

INDIANA STATE RECOUNT COMMISSION

MINUTES OF THE MAY 4, 2011 MEETING

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

MEMBERS ABSENT: None

STAFF ATTENDING: Bradley W. Skolnik, Recount Director; J. Bradley King, Majority Counsel; Leslie Barnes, Minority Counsel

OTHERS ATTENDING: Mr. James Bopp; Ms. Karen Celestino-Horseman.

1. CALL TO ORDER:

The chair called the meeting of the Commission to order at 9:30 a.m. at Indiana Government Center South, Conference Center Room C, 402 West Washington Street, Indianapolis, Indiana.

2. COMMISSION BUSINESS:

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

The Commission approves the Transcript, with the following corrections:

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

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

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

Page 9, line 24, replace “act” with “echo”.

Page 9, line 25, delete “on”.

Page 29, line 5, replace “confirm” with “conform”.

Page 29, line 18, replace “attorney” with “general”.

Page 44, line 12, replace “sites” with “cites”.

3. ADJOURNMENT:

There being no further business before the Commission, the Commission adjourned at 10:56 a.m.

APPROVED:

Thomas E. Wheeler, II

Thomas E. Wheeler, II

Pursuant to Order 2011-15 of

The Indiana State Recount Commission

Original

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INDIANA RECOUNT COMMISSION
PUBLIC SESSION AGENDA

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Conducted On: Wednesday, May 4, 2011

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Location: Indiana Government Center South
Conference Center, Room C
402 West Washington Street
Indianapolis, Indiana 46219

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A STENOGRAPHIC RECORD BY:

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Rhonda J. Hobbs, RPR

Notary Public

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Stenographic Reporter

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Connor + Associates, Inc.

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A P P E A R A N C E S

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INDIANA RECOUNT COMMISSION:

Mr. Thomas Wheeler - Chairman

Mr. Bernard L. Pylitt - Commission Member

Mr. Gordon Durnill - Commission Member

INDIANA ELECTION DIVISION STAFF:

Ms. Leslie Barnes - Co-Legal Counsel

Mr. Bradley King - Co-Director

1 **CHAIRMAN T. WHEELER:** I'm going to go ahead
2 and call the meeting to order of the Indiana
3 Recount Commission. The Indiana Recount
4 Commission has been convened today pursuant to
5 public session notice.

6 We are in the Indiana Government Center South,
7 Conference Room C. An agenda has been posted.
8 Looking to my left and right, I note that we have a
9 quorum of the commission members, Commissioner
10 Pylitt and Commissioner Durnill.

11 My name is Tom Wheeler. I'm the Chairman of
12 the Recount Commission. And just as a historical,
13 I spent five years chairing the Indiana Election
14 Commission, and for those five years, I never had a
15 gavel so that's why I'm very excited to have a
16 gavel.

17 With that, the first agenda item is an
18 approval of the May 4th -- well, actually, strike
19 that. Let me -- Brad, do you want to go through
20 the binders that are in front of the Commission
21 members first?

22 **MR. B. KING:** Certainly, Mr. Chairman Mr.
23 Chairman and Members of the Commission, the
24 members and the counsel and the recount director
25 have binders with several tabs. The first tab

1 is the notice and agenda for this meeting
2 followed by the recount guidelines as amended
3 November 24th, 2010.

4 The next tab is the executive session minutes
5 for today. The third tab is the original petition
6 for contest filed November 19th, 2010. The next
7 tab are impound orders issued by the recount
8 director on April the 27th of 2011.

9 The document following, or the tab following
10 that concerns discovery requests, the original
11 discovery requests filed by Mr. Parker on
12 April 15th of 2011, followed by Respondent Charlie
13 White's response, which was filed yesterday, May
14 the 3rd. The final tab are court orders and
15 notices of appeal. They include the judgment and
16 opinion of the Marion Circuit Court, followed
17 by -- that's in the very back of that tab, and
18 they're in rough chronological order with the most
19 recent first.

20 They're followed by that -- by the appellee's
21 verified motion to dismiss appeal and notice of
22 appeal to the Indiana Court of Appeals.

23 **CHAIRMAN T. WHEELER:** Thank you, Brad. I
24 would move to approval of the May 4, 2011
25 executive session minutes, and actually, I would

1 make a notation with respect to those minutes,
2 in terms of other persons present, it notes two
3 individuals from the office of attorney general.
4 I believe that we had Gary Secrest as well from
5 the Attorney General's office present for that
6 executive session as well.

7 The only members attending were the three
8 commission members, as well as our legal counsel
9 from the Office of Attorney General. With that
10 modification to the minutes, I accept a motion to
11 approve.

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

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

14 **CHAIRMAN T. WHEELER:** Motion's been
15 approved and second, any further discussion?

16 *(No response.)*

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

19 **THE COMMISSION:** Aye.

20 **CHAIRMAN T. WHEELER:** Those opposed, same
21 sign?

22 *(No response.)*

23 **CHAIRMAN T. WHEELER:** Motion carries.

24 **MR. B. KING:** Mr. Chairman?

25 **CHAIRMAN T. WHEELER:** Yes, sir.

1 **MR. B. KING:** The Indiana Open Door Law
2 requires following an executive session a
3 certification by the members of the governing
4 body that no subject matter was discussed at the
5 executive session other than the subject matter
6 specified in the public notice. If the
7 commission could execute that certification at
8 this time, that would be helpful for the record?

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

10 **CHAIRMAN T. WHEELER:** We've already
11 approved the minutes so I will sign both of
12 those. All right, the next item on the agenda
13 is the Petition for Contest for Election of
14 Secretary of State, Indiana Democratic Party
15 versus Charlie White, and I'm going to take the
16 privilege of the chair for just a moment.

17 I've reviewed -- we have all of the binders.
18 I've reviewed a lot of the pleadings that have been
19 filed in the circuit court and I'm a little bit
20 disturbed by the tone of some of the commentary
21 related to, particularly, the action by the recount
22 commission characterizing this as a partisan
23 process or a political process.

24 I would admonish both parties this is -- this
25 is not a partisan process -- this isn't a political

1 process, although it is part of the political --
2 the election law. This process is designed to find
3 out what happened, how it happened, and make a
4 determination if any laws, election laws have been
5 complied with.

6 To that end, I know that each of the
7 commission members -- again, I spent five years
8 chairing the Indiana Election Commission and we
9 heard everything from presidential challenges all
10 the way down. I know that that body operated in a
11 bipartisan fashion, not in a partisan fashion, and
12 I know the other two commission members here --
13 both Commissioner Pylitt, I've known for a long
14 time, and Commissioner Durnill. I will promise you
15 this is not a partisan process.

16 We are acting as administrative law judges.
17 No different than Judge Rosenberg, who was elected
18 and in a partisan process, acted as a judge and
19 issued the two orders that he's issued thus far.

20 I would encourage you in your briefing with us
21 to refrain from partisan attacks and commentary. I
22 saw some of that. It won't be tolerated in front
23 of this commission -- I'll strike your briefs and
24 I'll send them back to you and you can take another
25 swing at it, just so we're real clear as to how

1 that process is going to go.

2 Again, this is not a partisan process here and
3 we won't tolerate partisan attacks from either
4 party, so I just want to make that very very clear
5 at the outset.

6 **MS. K. CELESTINO-HORSEMAN:** Now a point of
7 clarification, but we're not being instructed --
8 in any event if we think the due process rights
9 of our client is being violated because of
10 partisanship, which is how those were framed,
11 we're not being instructed that we cannot raise
12 due process arguments; correct?

13 **CHAIRMAN T. WHEELER:** Surely. If you
14 think, for example, that someone has
15 inappropriately contacted a commission member or
16 applied political pressure to a commission
17 member just as you thought that might happen
18 with a judge, you want to bring that to the
19 attention of the commission, absolutely.

20 **MS. K. CELESTINO-HORSEMAN:** And -- and this
21 commission is not instructing us that we cannot
22 raise those arguments in front of a trial court,
23 is it?

24 **CHAIRMAN T. WHEELER:** We certainly wouldn't
25 have the power to do that, but what I'm telling

1 you is with respect to this commission, when you
2 file briefs with this commission, please keep
3 the partisan attacks out of it.

4 **MS. K. CELESTINO-HORSEMAN:** Well -- and I
5 would just say on behalf of my client that it
6 was not intended as just simply being a partisan
7 attack, but is...

8 **CHAIRMAN T. WHEELER:** And I'm not picking
9 anybody out. I'm saying in this process. I
10 want -- I want to assure you that -- of the
11 integrity of the process in commissioners here.
12 We're not interested in making a partisan
13 decision. We're interested in making the
14 correct decision based upon the facts and
15 applying the law as any other administrative law
16 judge would do.

17 I know Commissioner Pylitt has sat both as a
18 judge and an administrative law judge, and I have
19 as well, and Gordon's has been on the recount
20 commission. I just want to assure you that this
21 will not be a partisan process.

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

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

24 **COMMISSION MEMBER B. PYLITT:** I would act
25 on your sentiments. I have the greatest deal of

1 respect for you and Commissioner Durnill. I
2 actually got to represent Commissioner Durnill
3 as they left the U.S. Attorney's Office many
4 years ago, and I can assure you that no one has
5 advised me what to do, say, or how to act in
6 this, other than my wife, who told me to behave
7 myself.

8 **CHAIRMAN T. WHEELER:** My wife didn't even
9 go that far. Now with respect to that, the
10 intent of this particular hearing is not to
11 resolve the underlying issues. As I understand,
12 and I have Judge Rosenberg's order here, Judge
13 Rosenberg has ordered the recount commission to
14 take final action against the petition no later
15 than July 6th.

16 While I may have some reservations with Judge
17 Rosenberg's authority to direct this commission and
18 set dates and direct this commission how to conduct
19 this hearing. As I understand it, he issued that
20 based upon a balance between the two parties of --
21 as I understand this order, the Petitioners were
22 looking for a much earlier date, and the Respondent
23 was looking for a later date, and it looks to me a
24 little bit like he cut that in half and he had a
25 considered determination as to when -- what

1 expeditiously meant.

2 And it seems reasonable to me -- we certainly,
3 this -- this body intends to operate in an
4 expeditious fashion, I think, and that's why we're
5 here and having a hearing so quickly on this. Is
6 that date, does that seem reasonable for you to get
7 that done? Clearly, he's issued that order. Are
8 you both comfortable with getting that done within
9 this period of time?

10 **MS. K. CELESTINO-HORSEMAN:** I would still
11 maintain -- particularly, if I don't know what's
12 going to happen with this discovery issue that
13 is before the commission and if no discovery is
14 allowed to be taken, then we would still
15 maintain that there's no reason why this could
16 not be resolved expeditiously, even taking an
17 appeal to the circuit court, so other than
18 that -- I mean, yeah, we think it could be done
19 in a shorter time.

20 **CHAIRMAN T. WHEELER:** You're comfortable
21 with that as the outside date set by Judge
22 Rosenberg?

23 **MS. K. CELESTINO-HORSEMAN:** We would like
24 to see it sooner.

25 **CHAIRMAN T. WHEELER:** Well, I understand

1 that, but you're -- if he --

2 **MS. K. CELESTINO-HORSEMAN:** You're asking
3 me if I'm comfortable with it, I...

4 **CHAIRMAN T. WHEELER:** I understand. I
5 don't want you to waive any rights.

6 **MS. K. CELESTINO-HORSEMAN:** Right.
7 Exactly.

8 **CHAIRMAN T. WHEELER:** Mr. Bopp, can you...

9 **MR. J. BOPP:** Well, if there's no
10 discovery, that certainly be done well within, I
11 think, the deadline set by Judge Rosenberg.

12 **CHAIRMAN T. WHEELER:** And what I'm hearing
13 from both of you if there's -- if there's
14 discovery, that may push it and delay things?

15 **MS. K. CELESTINO-HORSEMAN:** The discovery
16 that we're seeking can be done very quickly.
17 I'm -- so I don't see that that would cause any
18 delay or anything.

19 **CHAIRMAN T. WHEELER:** As I'm looking at
20 that -- you know, as I've said, this is going to
21 be -- I'm going to treat this as a prehearing
22 conference, and using -- I am certainly
23 comfortable with that July 6th date, in getting
24 this done, and I will get with the commission
25 members to look at those dates within that time

1 frame, so we will be done by that date.

2 Using that date to back up, I think the
3 commission members -- this is not an AOPA
4 proceeding, however, I think we are inclined to
5 have findings of fact and conclusions of law and
6 order to give Judge Rosenberg something to go on,
7 if in fact one of the two parties -- in the
8 unlikely event that you choose to appeal whatever
9 decision that we render, it will give an
10 administrative record and framework for that appeal
11 both to Judge Rosenberge and the Court of --
12 suspecting you'll have the Court of Appeals or
13 Supreme Court review.

14 Given that fact, we will need we have to back
15 these dates. I would like to give you the date of
16 June 21st, 2011 for a hearing, that would be your
17 hearing on the merits, your fact-finding hearing.
18 We will hold a hearing on July 30th, 2011 for the
19 purposes of approving findings of fact and
20 conclusions of law and issuing the final order,
21 which I think --

22 **MR. J. BOPP:** What date was that again?

23 **CHAIRMAN T. WHEELER:** June 30th. That will
24 give you about an 8-day period to submit
25 proposed findings of fact and conclusions of law

1 between the time of the hearing and the time
2 that we meet again to issue our final decision
3 on June 30th, backing those -- and then backing
4 those dates out to June 21st.

5 Now we have also -- there's an issue of the
6 hearing itself, the length of the hearing, I'd like
7 to hear some feedback from the other commissioners
8 as to what they think in terms of how long that
9 hearing takes, what that hearing...

10 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
11 I might have a suggestion that may bootstrap
12 your inquiry. I would like to have the parties
13 meet with within a relatively short period of
14 time to discuss the possibility of stipulating
15 to findings of facts and to stipulate as to
16 documents and/or the admissibility of documents,
17 and I think if they do that, we should be able
18 to have a pretty streamlined hearing.

19 If that occurs, it would seem to me that a
20 full day for the hearing, with a half day on the
21 side, with an understanding, that if one of the
22 parties take half of the day to cross-examine the
23 witness, that the Chair has the ability to deduct
24 that from the other half day for the hearing.

25 So I suppose in anticipation of the hearing, I

1 would move that we draft an order for the counsel
2 for the parties to meet within the next seven days
3 in an attempt to reach stipulation as to facts and
4 the documents, report back to us, and it may well
5 be that that may resolve a lot of the requests for
6 discovery that are outstanding.

7 **CHAIRMAN T. WHEELER:** Let me break that
8 into two items.

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

10 **CHAIRMAN T. WHEELER:** The first item I
11 heard was setting a hearing, the hearing on the
12 21st for a one-day hearing with a half a day,
13 perhaps 4 hours for each side, with the
14 understanding that if somebody -- we'll count
15 your cross-examine time, if it gets to be
16 extensive against your time, so we're not let
17 somebody chew up somebody's direct time.
18 Commissioner Durnill?

19 **COMMISSION MEMBER G. DURNILL:** I agree.

20 **CHAIRMAN T. WHEELER:** What I'm going to do
21 is set that hearing on the 21st for a one-day
22 hearing, four hours for each side. I'll
23 probably throw in some time for opening
24 statements and closing statements. We may have
25 you waive closing in lieu of valid briefs,

1 depending on how it goes, bit I'll kind of play
2 that by ear when we get into the hearing. Now I
3 have a motion -- do I need a motion on that,
4 Brad or Leslie?

5 **MR. B. KING:** With regard to your...

6 **CHAIRMAN T. WHEELER:** With regard to
7 setting it for a one-day hearing -- we don't
8 need a motion; correct?

9 **MR. B. KING:** You can have the director to
10 prepare it.

11 **CHAIRMAN T. WHEELER:** Let the director to
12 prepare it. So what I would ask is Brad to
13 prepare it. I'm going to modify Judge
14 Rosenberg's direction about -- I think he wanted
15 a case management order. What I'd like is a
16 prehearing order setting out the information
17 we're putting in here and we'll get that out to
18 you guys as quickly as Brad can get to it, and I
19 suspect he will get to it expeditiously and
20 we'll get this in writing.

21 All right, now I what to jump to kind of the
22 second issue. This relates to discovery issue that
23 both -- both counsel have mentioned --

24 **MR. J. BOPP:** Mr. Chairman, did you resolve
25 this stipulation -- this...

1 **CHAIRMAN T. WHEELER:** That's -- that's
2 where we're going right now.

3 **MR. J. BOPP:** Okay.

4 **CHAIRMAN T. WHEELER:** As I understood the
5 process that Commissioner Pylitt was outlining,
6 what he has suggested is that with respect to
7 the -- there's a couple of issues, one, the
8 Petitioner has pending discovery requests. I
9 certainly heard -- I didn't hear, I am told that
10 the Respondent has indicated that if discovery
11 is permitted, Respondent has discovery that they
12 would intend to serve as well; is that correct,
13 Mr. Bopp?

14 **MR. J. BOPP:** Yes.

15 **CHAIRMAN T. WHEELER:** Although we haven't
16 gotten those requests. We did get your filing
17 this morning related to discovery. What the
18 Commission -- what I think Commissioner Pylitt
19 has suggested in the process that would take
20 place is that the parties for the next seven
21 days would get together, figure out what you can
22 stipulate, what documents you can stipulate to,
23 what facts you can stipulate to and what
24 discovery you can stipulate to.

25 If there's discovery that Mr. Bopp would like

1 that you don't have an objection to, come back to
2 us. I think it is the Commission's position under
3 the statute that the parties do not have an
4 independent right to conduct discovery. However,
5 the Commission has the right, clearly, to issue
6 discovery orders and order that discovery take
7 place as per the impoundment order that Director
8 Skolnik has already issued -- two impoundment
9 orders that he's already issued.

10 And so with this process, what we are
11 suggesting to you is that you guys spend seven
12 days, try to work it out among yourselves, okay,
13 with respect to -- I know you have requested, for
14 example, a deposition of Charlie White. Let me
15 suggest to you that there may be a better process,
16 and you have indicated, I think, that that -- at
17 least in the motions that you have filed with the
18 circuit court, that you have concerns about his
19 Fifth Amendment Rights, giving a deposition and due
20 process.

21 What I -- what I would humbly suggest to you
22 is you take a look at the trial rules and consider,
23 for example, a deposition by interrogatories which
24 would allow you to ask the questions that you need
25 to ask and allow you to raise your objections, and

1 then I'm -- I'm just -- I'm throwing that out there
2 as a suggestion for handling that process.

3 You may be able to get the information that
4 the Petitioner needs without impairing his Fifth
5 Amendment Rights, and then you can object on a
6 question-by-question basis. What we will do, if
7 that's the process you select, then the Commission
8 can come back.

9 After that seven-day period, if you continue
10 to have an objection, you guys haven't been able to
11 agree on a process or discovery or anything like
12 that, the commission members will meet again and
13 resolve -- we'll hear argument. If it's the
14 position, Mr. Bopp's position -- I assume you just
15 got the same pleading he filed this morning -- I
16 presume you got it this morning, that there's no
17 discovery -- maybe he takes that position -- why
18 don't you discuss that. You've got seven days to
19 do it, come back to us, we'll set a meeting, you
20 can both brief the issue, and we'll address whether
21 discovery is even appropriate in this proceeding.

22 And if it is, we'll resolve the issues that
23 you guys have got between yourselves among that
24 discovery, and that's consistent with Commissioner
25 Pylitt's recommendation. All right, so seven days

1 out -- Brad, parties meet seven days out.

2 **MR. J. BOPP:** Can I comment on that, Mr.
3 Chairman?

4 **CHAIRMAN T. WHEELER:** Please.

5 **MR. J. BOPP:** I'm in D.C. the next four
6 business days on business and so I will not be
7 back in Indiana -- well, I will be over the
8 weekend, but my wife and my children have plans
9 and -- but I'll be back on Wednesday. My
10 thought is that we report back to you by the end
11 of business on the 13th, which is Friday, and
12 that would give us the opportunity to exchange
13 proposed stipulation of facts, say -- exchange
14 that on Wednesday, the 11th, and then give us
15 time to agree to those stipulated facts or
16 object and then discuss discovery, so we would
17 have the 11th, the 12th --

18 **CHAIRMAN T. WHEELER:** So that will give you
19 two additional days?

20 **MR. J. BOPP:** That would give us two
21 additional days and we'd be able to -- that
22 would -- that'll allow me to participate in this
23 and...

24 **CHAIRMAN T. WHEELER:** I do happen to know,
25 personally, we do have some very very competent

1 attorneys in your office --

2 MR. J. BOPP: We do.

3 CHAIRMAN T. WHEELER: -- to assist you with
4 that.

5 MR. J. BOPP: We do, and that --

6 CHAIRMAN T. WHEELER: Miss Horseman, do you
7 have an objection to two additional days?

8 MS. K. CELESTINO-HORSEMAN: I'm still
9 trying to see -- I mean, if Mr. White intends to
10 take the Fifth Amendment, plead the Fifth
11 Amendment, then he isn't going to be wanting to
12 stipulate to anything.

13 CHAIRMAN T. WHEELER: Well, I understand
14 that, but we'll find -- my point is this
15 process --

16 MS. K. CELESTINO-HORSEMAN: But I'm --
17 I'm...

18 CHAIRMAN T. WHEELER: -- is just to find
19 that out.

20 MS. K. CELESTINO-HORSEMAN: Okay.

21 CHAIRMAN T. WHEELER: You guys are going to
22 talk and find that out.

23 MS. K. CELESTINO-HORSEMAN: Okay.

24 CHAIRMAN T. WHEELER: I trust you guys as
25 officers of the court to be able to talk in an

1 adult fashion about whether or not that is and
2 what -- there's an awful lot of this, I truly
3 believe, that can be stipulated to, and I truly
4 hope that you guys can do that because it'll A)
5 maybe go a lot faster; B) I don't think, you
6 know, the public is interested in seeing a lot
7 of squabbling over this. They'd rather see
8 this, and I -- and I believe, certainly, the
9 direction we've gotten is to do this in an
10 expeditious fashion -- I think this is the most
11 expeditious fashion to get this, and I would
12 submit that with the reservations that were
13 raised about discovery, this may be the best
14 process for you to get a lot of what you want on
15 the Petitioner's side as well through a
16 conversation with Mr. Bopp and trying to work
17 that over -- out over the next seven days.

18 **MS. K. CELESTINO-HORSEMAN:** I -- well, I
19 guess what I would ask then is that we -- it
20 sounded as -- I'm sorry, and I probably
21 misunderstood, because it sounded like what was
22 being said was that we were required to exchange
23 stipulated facts.

24 **CHAIRMAN T. WHEELER:** We did not say that.

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

1 **CHAIRMAN T. WHEELER:** That was Mr. Bopp.

2 **MS. K. CELESTINO-HORSEMAN:** All right.

3 **MR. J. BOPP:** That was my suggestion on how
4 we might proceed.

5 **CHAIRMAN T. WHEELER:** I would certainly --
6 I would certainly encourage you to do that.

7 **MS. K. CELESTINO-HORSEMAN:** Yeah, and --

8 **CHAIRMAN T. WHEELER:** But if -- if you guys
9 want to fight about it, bring it back to us, and
10 we'll rule on it.

11 **MS. K. CELESTINO-HORSEMAN:** I guess -- I
12 guess the easiest -- that's why I -- I truly
13 think that the easiest thing is a deposition,
14 then if we know that the Fifth is being pleaded,
15 that's it, we don't have to worry about
16 interrogatories or anything.

17 **CHAIRMAN T. WHEELER:** I understand that,
18 but we'll resolve that. You come back to us and
19 say look, we've talked to them, we've talked
20 about -- there's a lot of -- you know, you're a
21 trial attorney. I know Bill Groth is. I've
22 litigated cases with him, I've litigated with
23 Mr. Bopp, you guys -- there's a lot of options
24 under the trial rules.

25 If you come back and say here's a better

1 option, we'll look at it, but take these seven
2 days, talk to each other, and figure -- try to
3 figure this out. If you can't figure it out, we'll
4 rule on it.

5 **MS. K. CELESTINO-HORSEMAN:** It's -- I
6 guess --

7 **CHAIRMAN T. WHEELER:** Here's the question
8 I've got for you.

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

10 **CHAIRMAN T. WHEELER:** Do you have an
11 objection to Mr. Bopp extending that seven days
12 til the 13th?

13 **MS. K. CELESTINO-HORSEMAN:** No, I don't
14 have any objection with that.

15 **CHAIRMAN T. WHEELER:** All right. Let's --
16 that's the process we're going to follow, and I
17 certainly encourage the two parties to work that
18 out in that process.

19 Now I am going to address I want to bring in
20 one additional issue, which is, I think, relevant,
21 which involves -- it isn't really under the control
22 of either of the parties here, which involves what
23 I'll refer to as the Rokita report, that the
24 Petitioners have issued a -- have asked that we
25 issue a discovery order for the Rokita report, and

1 then I'll look to my colleagues, Commissioner
2 Durnill, what are your thoughts on the Rokita
3 report and the request for it -- it's obviously not
4 in the hands of either of these two parties?

5 **COMMISSION MEMBER G. DURNIL:** Do you want
6 me to make the -- do you need a motion or what
7 are we doing?

8 **CHAIRMAN T. WHEELER:** Whatever you're --
9 you're thinking of.

10 **COMMISSION MEMBER G. DURNILL:** I think we
11 three commissioners need to take a look and see
12 what's in it, and I think my advice might be
13 that it be turned over to the AG. We take a
14 look and see what's there, see whether there's
15 anything that's pertinent to what we're doing in
16 our -- in our responsibility.

17 **CHAIRMAN T. WHEELER:** So you're suggesting
18 maybe an in-camera process.

19 **COMMISSION MEMBER G. DURNILL:** In-camera,
20 absolutely.

21 **CHAIRMAN T. WHEELER:** All right. I guess
22 that -- that meets along with what I'm thinking.
23 There's -- there's -- none of the commission
24 members have seen the report. I have no idea
25 what's in the report. I know that Jerry Bonnet

1 is here today, the Deputy Secretary of State.

2 What -- I guess going along with what
3 Commissioner Durnill has suggested, what I would --
4 what I would recommend to our fellow commissioners
5 is perhaps we conduct an in-camera inspection of
6 the report. We draft the -- we have the ability to
7 issue a discovery order, that's correct?

8 **MR. B. KING:** That's correct.

9 **CHAIRMAN T. WHEELER:** So we can issue a
10 discovery order today directing the Secretary of
11 State's office to submit the Rokita report to
12 the commission for an in-camera inspection.
13 Leslie, do we have the power to do that?

14 **MS. L. BARNES:** Yes.

15 **CHAIRMAN T. WHEELER:** Okay. The process I
16 would suggest in doing that is that it be
17 submitted to -- we do have the AG's office, our
18 representative, be submitted to Gary Secrest.
19 The process I would suggest is that it be done
20 in 24 hours, and frankly, because I think there
21 may be -- the only thing I know about the report
22 is what I've read in the press.

23 My understanding is there is -- is kind of a
24 core report done by the general counsel for the
25 Secretary of State, to the Secretary of State, and

1 then there's a -- several hundred pages of attached
2 documentation that may or may not be public
3 records.

4 I suspect that much of what you guys may be
5 fighting over, in terms of the discovery you've
6 requested, may already be in an attachment to that
7 report. So what I want to do is create a process
8 where that gets -- to the extent we can get that
9 out to you, that may obviate some of the fighting
10 you may do over whether discovery, and particularly
11 discovery from third parties, I -- I don't know.
12 It may or may not.

13 So what I would suggest to my fellow
14 commissioners is that we issue a discovery order
15 that the Secretary of State's office submit the
16 Rokita report for an in-camera inspection by the
17 commission members, that it be submitted to the
18 AG's office within 24 hours, that the Secretary of
19 State attach or append to that report a privilege
20 log indicating if the Secretary of State believes
21 that documents in there are privileged -- I don't
22 know. It could be -- there could be personal
23 information related to the Secretary of State,
24 information that is protected by federal law.

25 For example, there may be some specific voter

1 information that's in there that is protected by
2 federal law -- I don't know the answer to that, but
3 I would suggest giving the Secretary of State's
4 office 24 hours to raise those objections and just
5 create a privilege log, append it to that.

6 The process I would envision is that the
7 members of the commission, one at a time would go
8 to the Attorney General's office -- the Attorney
9 General is not going to review the document at all,
10 they're simply maintaining it in their custody and
11 control, the individual commission members would go
12 and review those individually, along with the
13 privilege log created by the Secretary of State,
14 and then what I would suggest is that the
15 commission members authorize a member of the
16 commission to designate what documents will be
17 released pursuant to discovery that we're producing
18 right now to the parties -- Commissioner Pylitt?

19 **COMMISSION MEMBER B. PYLITT:** I think
20 that's a good suggestion.

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

22 **COMMISSION MEMBER G. DURNILL:** I agree with
23 the comments.

24 **CHAIRMAN T. WHEELER:** Let me -- let me...

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

1 **CHAIRMAN T. WHEELER:** Director Skolnik, you
2 understand the motion -- I guess there was a
3 motion in process?

4 **RECOUNT DIRECTOR B. SKOLNIK:** I think I do,
5 yeah, and the rule will confirm.

6 **CHAIRMAN T. WHEELER:** All right. And now
7 the parties. I'll start with the Petitioner?

8 **MS. K. CELESTINO-HORSEMAN:** Thank you. Mr.
9 chairman, I know you're at a disadvantage
10 because you've come in now after this -- it's
11 already been through it once, but I did want to
12 note a few things for the record. First of all,
13 a representative of the Indiana Secretary of
14 State, A.J. Feeney-Ruiz, has stated that the
15 report is to be made public so it's...

16 **CHAIRMAN T. WHEELER:** I don't believe
17 that's exactly what he said. I believe he said
18 after review by the inspector attorney, the
19 public access counselor, and maybe the AG, so I
20 don't believe he said that it was coming
21 straight out. There was -- there was an
22 administrative process and review.

23 I would note that the inspector general has
24 not -- despite some indication he would do it on
25 Monday, he has not issued a determination regarding

1 the release of the report. I believe the process
2 we're setting forth is the most expeditious manner
3 for you to get this information.

4 **MS. K. CELESTINO-HORSEMAN:** Well, what Mr.
5 Ruiz was quoted in the media was -- as was
6 saying this. Now if that's the process that he
7 intended to follow afterwards, unfortunately, we
8 were never informed of anything about that
9 outstanding request.

10 **CHAIRMAN T. WHEELER:** I understand. That's
11 why I'm giving them 24 hours. It may be that
12 the Secretary of State says that this is all
13 public and here it goes --

14 **MS. K. CELESTINO-HORSEMAN:** And then
15 secondly.

16 **CHAIRMAN T. WHEELER:** -- and that's why --
17 why we created this process to expedite.
18 Remember, the purpose of this, and you have said
19 it over and over again, you want this process
20 expedited. I think this is the fastest way for
21 us to get this information to you in an effort
22 to resolve this.

23 **MS. K. CELESTINO-HORSEMAN:** Sure. And I
24 just want to put -- I'm just trying to establish
25 my record here. Secondly, in addition to that,

1 since the inspector general is looking at it,
2 are we adding a fourth step now, this
3 commission, by requiring the Attorney General's
4 office to look at it?

5 **CHAIRMAN T. WHEELER:** No. I think I made
6 it clear the Attorney General's office is not
7 looking at it.

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

9 **CHAIRMAN T. WHEELER:** I think what I made
10 clear, this order allows the Secretary of State
11 24 hours to determine what they have concerns
12 about. We will then address those concerns as
13 part of that privilege log which will be
14 addressed attached.

15 We will each look at that privilege log. We
16 will look at the documents. For example, if he
17 says my Social Security number is in -- you know,
18 at Page 186, and we've all -- everybody here has
19 dealt with a privilege log, at least all the
20 attorneys have dealt with a privilege log, but Page
21 186, we can look at it and say you redact,
22 obviously, the Secretary of State's Social Security
23 number.

24 So I think that should address the concerns
25 that you're raising with respect to that

1 information.

2 **MS. K. CELESTINO-HORSEMAN:** Well...

3 **CHAIRMAN T. WHEELER:** There is not an
4 additional process. The Attorney General's
5 office is not reviewing and has not been asked
6 to render a formal opinion, as far as I know.
7 Attorney General Secrest is nodding, I mean,
8 that they have not been asked to issue a public
9 opinion. So no, there's not a fourth step in
10 the process.

11 **MS. K. CELESTINO-HORSEMAN:** All right. And
12 if it -- certainly, if it seems like a Social
13 Security number, we have no objection, which the
14 procedural posture of this is rather strange,
15 because the individual who is the focus of this
16 election contest is being asked to review a
17 document that he's already had access to, which
18 has been refused to us. So for the record, I
19 want --

20 **CHAIRMAN T. WHEELER:** I don't know that
21 there's a record -- I don't know that it's a
22 public record that he's had access to it. I
23 believe that's...

24 **MS. K. CELESTINO-HORSEMAN:** Well, they
25 haven't maintained -- but he has had access.

1 **CHAIRMAN T. WHEELER:** Well, I believe -- I
2 believe -- well, I don't know that that's a
3 fact.

4 **MS. K. CELESTINO-HORSEMAN:** All right.

5 **CHAIRMAN T. WHEELER:** It's certainly not a
6 fact in front of this commission, okay, so
7 I'd -- I'd ask you to restrict. That's my part.

8 **MS. K. CELESTINO-HORSEMAN:** But the
9 commission --

10 **CHAIRMAN T. WHEELER:** I'd ask you to
11 restrict. That's what the inspector general is
12 investigating, is my understanding, --

13 **MS. K. CELESTINO-HORSEMAN:** But the
14 commission is essentially asking --

15 **THE COMMISSION:** -- and so we will know
16 from his investigation.

17 **MS. K. CELESTINO-HORSEMAN:** -- him to
18 review this document, if he hasn't seen it
19 before by its order today telling him to go
20 through it, but asking him to review it, and we
21 still haven't had a chance -- I mean, an
22 in-camera inspection in a court of law...

23 **CHAIRMAN T. WHEELER:** Hold on. We have
24 asked -- we -- forgive me, the proposal, the
25 process is that the Office of the Secretary of

1 State review that. The Deputy Secretary of
2 State at this point in time is also the general
3 counsel. I -- certainly, for those of us who
4 have been involved in a privilege log
5 examination, it would be -- I would suspect it
6 would be the general counsel.

7 I don't know, as I sit here today, whether or
8 not as the sitting Secretary of State, Secretary of
9 State White by nature of having that office right
10 now has access to that document. I don't know the
11 answer to that and you don't know either.

12 **MS. K. CELESTINO-HORSEMAN:** Can we ask Mr.
13 Bopp, the counsel for the Secretary of State, to
14 answer that question?

15 **CHAIRMAN T. WHEELER:** Well, I don't -- I
16 don't that's relevant to the process that I'm
17 setting forth. The process I'm setting forth is
18 that the Secretary of State's office review this
19 document within 24 hours, make a determination
20 of what is privileged and provide that to us as
21 part of the privilege log.

22 **MS. K. CELESTINO-HORSEMAN:** And my comments
23 that I've made on the record and my concerns
24 about this. There's no Chinese wall asking him
25 to look at this and all that. Those are my

1 concerns, I mean...

2 **CHAIRMAN T. WHEELER:** Well, is there
3 something legal that requires a Chinese Wall.

4 **MS. K. CELESTINO-HORSEMAN:** Well...

5 **CHAIRMAN T. WHEELER:** Give me a statutory
6 site; is there something that requires a Chinese
7 wall?

8 **MS. K. CELESTINO-HORSEMAN:** Well, I think
9 due process says that if one party to an action
10 gets to examine a document that is the subject
11 of litigation or context like this, then
12 certainly, the other party should have the same
13 opportunity. That is what I am saying. If --

14 **CHAIRMAN T. WHEELER:** All right. Let me --
15 let me pose a hypothetical to you, okay. Let's
16 assume that I represent a school corporation.
17 Mr. Groth serves discovery on the school
18 corporation asking for a number of documents.
19 The superintendent of the school corporation
20 goes through, compiles those documents, puts
21 them forth. The general counsel says this is
22 the privilege log. You're telling me that
23 violates due process because I don't give all
24 those documents to the other side to look at at
25 the same time?

1 **MS. K. CELESTINO-HORSEMAN:** If Mr. Groth is
2 suing the superintendent in a personal nature
3 and doing that and then having him also going
4 through and doing the privilege log and there's
5 no evidence that he had seen those documents
6 prior to the time of production -- I mean, if
7 they're documents that he's generated and that
8 he's worked on, certainly, that's one thing, and
9 that's the kind of situation that is encountered
10 in a situation like that, but Mr. White did not
11 generate this document. It was done by his
12 predecessor for the exact purpose of examining
13 what's at issue here. So if he hasn't seen it,
14 he certainly shouldn't be taking a look at it
15 now.

16 **CHAIRMAN T. WHEELER:** All right. I
17 understand your objection. Mr. Bopp.

18 **MR. J. BOPP:** My only question was how are
19 you going to complete this process; in other
20 words, once the three of you have reviewed the
21 document, then are the three of you going to
22 make a determination on which of these
23 documents --

24 **CHAIRMAN T. WHEELER:** That's a -- that's a
25 fair question.

1 **MR. J. BOPP:** -- are to be released?

2 **CHAIRMAN T. WHEELER:** That's a fair
3 question, and my proposal for the fellow
4 commission members is that we designate one of
5 our members to make that determination rather
6 than reconvening the entire commission.

7 **MR. J. BOPP:** And then it seems to me you
8 should -- once that determination is made and is
9 conveyed to the Secretary of State and to us,
10 that there be at least 24 hours to allow the
11 Secretary of State or the Attorney General or
12 whoever it may be that has authority regarding
13 this, that they may want to raise issues so...

14 **CHAIRMAN T. WHEELER:** That's a fair
15 concern. Do you understand what he's saying?

16 *(The commission members indicated in the*
17 *affirmative.)*

18 **MR. J. BOPP:** If you give them like a
19 24-hour notice of what is your intention to
20 release, so that you -- so that they can take
21 any action that they deem appropriate.

22 **CHAIRMAN T. WHEELER:** And I guess in terms
23 of process, what I would hope is the Secretary
24 of State would create a privilege log --
25 typical -- you know, it'll say a letter from

1 John Doe to Jane Doe, February 16th, 2010, two
2 pages, objection based upon whatever it is.

3 That would then allow -- what my intent would
4 be, we would go through and say -- the same way a
5 court would do, yes, no, yes, no, yes, no, provide
6 that back to the Secretary, and I'm proposing this
7 is part of the process, provide that back to the
8 Secretary, the general counsel for the Secretary of
9 State's office, to give them 24 hours, if they want
10 to go Judge -- I assume that would go to Judge
11 Rosenberg, or I suppose they could pick their
12 choice, or at least challenge it in front of this
13 commission, ask for a commission hearing on this
14 determination.

15 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
16 my only concern -- I appreciate Mr. Bopp's
17 question, is that putting everything that we do
18 as a commission subject to judicial review by
19 Judge Rosenberg or another judge -- you know,
20 every ruling we render on discovery is going to
21 be reviewable, we may never get to the
22 expeditious hearing.

23 **CHAIRMAN T. WHEELER:** I suspect that's the
24 case. The process -- the process I'm
25 comfortable is the one I outlined before, with

1 one of us designated -- one of the commission
2 members designated in making the final
3 determination.

4 **COMMISSION MEMBER G. DURNILL:** How about
5 the director?

6 **CHAIRMAN T. WHEELER:** The director is not
7 going to have access to the documents.

8 **COMMISSION MEMBER G. DURNIL:** Oh, okay.
9 All right.

10 **CHAIRMAN T. WHEELER:** So it would have to
11 be one of the three of us.

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

13 **COMMISSION MEMBER B. PYLITT:** I guess I'm
14 trying to follow up with Mr. Bopp's question and
15 inquiry. If -- if we did that -- I'm
16 comfortable with a commission member doing that,
17 being designated.

18 **CHAIRMAN T. WHEELER:** All right. Director
19 Skolnik, you're comfortable with the process
20 that we've set out?

21 **RECOUNT DIRECTOR B. SKOLNIK:** One point of
22 clarification. Will the Secretary of State's
23 office be required to produce the full report to
24 the Attorney General office?

25 **CHAIRMAN T. WHEELER:** Yes.

1 **RECOUNT DIRECTOR B. SKOLNIK:** With a --
2 with -- and designate what they believe should
3 be privileged from this...

4 **CHAIRMAN T. WHEELER:** Right. They don't
5 withhold the privileged documents.

6 **RECOUNT DIRECTOR B. SKOLNIK:** Okay.

7 **CHAIRMAN T. WHEELER:** They produce the full
8 report. This is an in-camera inspection, just
9 like you would do in front of a judge, where you
10 would submit the whole documents and you tell
11 them what you don't think should go to the other
12 side, we'll make a determination as to what goes
13 and what doesn't go.

14 **RECOUNT DIRECTOR B. SKOLNIK:** After you've
15 reviewed the report, along with the privilege
16 log, with the state -- that will have the stated
17 reasons for the assertion of the privilege or...

18 **COMMISSION MEMBER B. PYLITT:** And implicit
19 to that, I assume that the three commissioners
20 would not be making copies of any of the
21 documents or any of the report, the AG will keep
22 the AG copy?

23 **CHAIRMAN T. WHEELER:** Right. It would be
24 simply eyes only, right. All right, anything
25 further, Commissioner Durnill?

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

2 **CHAIRMAN T. WHEELER:** Commissioner Pylitt?

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

4 **CHAIRMAN T. WHEELER:** All right. As I
5 understand it, I don't need a motion to make the
6 process. In terms of this, I would -- I guess I
7 would volunteer to be the individual to make the
8 final call. Are you comfortable with that? You
9 know I took the job solely so you would have to
10 call me Mr. Chairman.

11 **UNIDENTIFIED SPEAKER:** That's right.
12 Absolutely, Mr. Chairman.

13 **CHAIRMAN T. WHEELER:** Thank you, and I will
14 do it, again, expeditiously. We'll get this
15 done and get this out.

16 **MR. J. BOPP:** And then I did not understand
17 the resolution of my question.

18 **CHAIRMAN T. WHEELER:** The resolution of
19 your question was no.

20 **MR. J. BOPP:** No, no additional time?

21 **CHAIRMAN T. WHEELER:** No additional time.
22 The Secretary of State will know today, they'll
23 have 24 hours, and if they think there's
24 something highly confidential, yeah, they can
25 throw it out there and we'll see. All right,

1 that takes care of the Rokita report. We've got
2 a deadline. We've got a hearing date. We've
3 got a process. There will be a prehearing order
4 issued consistent with Judge Rosenberg's request
5 within -- Brad, when do we have the prehearing
6 order?

7 **MR. B. KING:** Tomorrow.

8 **RECOUNT DIRECTOR B. SKOLNIK:** We'll
9 endeavor to get that to everybody tomorrow.

10 **CHAIRMAN T. WHEELER:** Okay. Anything else
11 from the commission members?

12 **COMMISSION MEMBER B. PYLITT:** No, sir.

13 **COMMISSION MEMBER G. DURNILL:** No.

14 **CHAIRMAN T. WHEELER:** The director.

15 **RECOUNT DIRECTOR B. SKOLNIK:** Mr. Chairman,
16 I do have one note that in the judge's order
17 that there be a case management or prehearing
18 order. That would also set forth deadlines to
19 amend pleadings and to file pretrial motions.

20 I'll defer to counsel as to whether a petition
21 for contest be amended at this date, but I don't
22 know. I assume that those matters should be
23 addressed in the pretrial/case management order.

24 **COMMISSION MEMBER B. PYLITT:** Mr. Chairman,
25 Mr. Skolnik probably brings up a good point.

1 Don't we have to vote on the petition formally
2 or...

3 **MS. L. BARNES:** To order the contest?

4 **COMMISSION MEMBER B. PYLITT:** To order the
5 contest.

6 **MS. L. BARNES:** The commission has to
7 formally dismiss the contest.

8 **CHAIRMAN T. WHEELER:** Has that taken place
9 in the prior process?

10 **RECOUNT DIRECTOR B. SKOLNIK:** But I'd
11 also -- in terms of crafting the case management
12 or pretrial order, I would like guidance from...

13 **CHAIRMAN T. WHEELER:** Let me do -- let me
14 do the preliminary procedural matter, which I
15 thought had already been done.

16 **RECOUNT DIRECTOR B. SKOLNIK:** That was not
17 done because a motion to dismiss had been filed,
18 Mr. Chairman.

19 **CHAIRMAN T. WHEELER:** Because of the motion
20 to dismiss and so we didn't get to the next
21 step. As I understand it, Brad or Leslie --
22 Leslie, explain to me what we need to do at this
23 point?

24 **MS. L. BARNES:** According to the state law,
25 the commission needs to adopt an order granting

1 the contest, the last order from this commission
2 wasn't ordered dismissing the contest, and so if
3 the commission is going to go ahead with the
4 prehearing order and giving the parties the
5 opportunity to stipulate to facts and discovery,
6 they need to grant the contest initially.

7 **CHAIRMAN T. WHEELER:** We have to take it
8 off. Brad, do you concur with that?

9 **MR. B. KING:** I have some additions to it,
10 if I could, Mr. Chairman?

11 **CHAIRMAN T. WHEELER:** Please, and if you've
12 got statutory sites, give them to me?

13 **MR. B. KING:** Sure. let me briefly give an
14 overview of that, of the status. The verified
15 petition was filed November 19th of 2010.
16 Immediately after that filing, proof, or rather
17 service was given to all three candidates named
18 in the petition. The motion --

19 **CHAIRMAN T. WHEELER:** You're
20 working through the -- you're working through
21 the statutes, so which...

22 **MR. B. KING:** We can start with 3-12-11-12,
23 subsection B, or excuse me, subsection C. The
24 state recount commission shall grant petition
25 for a contest that has been filed and order a

1 contest proceeding on 1) the filing of a contest
2 petition under this chapter; and 2) proof of
3 service of all notice.

4 The Commission's records indicate the State
5 Police did serve notice of the contest proceeding
6 to the three candidates identified in the petition.
7 On December 12th, the Commission voted to dismiss
8 the petition, it's now before the Commission again,
9 and if the Commission adopts an order to grant the
10 contest petition under 3-12-11-15, the Election
11 Division will send a certified copy of that order
12 to each opposing candidate named in the petition.
13 That is the necessary procedural step --

14 **CHAIRMAN T. WHEELER:** To initiate the
15 process.

16 **MR. B. KING:** -- for the Commission to
17 proceed, yes.

18 **CHAIRMAN T. WHEELER:** All right. I will --

19 **MS. K. CELESTINO-HORSEMAN:** I --

20 **CHAIRMAN T. WHEELER:** -- accept a motion.

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

22 **MS. K. CELESTINO-HORSEMAN:** Mr. Chairman,
23 for the record -- I just want to make on the
24 record that this is fine, but as long as it
25 doesn't in any way make this look as if this is

1 being treated as if it were a brand new
2 petition.

3 **CHAIRMAN T. WHEELER:** As I understand it --
4 I was not involved in the initial process which
5 is why I wasn't sure procedurally where we are.
6 As I understand it, we have never gotten to this
7 part of the process. The statute allows for the
8 dismissal of a petition for contest as opposed
9 to a contest.

10 So as I understand it, the process that the
11 director and -- well, director and director -- I
12 meant Director King has outlined, that the original
13 motion that was granted to dismiss was of the
14 petition for the contest, not the contest itself.

15 So in terms of a procedural process, as I
16 understand it, we need to go ahead and act on the
17 contest, the petition for contest, and order the
18 contest; correct?

19 **MR. B. KING:** Yes, Mr. Chairman, that's
20 correct.

21 **CHAIRMAN T. WHEELER:** And I believe I have
22 a motion from Commissioner Durnill.

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

24 **CHAIRMAN T. WHEELER:** The motion's made and
25 seconded, is there any discussion?

1 (No response.)

2 **CHAIRMAN T. WHEELER:** Hearing none, all in
3 favor of the motion, signify by saying aye?

4 **THE COMMISSION:** Aye.

5 **CHAIRMAN T. WHEELER:** Those opposed, same
6 sign?

7 (No response.)

8 **CHAIRMAN T. WHEELER:** Motions carries. The
9 Division or the director will draft the
10 appropriate order for the thing and serve it on
11 the parties pursuant to the statute. All right,
12 Leslie, anything else from your side?

13 **MS. L. BARNES:** No, Mr. Chairman, thank
14 you.

15 **CHAIRMAN T. WHEELER:** I'm sorry, I should
16 have -- unfortunately, we've worked together for
17 five years, I get a little informal. Director
18 King, anything from your side?

19 **MR. B. KING:** No, sir.

20 **CHAIRMAN T. WHEELER:** I'll give the
21 Petitioners one last shot?

22 **MS. K. CELESTINO-HORSEMAN:** Thanks for your
23 patience.

24 **CHAIRMAN T. WHEELER:** Thank you.
25 Respondent?

1 **MR. J. BOPP:** Nothing.

2 **CHAIRMAN T. WHEELER:** All right. The
3 prehearing -- as I understand it, the prehearing
4 order will be drafted and circulated -- it will
5 be signed and circulated to the parties
6 tomorrow?

7 **RECOUNT DIRECTOR B. SKOLNIK:** Yes.

8 **CHAIRMAN T. WHEELER:** And with that, I'll
9 accept a motion to adjourn.

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

11 **COMMISSION MEMBER G. DURNILL:** Second.

12 **CHAIRMAN T. WHEELER:** Motion's been made
13 and seconded, all in favor, signify by saying
14 aye?

15 **THE COMMISSION:** Aye.

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

18 *(No response.)*

19 **CHAIRMAN T. WHEELER:** I get to use my
20 gavel. Thank you very much.

21 *(Time noted: 10:56 a.m.)*

22

23

24

25

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

3

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

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

11 IN WITNESS WHEREOF, I have hereunto set
 12 my hand and affixed my notarial seal this 18th
 13 day of May, 2011.

14

15

16



NOTARY PUBLIC

17

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

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