

## **INDIANA STATE RECOUNT COMMISSION**

### **MINUTES OF THE DECEMBER 10, 2004 MEETING**

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

**MEMBERS ABSENT:** None

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

**OTHERS ATTENDING:** Jerry Snook, Metro Source; James Bopp, Jr., attorney for Mr. Sodrel; Karen Avery, Network Indiana; Luke Clippinger, representing Congressman Baron Hill

#### **1. CALL TO ORDER AND DOCUMENTATION OF MEETING NOTICE**

The chair called the December 10, 2004 meeting of the Indiana State Recount Commission to order at 11:05 a.m. in Room 201 of The Statehouse. The chair reviewed the agenda and recognized Mr. King who advised that the required meeting notice had been given under the Open Door Law.

#### **2. APPROVAL OF MINUTES OF NOVEMBER 16, 2004 MEETING**

The chair presented the minutes for the November 16, 2004 meeting. Mr. Durnil moved to accept the minutes, which was seconded by Mr. Griffin. There being no further discussion, the chair called the question and declared that with three members voting “aye” (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting “nay,” the motion was adopted.

#### **3. JOINT MOTION TO DISMISS**

The chair recognized Mr. King, who indicated that a joint motion to dismiss, submitted by the attorneys for Mr. Hill and Mr. Sodrel, had been received by the Indiana Election Division on December 9, 2004 at 4:22 p.m and that a copy of the motion had been provided to Commission members. In response to a question by the Chair, Mr. King and Ms. Robertson confirmed that the motion did meet statutory filing requirements.

The Chair then recognized Mr. Clippinger, representing Mr. Hill. Mr. Clippinger indicated that Mr. Hill appreciated the hard work done by all involved with the process. The Chair then recognized Mr. Bopp, representing Mr. Sodrel. Mr. Bopp also thanked the Commission, the State Board of Accounts, the State Police, and the Secretary of State's office for the work during the recount. Mr. Durnil moved to grant the motion to dismiss, which was seconded by the Chair. There being no further discussion, the chair called the question and declared that with three members voting “aye” (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting “nay,” the motion was adopted.

The Chair then made the following comments: "First of all, I would like to thank some people for their help with this recount. The County Clerks, the Indiana State Police and the State Board of

Accounts were invaluable over the last few weeks. The recount process is, by design, an open, public process which serves to instill and maintain voter confidence in our electoral system so that there will be no question as to the winner. We can learn a great deal from recounts -- how to improve state law, what we can do better as election administrators, and what we already do extremely well. I am reminded that the United States Supreme Court in 2000 held Indiana up as a shining example for the rest of the world to note how to conduct an election recount in a free society. This recount taught us that the process did, in fact, function as it should. As with every election ever conducted throughout world history, there were some small human errors that were discovered. However, there were no systemic problems that came to light. From this, we get reassurance that the election was fair and accurate. Hopefully, this knowledge will boost voter confidence in the election process."

The Chair asked Mr. Durnil and Mr. Griffin whether they would like to offer any additional comments. They both indicated they agreed with the Chair's comments and had nothing further to add.

#### **4. ORDER 2004-17 DETERMINATION OF RECOUNT EXPENSES**

The chair recognized Mr. King, who presented order 2004-17 to the Commission for approval. Mr. King indicated that under Indiana Code 3-12-11-10 neither a full nor partial refund of the cash deposit of \$6130 should be granted to the petitioner since there was no reduction in the margin between the petitioner and respondent and since the costs of the recount and contest far exceed the amount of the cash deposit. He added that Order 2004-17 further indicated that the expenses of the recount would be paid from the State Recount Fund, pursuant to Indiana Code 3-12-10-12(d).

Mr. Griffin indicated that he needed more explanation and clarification before agreeing to adopt Order 2004-17 and wanted to be sure he was not writing a blank check. He indicated he would like the proposed Order to include a provision to allow him to see the expenses before their approval and stop payment of any invoices. He also indicated he remembered some questions having been asked relating to expenses during the Indiana State Senate District 36 recount in May and June 2004. Mr. King and Ms. Robertson clarified that Mr. Reuben had inquired during the SD 36 recount why the expenses of the State Board of Accounts were paid from the State Recount Fund.

Ms. Willis indicated that, as she had offered after the SD 36 recount when orders identical to Order 2004-17 and Order 2004-18 had been adopted by the Commission, she would send information about all expenses claimed by the various entities to the Commission members. Mr. Durnil asked whether a spreadsheet could be created and sent to the Commission members letting them know what were the costs of the recount and contest.

The Chair indicated that the Commission's consideration of Order 2004-17 should also include consideration of Order 2004-18, which delegates certain powers to the recount director. The Chair recognized Lt. Col. Medler and Mr. Rogina to provide an estimate of costs for which their agencies would be submitting claims against the State Recount Fund. Lt. Col. Medler indicated that he could not provide an exact figure but after approximating man hours, mileage, and other expenses and projecting such costs for the release of impoundment materials, he anticipated an amount no greater than \$47,000 being claimed. Mr. Rogina indicated that he also could not provide an exact figure but that his estimate indicated the State Board of Accounts would be submitting a claim for approximately \$45,000. Ms. Willis informed the Commission that there

would be a few additional expenses relating to travel for her, copy machine rental, and facility fees, among others.

Mr. Griffin indicated he would be happier with an order that provided a "not to exceed" amount and questioned what would happen if the costs grossly exceeded the estimates. Mr. Durnil indicated that this process has worked well in the past and he was happy to continue following the pattern of past recounts. The Chair inquired where the monies paid from the State Recount Fund would go. He asked Mr. Rogina why the State Board of Accounts would submit a claim to the Recount Commission when the monies go back to the general fund. The Chair recognized Mr. King, who advised that the Commission is affirmatively required by Indiana law (Ind. Code 3-12-10-11) to pay the State Board of Accounts and the State Police for their work during the recount. The Chair inquired whether there was actually any expense to the taxpayers. Mr. Rogina clarified that the entire cost of the recount was expense to the taxpayers. Mr. Griffin wanted to know if there was a great difference in the amounts estimated today and the amounts actually paid from the Recount Fund, how might that happen.

Mr. Durnil moved to adopt Orders 2004-17 and 2004-18, which was seconded by the Chair. There being no further discussion, the Chair called the question and declared that with three members voting "aye" (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting "nay," the motion was adopted. Mr. Griffin clarified that his vote was conditioned on someone alerting him if they thought something was amiss. The Chair further clarified that he trusted Mr. Griffin would call him if Mr. Griffin thought something was amiss.

#### **5. REPORT OF INDIANA STATE POLICE AND ORDER 2004-19**

The chair recognized Lt. Col. Medler, who gave a report that the Indiana State Police had maintained control of the impounded materials since the time they were impounded and had several officers on hand during the entire recount.

The Chair recognized Mr. King, who indicated that Order 2004-19 was an order rescinding Impoundment Orders 2004-13 and 2004-15. Mr. Griffin asked for clarification that 2004-13 was the original impoundment order and 2004-15 was the impoundment order for the voter registration materials in Monroe County. Mr. King affirmed that this was correct.

Mr. Durnil moved to adopt Order 2004-19, which was seconded by Mr. Griffin. There being no further discussion, the Chair called the question and declared that with three members voting "aye" (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting "nay," the motion was adopted.

#### **6. REPORT OF STATE BOARD OF ACCOUNTS**

The chair recognized Mr. Rogina, who noted the hard work performed by the staff of the State Board of Accounts and reported that the recount proceeded without incident.

#### **7. ORDER 2004-20 AMENDMENT TO GUIDELINES**

The Chair recognized Mr. King, who indicated that at the conclusion of a recount there is an opportunity for the Commission to approve minor amendments to the Guidelines for Conduct of an Election Recount and Contest that resolve issues or questions noted during the recount or contest proceedings so that these matters will be addressed before future recounts are conducted. He stated that proposed Order 2004-20 contains two such changes: first an addition of provisional

ballots to the language in Chapter 2, Section 17, which instructs audit teams to refrain from removing any absentee ballots from their envelopes that were not removed by the precinct election board or central count absentee ballot counters. Mr. King noted that this amendment would clarify that provisional ballots are to be treated in the same way. He added that the second change deletes references to lever voting machines since the state's last lever machine county recently entered into a contract to replace those machines, and that these Guideline provisions will therefore become obsolete before the next recount.

Mr. Durnil moved to adopt Order 2004-20, which was seconded by Mr. Griffin. There being no further discussion, the Chair called the question and declared that with three members voting "aye" (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting "nay," the motion was adopted.

### **8. RESOLUTION 2004-21**

The Chair introduced Resolution 2004-21, thanking several individuals and organizations involved in the CD 9 recount and contest for their work.

Mr. Griffin moved to adopt Resolution 2004-21, which was seconded by Mr. Durnil. There being no further discussion, the Chair called the question and declared that with three members voting "aye" (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting "nay," the motion was adopted.

### **9. ADJOURNMENT**

There being no further business before the Commission, Mr. Durnil moved the meeting be adjourned, which was seconded by Mr. Griffin. There being no further discussion, the Chair called the question and declared that with three members voting "aye" (Mr. Rokita; Mr. Durnil; and Mr. Griffin), and no member voting "nay," the motion was adopted. The Chair adjourned the State Recount Commission at 11:50 a.m.

APPROVED:

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Heather C. Willis, Recount Director