INDIANA STATE RECOUNT COMMISSION
MINUTES OF THE NOVEMBER 4, 2016 MEETING

MEMBERS PRESENT: The Honorable Connie Lawson, Chairman of the Indiana State Recount Commission ("the Commission"); Gordon Durnil, Member; Michael Claytor, Member.

MEMBERS ABSENT: None

STAFF ATTENDING: J. Bradley King, Majority Counsel; Matthew Kochevar, Minority Counsel; Mr. Philip Sieuso, Recount Director;

OTHERS ATTENDING: Mr. Paul Joyce; Ms. Valerie Warycha

1. CALL TO ORDER:

The chair called the meeting of the Commission to order at 1:30 p.m. at State House Room 125, 200 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 Susan Wollenweber Dezela, RDR, CRR, CRC, Connor Reporting, which is incorporated by reference into these minutes. The Commission approves the Transcript, with the correction of the following scriveners’ errors:

Page 15, line 4, replace “MALE SPEAKER” with “MR. JOYCE”.

Page 24, line 19, delete “Motion”.

Page 24, delete line 20.

3. ADJOURNMENT:

There being no further business before the Commission, the Commission adjourned at 1:53 p.m.

APPROVED:

Andrew J. Norris, Recount Director
Acting under the authority of the Indiana State Recount Commission
Pursuant to Order 2016-21
In the Matter Of:

Indiana State Recount Commission Hearing Public Meeting

TRANSCRIPT OF PROCEEDINGS

November 04, 2016
STATE OF INDIANA

BEFORE THE INDIANA STATE RECOUNT COMMISSION

TRANSCRIPT OF PROCEEDINGS

PUBLIC SESSION

NOVEMBER 4, 2016

1:30 P.M.

LOCATION:

INDIANA STATEHOUSE
200 WEST WASHINGTON STREET, ROOM 125
INDIANAPOLIS, IN

A STENOGRAPHIC RECORD BY:

SUSAN WOLLENWEBER DEZELAN, RDR, CRR, CRC
NOTARY PUBLIC
STENOGRAPHIC REPORTER
APPEARANCES

MARION COUNTY ELECTION BOARD:

MS. CONNIE LAWSON
Indiana Secretary of State and Chairperson

MR. GORDON DURNIL
Commissioner

MR. MICHAEL CLAYTOR
Commissioner

Mr. BRAD KING
Majority Counsel

MR. MATTHEW KOCHEVAR
Minority Counsel

MR. PHIL SICUSO
Recount Director
THE CHAIRPERSON: We will call the meeting of the Indiana State Recount Commission to order. All three members of the Commission are present, so there is a quorum for the meeting.

First, before we get started, I'd like to welcome our delegation that the International Center has brought to us. I understand several journalists and elected officials, possibly, from many African countries, so thank you for visiting us and observing our Recount Commission meeting. Glad to have you.

My name is Connie Lawson. I'm the Secretary of State, and I serve as Chair of the Commission. I'm joined by Commissioner Gordon Durnil and Commissioner Michael Claytor.

The Election Division of the Secretary of State's Office provides administrative support to the Recount Commission. Brad King serves as the majority counsel to the Commission, and Matthew Kochevar serves as the minority counsel. Our court reporter today is Susan Dezelan.

She's from Connor Reporting. Welcome, Susan.

And before we begin the actual meeting, I
do need to have a documentation of the
compliance with the Open Door Law, so I will ask
Mr. King to report regarding this meeting's
compliance.

MAJORITY COUNSEL KING: Madam Chair,
members of the Commission, the notice for this
meeting was posted in compliance with the
Indiana Open Door Law.

THE CHAIRPERSON: Thank you, Mr. King.
Before we begin, I just need to remind everyone,
again, since we do have a court reporter with
us, that you need to identify yourself when you
begin to speak, spell your name when identifying
yourself, and speak clearly, and please don't
speak at the same time that others are speaking.

So with that, I'm going to begin by
recognizing Phil Sicuso, who is the current
Recount Director, and Phil is going to provide
us an update regarding his activities since our
last Commission meeting on October the 26th.

I think he's got some final tasks that
he'll be describing regarding those recounts of
both the Senate District 36 and the 8th
Congressional District so Mr. Sicuso.

DIRECTOR SICUSO: Thank you, Madam Chair.
Philip Sicuso, S-I-C-U-S-O, Recount Director.
The main things I'd like to report regarding Senate District 36 and Congressional District 8 is that we have received, approved, and submitted for reimbursement all the costs associated with the recounts. It's primarily from the State Police, some individual expenses that came up at the county level, as well as the State Board of Accounts, and the fees for the Recount Director services. So those have been completed in a timely fashion. Just wanted to report that.

THE CHAIRPERSON: Okay.

DIRECTOR SICUSO: Go ahead.

THE CHAIRPERSON: Oh, go ahead.

DIRECTOR SICUSO: The other thing that I would like to confirm, and I don't know if I did this at the last meeting, was all the impounded materials have been released back to the counties, and I think in Crawford County, they were awaiting some of those materials for purposes of a local recount, and that was done promptly by an order that I had issued at the time.

THE CHAIRPERSON: Very good. Mr. King or
Mr. Kochevar, do you have anything to add to the report?

MAJORITY COUNSEL KING: Madam Chair, not with regard to the Recount Director's activities. It's been a pleasure to work with him and wish him the best in the future.

THE CHAIRPERSON: Matthew?

MR. KOCHEVAR: Yes, I will second Mr. King's comments.

THE CHAIRPERSON: Very good.

Our next agenda item is Order 2016-22. It's the adoption of amendment to the recount guidelines. And, again, I will recognize Director Sicuso to provide an overview of the draft order to amend the recount guidelines.

I think we had discussed in previous meetings that there were some procedures that would streamline our processes, and so that's why the guidelines have been recommended for revision. So Mr. Sicuso.

DIRECTOR SICUSO: Sure. I think at our last meeting, I had indicated that, during the course of the recount, we had -- or I had issued some orders, in more of an emergency fashion, to handle certain procedural issues while the
recount was going on. And at the conclusion of
that meeting, I believe we said that we'd be
sitting down with the State Board of Accounts,
the State Police, and the other people who
participated in the process, to try to come up
with all of our ideas, get them in writing, and
make the appropriate adjustments to the
guidelines moving forward that we'd take back as
recommendations.

So what you have in your binders in this
order that Brad has prepared, along with
Matthew, I believe, is really about six
different changes that we came up with as a
team, and I'm happy to just present really
quickly, and then if you have questions, we can
address them.

THE CHAIRPERSON: Okay.

DIRECTOR SICUSO: The first major change is
to recognize the ability and the desire for
customizable electronic forms that the State
Board of Accounts would be in the process of
creating. I understand that will probably take
some time. But during the course of these two
recounts that we just completed, there's a lot
of manual changing to the forms that was
required based on the systems that had been used in each county that differed from place to place, and we needed to have some adjustments on the fly. And the parties were involved, and that took a little bit of time to get those things done as we went from county to county. So what we'd like to do is make the forms electronic and a little bit more customizable or easily customizable in the future. And I know that that's an immediate goal of the entire team and the State Board of Accounts, in particular, so this would enable that process to unfold.

The second change is a recognition that the State Board of Accounts' assistance to the State Police, where appropriate, during the impoundment process, I think that would be -- there were no errors made, I don't want to say the State Police did an inadequate job; in fact, I think the State Police brought this up as something that would be helpful to them, to have State Board of Accounts officials with them when materials are originally impounded for multiple reasons, and we think that's a good idea, so that would be going into the guidelines.

The third change is ensuring that the State
Board of Accounts, prior to the commencement of the recount, or prior to the commencement of the tallying has a couple things from the State, rather than waiting to receive these things from the County. And that would be certification of the testing of the systems, the voting systems, and also certified results at the precinct and county level in each county.

As we went to each county, some of that information was a little bit slower in coming from different clerks and weren't necessarily ready to give us that. It just would save a little bit of time as an efficiency thing. And also might help us decide or the next director to decide where they want to go first in a multi-county recount.

Fourth, this would be a requirement that there would be a recount -- a prerecount inspection. In the current version of the guidelines, this is something that must be approved by both parties to the recount, and then the Director can direct from there, but we are adjusting the language to require that a prerecount inspection take place, and that the Director determine what counties those
prerecount inspections take place in, some or all of the relevant counties.

We think that was an extraordinarily helpful process in both recounts, gets the parties on the same page, and really sets the stage for an efficient process. And if we have a situation where parties don't want to do that, we think it really hampers the process moving forward, so we would like to make it more obligatory.

Fifth is authorizing the State Board of Accounts to do certain advance work in multi-county recounts, where tallying might be going on in one county, but we know that there's a lot of documentation organization or other manual work that needs to be done in other counties before the whole team arrives. We'd like to put in the guidelines an explicit approval for that process to begin. It's something we practically did in this recount, but, again, it was a little bit more procedurally cumbersome due to having to work with each of the parties, as we did that, get permission, all those sorts of things.

So the wording in the proposed guideline
would enable the parties to send representatives
to watch the process but not require that the
State Board of Accounts wait for that process --
wait for such observers to be there. It's -- we
need to move. So that's the idea behind this
one.

And lastly, we would like to slightly amend
the electronic copying procedures we put in
place for this recount. One of the items in
that process was that we would provide a hard
flash drive for the parties to take at the end
of each day, to look at all of the electronic
records that have been made, the exhibits in
particular. And we think it actually might be
even more efficient if we were to set up an
electronic data room, secure data room, where
people can electronically and remotely access
the same documents, electronically choose what
to print out and things of that nature.

It just took a few extra hours at the end
of each day for the State Board of Accounts to
prepare these flash drives, and if we can ever
get to a point where we upload these documents
to a central data room, it would be much more
efficient, so we wanted to recognize that
possibility and authorize that in the

guidelines.

So those are the main points. If you have
any questions, I would be happy to address them.

THE CHAIRPERSON: Thank you, Mr. Sicuso
Mr. King, do you have any further comments on
the order?

MAJORITY COUNSEL KING: Madam Chair, no,
other than to say that these do reflect the
number of efficiencies that everyone involved in
the recounts noted during the process, and it is
useful for the ongoing work of the Commission to
have those codified.

If the order is approved, the version of
the guidelines that are posted on the Recount
Commission's Web page will be updated during the
next couple of days to reflect them.

THE CHAIRPERSON: Okay, very good.
Mr. Kochevar, any comments?

MR. KOCHEVAR: Yes, Madam Secretary and
members of the Commission, the recommendations
for changes to the recount and contest manual
that are proposed in this order would go a long
way in making the process as efficient as
possible which I feel would be necessary should
there be a petition for recount or contest filed
after this election, noting the statutory
requirement that those recounts would need to be
completed by December 20th, subject to this
Commission extending it for that time.

So, again, this would go a long way in
providing efficiency to the State Board of
Accounts as well as this Commission completing
its work before that deadline.

THE CHAIRPERSON: Any discussion?

COMMISSIONER DURNIL: I don't think so.

State Board of Accounts agree?

MR. JOYCE: My name is Paul Joyce. I'm the
State Examiner for the State Board of Accounts.

J-O-Y-C-E.

I'd agree with everything that Phil said on
that. I would only add one more thing he might
consider that's not there, and a lot of it had
to do with the statement that was just made,
that if we do have a recount that could possibly
be a state-wide recount, that would have to be
done by December 20th, okay, which would have
a deadline, and it would have to be done by
then, is one of the cumbersome issues that would
arise whenever we were on-site and actually
doing the recount was when they challenged the
voters' signatures, when they challenged the
poll books.

And what wound up happening in the
Congressional District is we had to wind up
copying every poll book so that we could give it
to them for review. And then, of course, at the
end of the Congressional District, they
dismissed it, okay?

So -- but it took significant, I mean,
significant amounts of time to do this. And the
main reason was you had, you know, viewers
sitting here viewing signatures, that, one,
we're trying to match up and compare whether it
was who they thought it was, okay?

And, you know, I'm not an expert in
signature, but I think you could -- you could
speak to many experts in signatures, and I've
talked to many. You can stand up at different
levels, and sit down, stand up, and you're going
to have different signatures. So it's very hard
to use a signature as a -- when you're looking
to verify is this signature that person.

So what I would ask is if, for instance,
somebody starts challenging poll books because
of the signature, and this is the reason they're
going to try to ask for a --

DIRECTOR SICUSO: Contest.

MALE SPEAKER: A contest. Not necessarily
whether the vote is actual or not, but we think
that there's a contest basis to have a
reelection, that possibly, before we get through
92 counties doing this, that we hear that
argument up front, if we are going to allow
that, before we go to all 92 counties and
actually start doing this.

Because I can honestly say I've not yet ran
across that signature that's not been valid in
any of the, I think, five recounts that I've
participated in. And I've never actually seen
one ruled on that it's invalid.

I think that if somebody could prove that
there was significant amount of deficiencies of,
say, deceased voters that came in at that day
and signed it, okay, but with our requirement to
have ID when you go vote, it's not a very likely
scenario. So I can't see the scenario where it
would significantly impact the election.

COMMISSIONER DURNIL: Are you suggesting an
extension of the time frame?
MR. JOYCE: Not an extension of the time, but if somebody starts raising that early in the process, when we start going to the counties, that, rather than wait till the end to make a hearing on that and to see whether we're going to accept that as a purpose for a --

DIRECTOR SICUSO: Contest.

MR. JOYCE: A contest, I'm sorry, a contest of the election, which would force a reelection to occur within Indiana, let's hear that before we get through all the 92 counties so we can focus on what issues might be relevant as far as the recount stuff goes.

COMMISSIONER CLAYTOR: So bring that up as an interim appeal to the Commission?

MR. JOYCE: Correct, and whether we're going to hear that or not, you know, at the end of it, okay, because, in that particular case, in the case that we were out at there, it didn't even get heard. But, yeah, we spent, like I say, significant time just making copies of the voter books for the individuals.

I think what I'm saying is we only have a small amount of time from election day to December 20th, and if a contest is granted,
it's going to be granted on a very few grounds, you know, that there was significant, you know, default in how the election process occurred. 

If there -- somebody could prove that there was a -- lots of voters that had signed poll books that didn't exist, then that would be -- could be a problem, but I have yet ever to see that as the case.

So what people do is they're going to go in and they're going to say, "I'm going to challenge that poll book, I'm going to challenge those signatures."

So what we have to do is go in there and copy those entire poll books. Some are electronic, some are not electronic, so you have to actually manually take and recopy all those. And then you have to set there, if you want to, they -- they go through them, each one, through all 47,000 ballots, and they look and they sit there and they -- line by line on those signatures.

And I don't think that if we have a full recount in the state, that we could get it done by December 20th if the poll books start to get challenged like they did in the last
1 election.

2 THE CHAIRPERSON: Thank you for your
3 comments, Mr. Joyce.
4 We do have an order before us, and it's
5 prepared and ready to sign. I think that this
6 might be an agenda item for another Recount
7 Commission meeting, but I don't know that we can
8 revise the order that's before us right now, so
9 am I correct in that, Mr. King?
10
11 MAJORITY COUNSEL KING: Madam Chair, yeah,
12 my -- my advice to the Commission on this would
13 be it does require some serious discussion and
14 review of drafts before the Commission would be
15 well advised to proceed.
16
17 MR. JOYCE: I just want to make sure that
18 you're aware of that particular issue if one
19 would come up during this election.
20
21 THE CHAIRPERSON: I'm sure it is a very
22 time-consuming process. So, okay, any other
23 discussion? Yes, Mr. Claytor?
24
25 MR. CLAYTOR: I would like to move the
26 adoption of Order 2016-22.
27
28 COMMISSIONER DURNIL: Second.
29
30 THE CHAIRPERSON: I have a motion and a
31 second. Any further discussion?
If not, all in favor say aye. The ayes have it and the motion is approved. Order 2016-22 is adopted.

So now I'd like to recognize our majority counsel, Brad King, to present Order 2016-21 which employs Andrew Norris as Recount Director.

Mr. King?

MAJORITY COUNSEL KING: Thank you, Madam Chair and members of the Commission. Order 2016-21 is behind the blue tab in your binder. The Chair has explained the essential elements of the order.

Under Indiana Code 3-12-10, the Commission is required to employ a Recount Director to perform the tasks that are delegated to the Director by the Commission.

The order also includes a provision authorizing the Director to exercise any of the Commission's powers other than making a final determination in a recount or contest proceeding that would come before the Commission.

The draft order notes that Mr. Andrew J. Norris is willing to serve as Recount Director and is a member in good standing of the Indiana bar, and, therefore, meets the qualifications,
under statute, to exercise the powers delegated
to him by the Commission.

The order provides for the salary of the
Recount Director, it provides that the
employment would take effect immediately upon
the adoption of this order.

And then finally, the order rescinds
previous orders dating back to 2012, with the
Commission's thanks to Mr. Sicuso and the
individuals who served as deputy directors
during the recounts earlier this year,
Mr. Sebastian Smelko, Ms. Meaghan Haller, and
Ms. Jessica Whalen, for their services to the
Commission.

I'd be happy to answer any questions.

THE CHAIRPERSON: Okay. Mr. Kochevar, any
further comments?

MR. KOCHEVAR: The only comments I would
make would also be to extend my thanks to
Mr. Sicuso and the deputy directors from the
previous recount in the primary. It being my
first primary -- or my first recount and contest
proceedings, Mr. Sicuso has definitely set an
equency that I would expect from future recount
directors and deputy directors. So my thanks to
DIRECTOR SICUSO: Thank you.

THE CHAIRPERSON: Thank you. Now I'd like to ask Andrew Norris to introduce himself to the Commission and make any remarks. Andrew, do you want to just stand up and...

MR. NORRIS: Sure. My name is Andrew Norris, N-O-R-R-I-S. I'm excited to be here. It should be a fun Tuesday. Let's hope for clear and convincing results.

THE CHAIRPERSON: Are there any questions from the Commission members?

COMMISSIONER DURNIL: I'll move the adoption of the order.

THE CHAIRPERSON: I have a motion and a second. Is there further discussion?

MR. CLAYTOR: I'd like to ask a couple questions.

THE CHAIRPERSON: Oh, okay.

MR. CLAYTOR: I'm sorry, I don't know you, so --

MS. WARYCHA: I want to ask you to move you over here, Andrew, and get you a mic. Sorry. Just because we're streaming.

MR. CLAYTOR: Sure. I'm sorry, we've not
met before, so I just thought I'd ask a few
questions if you have experience with election
law, if you've been involved in a recount,
anything like that.

MR. NORRIS: I've not been involved in a
recount. My experience with election law has
been tangential. I spent 10 years working in
state government: The Governor's office, the
Senate, and the Supreme Court as a clerk.

Most of my work has been transactional
since I joined the bar, but very familiar with
working in and around state code and working
with state law, writing state laws. So my
experience is there, though not specifically
with recounts.

MR. CLAYTOR: And then the good old
conflict question: Are you currently working,
professionally or volunteer, in any campaign
that could actually come before the Commission?

MR. NORRIS: I'm not -- I've not
participated in any campaigning in this
particular season or for a couple years since I
was a lawyer.

MR. CLAYTOR: Good for you.

MR. NORRIS: It's been a nice break.
THE CHAIRPERSON: I do have a motion. Do I have a second?

MR. CLAYTOR: Second.

THE CHAIRPERSON: Any further discussion?

All those in favor, aye. The ayes have it.

Order 2016-21 is adopted.

Is there any other business to come before the Commission? No?

If not, I would also like to add my thanks to former Recount Director Phil Sicuso and Sebastian Smelko and Jessica Whalen and Meaghan Haller for their past services as the Recount Director and the deputy directors.

You know, when we had our last meeting in August, we had candidates and other participants here who complimented the way the recount was run, and we certainly appreciate what you did to make sure that ran smoothly.

I want to thank the State Board of Accounts, Mr. Joyce and his staff, and also the Indiana State Police, I see Major Snider is here as well. And then if you all, you know, on Wednesday, November the 9th, give your county clerks a hug.

[LAUGHTER]
THE CHAIRPERSON: They have had a tough year and a busy year. So we would appreciate your thanks to them.

With that, I see no other business to come before the Commission. Is there a motion to adjourn?

MR. CLAYTOR: Madam Chairman, just as a comment, I like what Paul was talking about, and it would be nice if Mr. King or Dale or Matthew would look at some sort of interim process to bring things before the Commission, and come possibly to our next meeting. I think that's a good idea.

THE CHAIRPERSON: Thank you.

MR. CLAYTOR: So I will second the motion to adjourn.

THE CHAIRPERSON: We have a motion to adjourn. All those in favor, aye. Motion is adjourned. Our meeting is adjourned. "Motion is adjourned"; meeting is adjourned.

(Time noted: 1:53 p.m.)
STATE OF INDIANA )
COUNTY OF MARION )

I, Susan Wollenweber Dezela, RDR, CRR,
CRC, a Notary Public in and for the County of
Marion, State of Indiana, at large, do hereby
certify that the foregoing hearing was taken at
the Indiana Statehouse, 200 West Washington
Street, Room 125, Indianapolis, Marion County,
Indiana, on the 4th day of November, 2016,
commencing at the hour of 1:30 p.m.;
That said hearing was taken down in
stenograph notes and afterwards reduced to
English under my direction, and that the
transcript is a true record of the testimony
given during this hearing;
That the parties were represented by their
counsel as aforementioned.
I do further certify that I am a
disinterested person in this cause of action,
that I am not a relative or attorney of either
party or otherwise interested in the outcome of
this action, and that I am not in the employ of
the attorneys for any party.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal on this 7th day of November, 2016.

My Commission Expires:
March 24, 2024
County of Residence:
Marion County