mechanism for me not to serve.

In fact, the General Assembly made it a "shall" provision; that the Secretary of State "shall be the Chair" of this Commission.

Secondly, and it is irrelevant, but I will say that you've not demonstrated any evidence of bias in any of your argument, that I can't judge a recount, a tallying of the votes. So we'll move on.

Do you agree with starting with Warren?

MR. REUBEN: Yes.

CHAIRMAN ROKITA: All right. We shall start there. I'll have the Recount Director -- let's see -- read the tally of votes in the State Board of Accounts. We'll go in alphanumerical order. Is that the order that we've put these precincts in, starting with Warren?

COMMISSIONER SKOLNIK: That is correct, Mr. Chairman.

CHAIRMAN ROKITA: We'll start with any undisputed valid, invalid, or no votes.

COMMISSIONER SKOLNIK: Mr. Chairman, this
entire Warren County, Adams Precinct, in Adams Precinct, the entire precinct, it's my understanding, has been disputed by the petitioner.

So therefore there are no undisputed valid, invalid, or no votes.

CHAIRMAN ROKITA: So we'll move to the disputed ballots. Well, no, we'll take a motion. There are none, so there's no motion needed.

COMMISSIONER SKOLNIK: I think we would -- and Counsel, correct me if I'm wrong -- do we also then go to the next precinct to ascertain whether there are any undisputed ...

COMMISSIONER KING: Yes.

COMMISSIONER SKOLNIK: And we do all the undisputed first in each precinct --

CHAIRMAN ROKITA: We don't go precinct by precinct?

COMMISSIONER KING: Mr. Chairman, if I may respond?

CHAIRMAN ROKITA: Yes.

COMMISSIONER KING: The guidelines anticipate that the first part of the recount process is to identify areas where there is agreement and not dispute between the parties, which would include the undisputed votes, either valid or invalid, and no
votes. It does not specify that that be done by
precinct. It's been done -- at least according to
past Commission practice, it's been done at the
beginning to narrow the issues for all precincts.

CHAIRMAN ROKITA: Okay. So can you give a
report, then, on all the precincts?

COMMISSIONER SKOLNIK: Mr. Chairman -- in
Warren County, or for the entire district?

CHAIRMAN ROKITA: For the entire district.

COMMISSIONER SKOLNIK: Let me just very briefly
state at the outset that the entire -- all precincts
throughout the entire district have been disputed by
the petitioner. Therefore, there are no undisputed
valid, invalid, or no votes, or undisputed -- no
votes within -- undisputed no votes within this
entire district. That covers both Warren County,
where we have three precincts, as well as the 35
precincts within Tippecanoe County.

CHAIRMAN ROKITA: Okay. So, now, on to the
disputed ballots, starting with the first precinct
in Warren.

COMMISSIONER SKOLNIK: Mr. Chairman and members
of the Commission, the total valid ballots tallied
by the State Board of Accounts reflects, for Adams
Precinct -- we'll start with Adams Precinct. I
apologize. Always takes us a minute to get into the flow here.

But for Adams Precinct, the total valid ballots tallied by the State Board of Accounts: Mr. Truitt, 158; Mr. Polles, 120.

The disputed valid ballots tallied by the State Board of Accounts will read the same: Mr. Truitt, 158; Mr. Polles, 120.

There were 16 no votes tallied by the State Board of Accounts, and those are disputed.

MR. REUBEN: And I'm prepared to withdraw part of my dispute, which may make this proceeding move more quickly.

CHAIRMAN ROKITA: Precinct by precinct? Do you want to preserve that right?

MR. REUBEN: I mean those three precincts in Warren, I will withdraw my dispute on all ballots, but for the absentees, for purposes of what we're doing here today.

I will not withdraw my dispute for what may be a judicial review. But for purposes of going forward today, I think I can shortcut a lot of what we're doing by just bringing before you the absentee ballots.

MR. RUNYAN: For point of clarification, there
were absentee ballots cast in the clerk's office
that were electronic, and then there are paper --

MR. REUBEN: I'm sorry. Let me -- let me
restate my -- let me -- adding further, the
challenge which I continue to maintain is over the
paper absentee ballots. And I will withdraw my
dispute, Mr. Chairman, to all other ballots which
were cast there for purposes of our hearing today.

Does that clarify?

MR. RUNYAN: Yes.

CHAIRMAN ROKITA: Does the cross-petitioner
have any objection to that?

MR. RUNYAN: To limiting it to the absentee
dpaper ballots?

CHAIRMAN ROKITA: Yes.

MR. RUNYAN: No.

CHAIRMAN ROKITA: Mr. Skolnik, does that change
the tally, or should we -- go ahead.

COMMISSIONER KING: Mr. Chairman and members of
the Commission, as I understand the guidelines,
we've now entered the portion of the proceedings
that involve the presentation of the petitioner's
case in chief, which calls for, in this case, the
production of exhibits related to the specific
ballots that remain in dispute in this precinct.
MR. REUBEN: Yes, sir.

CHAIRMAN ROKITA: So if he doesn't present evidence, then we can just take it as a ruling afterwards on a certain ballot?

COMMISSIONER KING: Yes. The guidelines contemplate a ballot by ballot consideration, unless there's an agreement to group ballots.

CHAIRMAN ROKITA: That is true. It's either group ballots if they're the same argument, or ballot by ballot.

MR. REUBEN: It's the same. It's an argument as a matter of law, not as a matter of fact.

CHAIRMAN ROKITA: Why don't we start like this. Why don't you start with your disputed ballots in this precinct.

MR. REUBEN: That would be fine.

CHAIRMAN ROKITA: And then if you want to waive at the end --

MR. REUBEN: That's fine.

CHAIRMAN ROKITA: -- then we can just tally at the end.

MR. REUBEN: Yes, sir. That would be fine.

I don't know how the State Board of Accounts has kept separate these disputed ballots from those three precincts. Mike, I guess I'd ask you to come
forward with the ...

CHAIRMAN ROKITA: Do you have an exhibit number?

MR. REUBEN: Yes, sir. I'm looking right now at Warrant County, Adams, Exhibit 1. Do you -- have you got them?

(Discussion off the record.)

CHAIRMAN ROKITA: Mr. Polles, go ahead.

PETITIONER'S CASE IN CHIEF

MR. REUBEN: I believe there are Exhibits 1 through 10 in Warren County, Adams township, ward, or district, as the stamp is in the SBA.

And the issue which I wish to raise is that the clerk's stamp -- I'm sorry -- the clerk's -- I'm sorry. The clerk's official seal and signature or facsimile signature does not appear on the back of the ballot, as was required by 3-11-4-19, which reads, in pertinent part, subject to another statute which is inapplicable, "A ballot that is mailed must bear the circuit court clerk's official seal and signature or facsimile signature on the back of the ballot."

CHAIRMAN ROKITA: Okay.

MR. REUBEN: These are -- 1 through 10, I
believe, Mr. Commissioner -- Mr. Chairman, all
failed to have that requirement met.

CHAIRMAN ROKITA: Okay. And then for the
benefit of the audience and those of us that are
here before the Commission for the first time --

MR. REUBEN: Yes, sir.

CHAIRMAN ROKITA: -- the petitioner is making
his case in chief now. Try to generally limit your
arguments in each of the precincts to five minutes.
But that's just a guideline. It certainly won't
count against you and time won't count against it if
the Commissioners have questions.

And then a response from the cross-petitioner
during the petitioner's case in chief is also
appropriate. And you have a cross-petition, so
we'll -- in this recount after we get through the
petitioner's case in chief, you'll have a chance for
your case in chief, with a response from the
petitioner at that point, if necessary.

So you -- the point being, again, that was for
the audience mostly.

You have a chance to respond to that first
argument. Is there a response?

MR. RUNYAN: Oh, yes, sir. I'm sorry.

3-12-1-12 (b), "Except as provided in section 13 of
this chapter, a ballot that has been marked and cast
by a voter in compliance with this title but may
otherwise not be counted solely as a result of the
act or failure to act of an election officer may
nevertheless be counted."

Mr. Chairman, we don't disagree that there's
not a clerk stamp. The failure to have the clerk
stamp was an error by the election official
providing that stamp.

We're prepared to call Jackie Brier at this
time to testify as to the nature of these ballots.

It's ultimately our belief that the section I
just read controls here. The error by the clerk to
not have the stamp does not invalidate the ballots.

CHAIRMAN ROKITA: Would the Commissioners like
to hear from Clerk Brier? Do they feel it's
necessary to hear from Clerk Brier?

Why don't you call your witness.

MR. RUNYAN: Ms. Brier?

CHAIRMAN ROKITA: Clerk Brier, why don't you
have a seat there.

(The witness takes the stand.)

CHAIRMAN ROKITA: Clerk Brier, before you sit
down, will you raise your right hand and repeat after me.

JACQUELINE BRIER, a witness called in this proceeding, having been first duly sworn by Chairman Rokita, takes the stand and testifies as follows:

CHAIRMAN ROKITA: Thank you. Have a seat.

The respondent can proceed.

DIRECT EXAMINATION,

QUESTIONS BY STEVEN E. RUNYAN:

Q  Ma'am, would you state your full name and spell it for the record, please.


Q  And what's your occupation?

A  Clerk of Warren Circuit Court.

Q  When were you first elected?

A  Six years ago.

Q  And then have been re-elected since that time?

A  Yes.

Q  During the course of your tenure as the clerk, how many elections have you overseen?

A  Five, six. Five.
Q  Okay. And are you familiar with the ballots, the absentee ballots that were cast in the 2008 general election?

A  Yes.

Q  Are the ballots that were cast in this election similar to the ballots that have been used throughout your tenure?

A  No. My first term we used punch cards.

Q  The punch cards, were they preprinted with the clerk's seal?

A  Yes, they were.

MR. REUBEN: With all due respect, those ballots were of a different system in a different election. They're clearly irrelevant, sir, and I think it's inappropriate to submit any testimony about them.

CHAIRMAN ROKITA: I appreciate that, Petitioner. And because of that, if you want to cross for a short period of time, I'll let you do that.

MR. RUNYAN: Your Honor, if I may approach?

BY MR. RUNYAN:

Q  This is Exhibit 1. Do you recognize the ballot?

A  Yes.

Q  Does it have the clerk's seal on it?
A It does not.
Q When did you first receive a sample -- or let me back up. Before the election, were you provided a sample ballot by your vendor?
A Yes. The 15th of August we received the first -- first printing.
Q And then do you review the ballots for accuracy?
A Yes. Our election board and the two county chairmen looked over the ballots.
Q Would you identify who those people were by name?
A Deborah Hyatt (phonetically) is the Republican election board member. She's the president. Billy Minton (phonetically) is the Democrat election board member.

Bill Miller is our county Republican Chair, and Chris Brown is our Democrat Chair. Sorry.
Q Thank you, ma'am. All of those individuals reviewed those sample ballots?
A They did.
Q And they did not have the clerk's seal?
A Correct.
Q Did anyone raise the lack of the clerk's seal as a concern?
A No.
Q Were you aware that the ballot needed a clerk's seal
on it?

A I remember when we had the punch cards, that when
you were running for office at one of our election
meetings, we had to make sure that we bought a stamp
that did not have our signature on it. It was just
a stamp.

And I did not have -- I ordered the stamp. I
didn't have to use it because the punch cards were
printed with the seal on it.

And I had just since overlooked that --

Q Was there any reason -- oh, I'm sorry.

A I'm sorry. What?

Q Was there any reason there was not a seal placed on
there, any conscious reason?

A No. It was just a mistake that was -- that was
overlooked by all of us.

Q Do you see the initials that are located at the
bottom right?

A Yes.

Q And are those initials placed on the ballot by your
absentees board?

A Yes, they are.

Q How many house districts are within Warren County?

A Two.

Q And are all the ballots consistent throughout both
districts, with the exceptions of the races that are in --

A Correct.

Q -- none of them -- none of them have a clerk's seal?

A None of them do.

Q On the ballots where the initials were placed, it says, "Clerk's initials," and there's two lines. Do you see that?

A Yes.

Q Does your office stamp those, or do they come preprinted?

A That comes printed that way.

Q And then your absentee board signs it -- or initials it?

A Initials, yes.

Q Okay.

MR. RUNYAN: I don't have anything else.

CHAIRMAN ROKITA: Petitioner, did you want a chance to ask a few questions of this witness?

MR. REUBEN: Just a couple.

CROSS-EXAMINATION,

QUESTIONS BY MR. LAWRENCE M. REUBEN:

Q The information you provided about the punch card election which you held previous to this one?

A Yes.
Q  It's a different system, isn't it?
A  Yes, it is.
Q  And different rules applied, isn't that correct, in
terms of how you did things?
A  Yes.
Q  And what we're talking about here, ma'am, as you
understand, are absentee ballots that were mailed
out to your constituent voters?
A  Yes.
Q  And they came back. And those were ballots without
your seal, signature, or facsimile. You understand
that?
A  Yes.
Q  All right.
MR. REUBEN: That's all I have.
CHAIRMAN ROKITA: Thank you. Do you have any
rebuttal to anything that he brought up?
MR. RUNYAN: Yes, Your Honor.
REDIRECT EXAMINATION,
QUESTIONS BY MR. STEVEN E. RUNYAN:
Q  Ma'am, do you have any doubt that that's a valid
ballot --
MR. REUBEN: I've got to -- that's your
decision, not hers. That's a question of law as to
whether it's valid ballots. We're here to argue
about -- you make a decision about that, not the clerk.

CHAIRMAN ROKITA: I agree.

MR. RUNYAN: I have a question whether she has any doubt, Mr. Chairman.

CHAIRMAN ROKITA: I agree. Her opinion is irrelevant to me at this point.

Any other questions?

MR. REUBEN: No, sir.

CHAIRMAN ROKITA: Thank you very much.

WITNESS BRIER: You're welcome.

(The witness leaves the stand.)

MR. REUBEN: Judge, the statute he referred to, that he hung his hat on, 3-12-1-12, specifically says, "Except as provided in section 13 of this chapter." Reading down, 13 says, "This section applies only to absentee ballots."

The one he was referring to does not. That -- that particular subpart refers to -- it clearly says, "This section applies only to absentee ballots." The whole ballot may not be counted unless the ballot is endorsed with initials, and so forth.
He omitted referring to what was the exception in 3-12-1-12.

CHAIRMAN ROKITA: Okay. Because this is the first time we've had this argument, there may be more time to have the same argument --

MR. REUBEN: Yes, sir.

CHAIRMAN ROKITA: -- recount proceeding, and taking a little bit more time to lay out the facts and the evidence, and --

MR. REUBEN: Yes, sir.

CHAIRMAN ROKITA: -- because of that, I'm going to ask, before I open the floor to the Commissioners, I would like each of our counsel to give us a brief description of the law for our deliberations.

We'll start with majority counsel here, Brad King. Thank you, Brad.

COMMISSIONER KING: Thank you, Mr. Chairman, and members of the Commission.

3-12-1-12 and 3-12-1-13 are interrelated. And that relationship was clarified by the Court of Appeals, most recently in the Sullivan vs. Krughoff case, 889 N.E.2d 1289. 3-12-1-12(a) states, "This section applies to votes cast by any method."

Then subsection (b) of section 12, says,
"Except as provided in section 13 of this chapter."

Then the argument has been set forth that, "A ballot marked and cast by a voter in compliance with the election code may otherwise -- but may otherwise not be counted solely as a result of the act or failure to act of an election officer may, nevertheless, be counted in a recount proceeding, unless evidence of fraud, tampering, or misconduct affecting the integrity of the ballot is presented by a party to the proceeding."

And then, "(c) The act or failure to act by an election officer is not by itself evidence of fraud, tampering, or misconduct affecting the integrity of the ballot."

Section 13 provides a narrow, specific exception to the general rule in section 12 which states that with regard to absentee ballots, the whole ballot may not be counted unless the ballot is endorsed with the bipartisan set of initials described there.

Section 13's narrow exception does not extend to other errors made by an election official involving absentee ballots, such as the failure to print the clerk seal or clerk signature.

And therefore, section 12 would apply.
CHAIRMAN ROKITA: Thank you. Democratic
counsel, anything to add or subtract?

COMMISSIONER BARNES: Thank you, Mr. Chairman.

There is another code section that the
Commission may want to take a look at to get a full
picture. I agree with Mr. King that section 13 is
an exception to section 12 and applies to absentee
ballots in the Sullivan case. The Court held that
one absolute rule was that absentee ballots must
bear the initials of the absentee voter board in
order to be counted, but the case did not address
the clerk seal.

I guess I would point the Commission -- in
section 12, it talks about the mistake or failure to
act of an election official. And if you look
earlier in 3-12-1, there's a definition of election
official. It's a person employed or appointed by a
political subdivision to carry out the duties of
Title III. And the clerk by that definition is not
an election official.

However, there is -- there's a code section
earlier in Title III which requires that it's the
county election board that prints the ballots.

And so I guess the question for the Commission
is, who is responsible for putting the seal there?
Is it the county election board? If so, they're an
election official, and section 12 may apply.

If it's the -- it seems to me if it's the
clerk's duty to put the seal there, then 3-12-1-12
might not apply, because she, the clerk, is not --
she's an elected official, not an appointed
official, and therefore not an election officer
under this chapter.

COMMISSIONER DURNIL: What about being the
secretary of the election board? Doesn't that make
her an election official?

COMMISSIONER FERNANDEZ: Is she the secretary
by nature of her elected office --

COMMISSIONER DURNIL: Right.

COMMISSIONER FERNANDEZ: -- or by appointment?

COMMISSIONER BARNES: She serves in two
capacities: As the clerk and as a member of the
county election board.

I guess the question is, the way I see it is,
whose duty is it to put the seal there? The county
election board or the clerk?

MR. BOCK: Are we allowed to respond to that?

CHAIRMAN ROKITA: Well, no, not at this time,
thank you, unless the Commissioners have a specific
question, if you want to get to the Commissioners'
questioning part.

One more round -- I don't want to keep going
back and forth like this -- but go ahead, Brad.

COMMISSIONER KING: I have one brief response,
Mr. Chairman, to the points raised by Ms. Barnes.
Under 3-6-5-14, each county election board shall
prepare all ballots.

CHAIRMAN ROKITA: Okay. Leslie, anything to
add to that?

COMMISSIONER BARNES: And that was the code
section -- I couldn't put my finger on the statute.
But Mr. King's correct that the county election
board prepares the ballot. But whose -- just like
the initials are not placed there until the day of
the election, when is the seal put there? Is the
seal put there -- is it preprinted, or is this seal
put there at the time of the election to
authenticate the ballot?

And that's kind of the purpose of these
statutes, the initials and the seal, is to
authenticate.

CHAIRMAN ROKITA: Thank you both, Counsel.

First I'll ask for any questions from the
Commissioners to the parties, and then I want to
take motions from the Commissioners.
Hearing none, any motions from the Commissioners?

COMMISSIONER DURNIL: I would move we -- that clearly, the error or mistake of the election official --

CHAIRMAN ROKITA: Is there --

COMMISSIONER DURNIL: -- recount the ballots.

CHAIRMAN ROKITA: Second for discussion.

Discussion amongst the Commissioners.

COMMISSIONER FERNANDEZ: Well, I guess part of the discussion -- I'm just trying to get clarity in terms of can someone answer the question about when the seal is actually applied? Is it a preprinted ballot, or is there -- is that how it typically works?

CHAIRMAN ROKITA: Do you want to call the clerk back up?

COMMISSIONER FERNANDEZ: Or if someone else knows.

CHAIRMAN ROKITA: Why don't we just call the clerk back up.

Clerk Brier, could you come back up. The Commission has some questions for you.

(The witness re-takes the stand.)
MR. BOCK: While she's doing that, could I make a response, Mr. Chairman? Because some of this is new argument we haven't had an opportunity to address. It's very limited. And I'll abide by whatever decision you make, obviously.

CHAIRMAN ROKITA: If the Commissioners have a question, I'll let them address it to you, but that's it right now. Thank you.

Clerk Brier, you're still under oath. Thank you very much for coming back while the Commissioners ask you questions.

WITNESS BRIER: Okay.

COMMISSIONER FERNANDEZ: The ballots, are they preprinted with the seals, typically, or is that something that someone physically adds after the ballots come back to the election board or the clerk's office?

WITNESS BRIER: In my experience, in the past they have been printed on there. And that's -- when they had presented the ballots to me up here the other day and asked for the clerk's seal, my first response was, "It's printed on the back." And Mr. Reuben said, "No, it isn't."

And that's when I realized that it wasn't on there; that normally, the printer would print that
on there for you.

CHAIRMAN ROKITA: Do you happen to know if this
is a practice in just your county, or is this across
the state, or do you happen to --

WITNESS BRIER: I honestly don't know that. I
don't know.

MR. REUBEN: Can we question on his questions?

CHAIRMAN ROKITA: I'll tell you what. In the
interest of getting this squared away, since this is
the first argument of the day and there's going to
be more, in the interest of being efficient down the
road, go ahead.

MR. REUBEN: Ma'am, you don't know, from what
you've said, whether or not the -- because you
didn't do it in this election, as far as putting the
stamp on there at any time, did you?

WITNESS BRIER: I did not.

MR. REUBEN: So all the ballots we're talking
about here, these absentees, did not carry your
stamp and seal or your signature, right?

WITNESS BRIER: Correct.

MR. REUBEN: How do you know when -- or do you
know when, under ordinary circumstances, you would
place your seal and stamp on there if, in prior
elections, it was already on there before it goes
out?

WITNESS BRIER: It would have been printed on
the back of the ballot.

MR. REUBEN: Are you sure about that?

WITNESS BRIER: That's -- that's how we had
done it in the past.

MR. REUBEN: But you don't know if that's the
way it's done now, do you?

WITNESS BRIER: That's the way it's -- that's
the way we want to do it from this point on.

MR. REUBEN: Is it true the ballot -- the
stamp -- the clerk's seal and signature would go
out, would be put on there just before the ballot is
mailed out to the voter?

WITNESS BRIER: It should be on there before
the ballot is mailed to the voter.

MR. REUBEN: Right. It should be put on there
not by the printer, because you don't know whether
or not the -- you're ever going to use those.

Isn't it true that the stamp goes on there when
you mail the ballot out to the voter?

WITNESS BRIER: In the past it's been printed
on there, and it was initialed by the absentee board
just before the ballot went in the mail.

MR. REUBEN: All right. I'm not -- the past
is -- that's not what we're talking about here. We're talking about this type of election with these kinds of ballots.

Are you not -- are you sure that it goes -- that the stamp is put on there at sometime other than just before it's mailed to the voter? Are you sure?

**WITNESS BRIER:** I would, in the future, have my seal printed on the ballot, and then the clerks that were working the absentee board would initial that ballot before -- because I feel like when that ballot is approved and my seal is on it, then that ballot has -- after it's been printed, the whole -- the board, everyone has reviewed it, and we feel that that ballot is correct, that my seal on there could be printed on the ballot at that time when we have determined that the ballot is correct.

**MR. REUBEN:** What is the -- tell us what the purpose, please, is of your clerk's seal and signature or facsimile on the absentee ballot.

**MR. BOCK:** This goes beyond the scope of the previous question.

**CHAIRMAN ROKITA:** I completely agree. I'd like to have the cross-petitioner respond with any
questions that they may have for this witness.

MR. BOCK: I don't have any questions related to this. We don't have any.

CHAIRMAN ROKITA: The Commissioners are ready to take a vote on that.

So could you repeat the motion?

COMMISSIONER DURNIL: The motion is that the failure to have a seal on there is the failure to act of an election official. The initials are there, so that we should count the ballots.

CHAIRMAN ROKITA: All in favor? Aye.

COMMISSIONER DURNIL: Aye.

CHAIRMAN ROKITA: All opposed?

COMMISSIONER FERNANDEZ: Aye.

CHAIRMAN ROKITA: Two to one. The motion carries. Next argument in this precinct?

MR. REUBEN: We have none.

(The witness leaves the stand.)

CHAIRMAN ROKITA: Mr. Director, can you tally the votes?

COMMISSIONER SKOLNIK: Mr. Chairman, the tally of the votes in -- for Adams Precinct in Warren County reflects 158 -- I'm sorry -- for Truitt, 158;
Polles, 120; 16 no votes.

CHAIRMAN ROKITA: Next precinct in Warren County?

COMMISSIONER SKOLNIK: Mr. Chairman, the next precinct in Warren County is Medina -- is that the correct pronunciation of that?

The total ballots tallied by the State Board of Accounts reflected 123 for Truitt, 77 for Polles. There were nine no votes tallied by the State Board of Accounts, and all ballots were disputed.

It's my understanding, if I'm not mistaken, that the precinct -- the dispute for the entire precinct has been withdrawn, but there are -- I assume that there are individual exhibits for absentee ballots --

MR. ROGINA: Yes, there are.

CHAIRMAN ROKITA: Thank you. Mr. Polles?

MR. REUBEN: May I move for a brief recess? What just occurred may be dispositive, and I need to make a couple of -- confer with my client. And I may be prepared to withdraw our petition at this point, but I would request a brief recess of the Commission.

CHAIRMAN ROKITA: How much time do you think you need?
MR. REUBEN: Fifteen minutes. I'd rather tell you 15 and come back in 5. And Mr. Rokita, you and I have been crossing paths long enough to know that brevity is not one of my better qualities.

CHAIRMAN ROKITA: I know. And it's so early in the day.

MR. REUBEN: And I'm trying to end the day, sir.

CHAIRMAN ROKITA: Do the Commissioners object to that or have an alternative plan?

COMMISSIONER DURNIL: How about 10 minutes?

MR. REUBEN: Oh, you want to negotiate?

CHAIRMAN ROKITA: The Commission will stand in recess for 10 minutes, and promptly come back at 1:10.

(A recess is taken, after which, the proceedings resume as follows:)

CHAIRMAN ROKITA: The State Recount Commission will come back to order. The recess went 15 minutes beyond what the original plan was.

Petitioner, do you have any comments?

MR. REUBEN: Yes, sir. And I apologize for the delay, but I think in the spirit of why the recess was called, it was -- the extra 15 minutes was warranted. And I think we'll be -- you'll be
pleased for the rest of the afternoon.

I wish to withdraw at this time the recount and
contest petition on behalf of petitioner.

CHAIRMAN ROKITA: In total? Recount and
contest?

MR. REUBEN: Yes, sir.

CHAIRMAN ROKITA: Okay. Is there a response?

MR. BOCK: Well, of course, we have our
cross-petition. Which we'll withdraw.

MR. REUBEN: Or you can become a Democrat.

CHAIRMAN ROKITA: Then I'll go to our two
counsel. Is there any reason that the Recount
Commission can't entertain this proposal?

COMMISSIONER KING: Mr. Chairman, members of
the Commission, no, there is not.

The language in the 3-12-11-12(e) contemplates
dismissal motions, and notes that whenever the
petitioner and each cross-petitioner or respondent
file a joint motion to dismiss a recount or contest,
the Commission shall rule on the motion to dismiss
before ordering or continuing with the recount or
contest.

And I would just suggest clarifying for the
record that what's been -- the motion made by the
petitioner and cross-petitioner or respondent would
constitute a joint motion to dismiss the recount and contest under this provision.

COMMISSIONER DURNIL: And I would move to accept it.

CHAIRMAN ROKITA: Okay. There was a motion to accept that, and I'll second it for discussion. Before that, let me get comment from other counsel first. Do you have anything to add or subtract?

COMMISSIONER BARNES: No. This took me by surprise.

CHAIRMAN ROKITA: Okay. Could we take this other joint motion -- do both sides agree?

MR. REUBEN: Yes, sir.

MR. BOCK: Yes, sir.

CHAIRMAN ROKITA: Commissioner Durnil, any discussion?

COMMISSIONER DURNIL: No.

CHAIRMAN ROKITA: The Chair has no discussion. All in favor of Commissioner Durnil's motion signify by saying aye.

(The Commission unanimously responds "aye.")


And now we'll go for the tallies. I'll
recognize the Recount Director.

COMMISSIONER SKOLNIK: Are we required,
Counsel, to render a tally if there's been a joint
dismissal?

COMMISSIONER KING: Mr. Chairman, I would
recommend for the purposes of the record of this
proceeding that the tally be documented to reflect
the dismissal.

COMMISSIONER DURNIL: So that would be the
official record.

CHAIRMAN ROKITA: Could we adopt the tally by
the State Board of Accounts as the official tally
with one motion? Without reading all this into the
record, can we adopt this State Board of Accounts
tally into the record?

COMMISSIONER KING: Mr. Chairman, members of
the Commission, I think as long as the document
referenced is clearly set forth in that motion, that
that would constitute sufficient evidence for the
record.

CHAIRMAN ROKITA: Counsel?

COMMISSIONER BARNES: Thank you, Mr. Chairman.
I'm not sure, and I wonder if I might ask for a
minute to look through the guidelines.

If both petitioner and cross-petitioner move
to withdraw, I wonder if the election day results should stand and not the recount, the State Board of Account's results.

CHAIRMAN ROKITA: Okay. Let's go ahead and -- first of all, I want to thank both Mr. Polles and Mr. Truitt for their joint motion. And I don't want to spoil that good nature by taking a short recess, but I want to get this right under the law.

MR. REUBEN: How long do you need, sir?

CHAIRMAN ROKITA: Let us take not more than 10 minutes.

MR. REUBEN: May I borrow your director to come knock on your door?

COMMISSIONER SKOLNIK: I only knocked once.

CHAIRMAN ROKITA: If it goes after 15, yeah. We'll take hopefully less than 10 minutes to get this straight so we know which records need to be produced. Thank you.

(A recess is taken, after which, the proceedings resume as follows:)

CHAIRMAN ROKITA: The State Recount Commission will come back to order.

As we recessed I asked the Republican and Democratic counsel to get together and see if they
could agree on how the Commission should proceed
with regard to the tally, the State Board of
Accounts tally of the votes.

And I understand that there is an agreement
amongst Counsel, and I'll ask the Democratic counsel
to state that joint opinion, please.

COMMISSIONER BARNES: Thank you, Mr. Chairman.

Brad, what was the statutory reference?

COMMISSIONER KING: 3-12-11-19 is the key one.

CHAIRMAN ROKITA: 3-12-11-19. Sorry to put you
on the spot there.

COMMISSIONER BARNES: Thank you, Mr. Chairman.

Counsel got together and talked. And when a
recount is completed, Indiana Code 3-12-11-18 [sic]
requires that the Recount Commission would make and
sign a certificate showing a tally of the votes.

But since this recount has been dismissed and
not completed, it is our understanding that the
results that the co-directors of the Indiana
Election Commission certified on November 24th
will stand. And that was our recommendation to the
Commission.

CHAIRMAN ROKITA: Okay. Thank you very much.

I'll take that as a joint?

COMMISSIONER KING: Yes, Mr. Chairman. That's
correct.

CHAIRMAN ROKITA: Okay. With that, we'll move
to -- I don't think there's a motion necessary.
We'll move to other business and additional matters
before consideration before this Commission.

Anything else?

COMMISSIONER SKOLNIK: Mr. Chairman, in the
past, I, as Recount Director, usually the next day
or so, have written orders dissolving the
impoundment so that the election materials that have
been impounded -- to lift that impoundment, orders
can be issued, which I know the clerks appreciate so
they can begin to do their work again. I'm
certainly prepared to do that here in the next day
or so.

There may be a number of other very minor
housekeeping matters that we probably may want to
address. In the past -- and I think standing order
2006-01 allows me to continue to do this -- the
Recount Director has been authorized by the
Commission to approve the payment of expenses that
are submitted by the state agencies that provide
assistance in this matter.

In addition, there are expenses that are
incurred by members of the Commission.
Counsel, you, I think, probably recall those. I think there is a per diem as well as travel expenses. And I'm prepared to work with the Commissioners in making sure that those expense vouchers, or whatever, are submitted on a timely basis.

CHAIRMAN ROKITA: And I'm sure you'll work with the agencies for their expenses.

COMMISSIONER SKOLNIK: Yes. We've done that in the past.

The one difference, as I recall, is regarding the payment of my bill. I believe, I think, in the past it was -- was the Chairman authorized to approve that? Is that how we proceeded on that? Obviously, I can't be in a position of authorizing my own statement for services rendered.

CHAIRMAN ROKITA: Yeah, we'll hold with that and I'll copy the Commissioners.

COMMISSIONER SKOLNIK: Yeah, I can't really copy -- obviously, on my statement as well as other expenses, we have copied members of the Commission.

CHAIRMAN ROKITA: Anything else? Anything from the Commissioners? Any final statements Commissioner Durnil, Commissioner Fernandez?
COMMISSIONER FERNANDEZ: I mean I don't want to prolong this at all, but I think that there's a lot of really good intentions in terms of the process of using the Voter Centers. It's sort of a first take on this pilot legislation that's going to be up for review, statutorily, in the next session.

I think to the extent that we can -- not "we" the Commission, but the people involved in the election process at the state and local level can sort through some of these issues. And I think we would be well-served so that folks can know with certainty how to proceed in utilizing the voting center process, but do it in a way that, you know, if there's potential conflicts between existing election law and the center plan, that we get these things resolved so that we don't come back in the future and have other issues that will be longer than this particular hearing.

CHAIRMAN ROKITA: Thank you, Commissioner Fernandez and Commissioner Durnil, for your service and continued service to the state.

I want to thank Recount Director Skolnik for his work, and, of course, both counsel, and again, the state agencies involved, as well as both county clerks who are here today, and their respective
election boards.

This process worked today because the process is transparent, because I believe we have very good and solid recounting contest laws here in the state of Indiana.

I want to thank the candidates for bringing this matter forward for the transparency of the voters and taxpayers.

And then, with regard to the Vote Center concept, I did not engage the petitioner on any of his substantive arguments because they related to things that were not in question in terms of his voluntary request. They had to do with bias of the Chair. None of that was presented, so I didn't take that as an opportunity to go into any of the potential conflicts or praises that can happen with the Vote Centers.

But I do think that because the Vote Center is in a pilot stage, this is very much part of that pilot. And to the extent that Vote Centers are considered to be something that the General Assembly wants to continue on and do in the 21st Century so that we can vote how we live in the 21st Century, I think this recount will provide some good information to make sure that everyone feels secure
in that regard, especially the voters and taxpayers.

So thank you very much. I appreciate, again, the Commissioners' service today.

And assuming no other additional matters for consideration, I'll ask for a motion to adjourn.

COMMISSIONER DURNIL: So move.

CHAIRMAN ROKITA: Second. All in favor say aye.

(The Commission unanimously responds "aye."

CHAIRMAN ROKITA: Thank you very much.

(WHEREUPON, the Recount Commission Hearing in the above-captioned matter is adjourned on the 7th day of December, 2008, at 1:50 p.m.)
STATE OF INDIANA )
) SS:
COUNTY OF HAMILTON)

I, Jenny L. Reeve, RPR, CSR No. 00-R-3006, a Notary Public and Stenographic Reporter within and for the County of Hamilton, State of Indiana at large, do hereby certify that on the 7th day of December, 2008, I took down in stenograph notes the foregoing hearing of the Indiana State Recount Commission.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 24th day of December, 2008.

[Signature]

NOTARY PUBLIC

My Commission Expires:
June 16, 2016

County of Residence:
Hamilton County