

**BEFORE THE
INDIANA RECOUNT COMMISSION**

In re Election Contest

**INDIANA DEMOCRATIC PARTY,
by its Chairperson, DANIEL J. PARKER
Petitioner,**

v.

**CHARLIE WHITE,
Respondent.**

Findings of Fact, Conclusions of Law, and Final Order

On June 21, 2011, the Indiana Recount Commission (“Commission”) heard evidence regarding the election contest petition filed by the Indiana Democratic Party, by its Chairman, Daniel J. Parker, filed on November 19, 2010. The Commission ordered a meeting to be conducted on June 28, 2011, at which the Commission would enter findings of fact, conclusions of law, and an order in this matter. The Commission, having reviewed the evidence and law applicable to this matter, and being duly advised in the premises, now enters the following Findings of Fact, Conclusions of Law, and Final Order (designated as Order 2011-14):

I. Findings of Fact

1. Any findings of fact that are stated in the Commission's conclusions of law are hereby incorporated into these conclusions as if they were stated herein.
2. The Respondent, Charlie White (“Mr. White”) was married to Nicole S. Mills (“Ms. Mills”) in September of 1998. (Stipulated Fact ¶ 1)

3. Mr. White and Ms. Mills had a child in January of 2001.
(Stipulated Fact ¶ 2)

4. Mr. White and Ms. Mills lived at 7527 Broad Leaf Lane, Fishers, Indiana (“Broad Leaf house”). (Stipulated Fact ¶ 3)

5. The Broad Leaf house is located in Delaware Township, Precinct 12.
(Stipulated Fact ¶ 4)

6. Mr. White voted in the 2004 and 2006 primary and general elections in the precinct for the Broad Leaf house. (Tr. 105)

7. Mr. White and Ms. Mills divorced in December, 2006. After the divorce Ms. Mills continued to live at the Broad Leaf house. (Stipulated Fact ¶ 7)

8. Mr. White and Ms. Mills had joint physical and legal custody of their son. (Tr. 109, 243)

9. The son’s residence is located at the Broad Leaf house. (Tr. 109, 181)

10. In December of 2006, Mr. White rented an apartment at 6994 Pintail Drive, Fishers, Indiana (“Pintail apartment”). (Stipulated Fact ¶ 8)

11. The Pintail apartment is located in Delaware Township, Precinct 14.
(Stipulated Fact ¶ 9)

12. Mr. White changed his voter registration from the Broad Leaf house to the Pintail apartment in January of 2007. (Stipulated Fact ¶ 10)

13. On January 24, 2007, Mr. White completed and submitted a voter registration application for Delaware Township, Precinct 14. (Am. Stipulated Fact

¶ 5)

14. Mr. White conveyed his interest in the Broad Leaf house to Ms. Mills on January 25, 2007, via quitclaim deed. (Stipulated Fact ¶ 11)

15. Quitclaim Deed for Parcel No. #15-14-02-02-06-015,000 (municipal address 7527 Broad Leaf Lane, Fishers, Indiana 46038), dated March 7, 2007, and recorded March 9, 2007, in the records of the Hamilton County, Indiana Recorder, is authentic. (Stipulated Fact ¶ 25)

16. While Mr. White remained liable on the Broad Leaf house mortgage, Ms. Mills made the mortgage and tax payments. (Tr. 242-43)

17. Mr. White formed a campaign committee with respect to his candidacy for Secretary of State and filed an initial report with the Indiana Election Division on January 26, 2009. (Stipulated Fact ¶ 12.) The personal mailing address on that report was the Pintail apartment address because that was Mr. White's residence at the time. (Tr. 106)

18. A CFA-1 form (Candidate's Statement of Organization and Designation of Principal Committee or Exploratory) for Mr. White, dated January 18, 2009, was filed with the Indiana Election Commission on January 26, 2009, and is authentic. (Stipulated Fact ¶ 26)

19. Mr. White moved out of the Pintail apartment in May of 2009. (Tr. 107; Stipulated Ex. 59, 61) He had his mail forwarded to the Broad Leaf house, (Tr. 107; Stipulated Ex. 62; Respondent's Ex. C, D), and began living in Ms. Mills' finished basement at the Broad Leaf house, where he had 24 hour access to

the house with a key and security code access. Mr. White testified that he did not pay any rent to his ex-wife. (Tr. 110, 113-14, 236-37, 256)

20. In June 2009 Mr. White became engaged to Michelle Quigley-White (“Ms. Quigley-White”). (Tr. 120, 209) They planned to marry in February or March of 2010. (Tr. 123-24) They agreed that they would not live together until they got married. (Tr. 121, 209)

21. Mr. White changed his driver’s license address from the Pintail apartment to the Broad Leaf house on December 8, 2009. (Petitioner’s Ex. 3, at 22)

22. After moving from the Pintail apartment, Mr. White began receiving billing statements and other mail at the Broad Leaf house, (Tr. 115, 118, 120, 141-144; Respondent’s Exhibits I through MM, OO, PP), including the final bill for the Pintail apartment and utility bills. (Tr. 111, 112; Stipulated Ex. 61; Stipulated Ex. 2)

23. Mr. White testified that he intended the Broad Leaf house to be his principal residence from June of 2009 until he moved into the Overview condo in June of 2010 after his honeymoon. (Tr. 113, 123, 211-12)

24. In a special election conducted in November, 2009, Mr. White voted in person at the Hamilton County, Delaware Township Precinct 14 polling location. At that time he indicated on the poll book that his address had changed from the Pintail apartment back to the Broad Leaf house. (Stipulated Fact ¶¶ 13, 27; Petitioner’s Ex. 6 at 1) Mr. White testified that he believed that he had

sufficiently changed his voter's registration address to the Broad Leaf house. Mr. White did not learn otherwise until he was called with a reminder to do so, at which time he filled out a voter registration application. (Tr. 116-18; Stipulated Ex. 13.)

25. The voter registration application dated February 22, 2010, signed by Mr. White, marked "Address Change" and filed with the Hamilton County, Indiana Board of Voter Registration February 22, 2010, is authentic. (Stipulated Fact ¶ 29; Stipulated Ex. 13)

26. In September of 2009, Mr. White signed a purchase contract for a three bedroom condominium at 13086 Overview Drive, Fishers, Indiana (the "Overview condo"). (Tr. 45; Stipulated Ex. 23) Due to problems with FHA approval, the mortgage process was drawn out. (Tr. 161, 199) While waiting for that financing to come through, Mr. White leased the Overview condo from the seller in November of 2009. (Tr. 210; Stip. Ex. 19)

27. The mortgagee for Mr. White's purchase of the Overview condo was GVC Mortgage. (Stip. Ex. 10)

28. On both of the Uniform Residential Loan Applications signed by Mr. White, it states above his signature: "I/We fully understand that it is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq." (Petitioner's Ex. 2, pp. 6, 10)

29. Mr. White signed the first Uniform Residential Loan Application on

January 28, 2009. (Petitioner's Ex. 2, p. 6) On that application Mr. White's "present address" is listed as the Overview condo. (Petitioner's Ex. 2, p. 3) The application indicates that Mr. White had been at the Overview condo for .2 years or approximately two and a half months. *Id.*

30. On the loan application dated January 28, 2010, Mr. White's mailing address is listed as the Overview condo. (Petitioner's Ex. 2, p. 3) Mr. White's former address (required to be listed if "residing at present address for less than two years") is listed as the Broad Leaf house. *Id.*

31. Mr. White signed a second Uniform Residential Loan Application on February 26, 2010. (Petitioner's Ex. 2, p. 10) The information in the second application contained information not contained in the first application, *e.g.*, White's new employment at "Krieg Devault Alexander & Capehart, LLP." (Petitioner's Ex. 2, p. 7)

32. In the loan application of February 26, 2010, Mr. White's present address and mailing address once again was claimed by him to be the Overview condo. *Id.* Also, Mr. White's former address was once again claimed to be the Broad Leaf house. *Id.*

33. On January 28, 2010 and February 26, 2010, Mr. White signed an HUD/VA Addendum to Uniform Residential Loan Application. (Petitioner's Ex. 2, p. 15). In that document Mr. White's present address was listed as the Overview condo. (Petitioner's Ex. 2, p. 14).

34. On January 28, 2010, Mr. White signed a Request for Transcript of

Tax Return, to be filed with the Internal Revenue Service and listed his then current address as the Overview condo.

35. Despite the warning that the provision of false information constituted a federal crime, Mr. White testified that he did not read the loan application of January 28, 2010 (Tr. 63) and that he did not read “all the documents.” (Tr. 128)

36. The loan application signed on January 28, 2010, states that the information provided within the application was provided by Mr. White and submitted by fax or mail. (Petitioner’s Ex. 2, p. 5)

37. Within the mortgage, Mr. White promised: “Borrower shall occupy, establish and use the [Overview condominium] as Borrower’s principal residence within sixty days after the execution of this Security Instrument . . .” (Stip. Ex. 10, p. 3, ¶ 5)

38. At the time Mr. White signed the loan applications on January 28, 2010 and February 26, 2010, he anticipated that he would be getting married in March of 2010 and he intended to move into the Overview condo after his marriage. (Tr. 127)

39. Pursuant to the terms of paragraph 5 of the mortgage, if not already occupying the Overview condominium, Mr. White promised to occupy it no later than April 27, 2010. (Stip. Ex. 10, p. 3, ¶ 5)

40. Mr. White obtained a homeowner’s insurance policy on the Overview condo and his prior home insurance policy was amended to change his

address to the Overview condo. (Stip. Ex. 20, p. 546). The Overview condo address was provided to the insurer by Mr. White. (Tr. 52-53).

41. Paragraph 6 of the lease for the Overview condominium provided: **“Assignment and Subletting:** Tenant shall not assign this lease, or sublet or grant any concession or license to use the premises or any part thereof without the prior written consent of Landlord.” (Stip. Ex. 19, p. 542)

42. Mr. White did not have the approval of the landlord for anyone to have exclusive possession of the condominium other than himself. (Tr. 48) Mr. White was the only individual listed on the lease as tenant. (Tr. 48; Stip. Ex. 19, p. 542)

43. From November 15, 2009 until his purchase of the Overview condominium closed, Mr. White paid \$1,700.00 per month in rent. (Tr. 78). The rent was an amount close to what Mr. White would eventually pay as a mortgage payment. (Tr. 78-79; Stip. Ex. 44, p. 732)

44. The Overview condo was to be Mr. White and Ms. Quigley-White’s marital home. (Tr. 121, 126, 210, 232) They agreed that Mr. White would not move into the Overview condo until they were married because they were concerned about the impact their living together before the marriage might have on their respective children. (Tr. 121-22, 209)

45. Ms. Quigley-White was neither a co-signer nor a renter of the Overview condo because her past financial problems including a foreclosure had left her with bad credit which, if she had been a party, would have prevented any

Overview condo transactions from occurring. (Tr. 124-25, 226-27) For this reason, Mr. White was also on the Overview condo utility and renter's insurance bills. (Tr. 124-25; Stip. Ex. 2, 3, and 20)

46. Ms. Quigley-White and her two children moved from her parents' home at 9668 Farragut Circle, Indianapolis, Indiana, into the Overview condo in November of 2009. (Tr. 121, 210, 217) Despite the move, Ms. Quigley-White claims that 9668 Farragut Circle, Indianapolis, Indiana, remained her principal residence and did not consider the Overview condo to be her new principal residence until after she married Mr. White on May 28, 2010. (Tr. 210-211, 217, 224-225)

47. One to two times a week Mr. White spent the night with his son at the Overview condo, sleeping on the couch. (Tr. 122-23, 213-14)

48. Tammi Kaesar worked for Executive Homes and sold Mr. White the Overview condominium. (DT 185) Tammi Kaesar's office sat on the corner where the Overview condominium was located. (Tr. 190) Ms. Kaesar testified that she assumed that Ms. Quigley-White was living in the Overview condominium because she would see Ms. Quigley-White and her children "come and go." (Tr. 203)

49. Ms. Kaesar testified that she also assumed that Mr. White was living there because he also came and went and she saw his vehicle most evenings. (Tr. 190, 205)

50. In February of 2010, Mr. White was employed by Kreig DeVault.

(Tr. 126) He provided Kreig with the Overview condo address because he believed that he would be married in March 2010 and thought it was inappropriate for medical insurance statements and information regarding Ms. Quigley-White to go to his ex-wife Ms. Mills at the Broad Leaf house. (Tr. 126-27)

51. On February 1, 2010, Mr. White completed an I-9 Employment Eligibility Verification. (Petitioner's Ex. 3, KD 21) The I-9 stated: "I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form." *Id.*

52. Kreig's life insurance records dated March 2, 2010 indicate that Mr. White's address was the Overview condo. (Petitioner's Ex. 3, KD 29, KD 33)

53. On February 16, 2010, while employed by Krieg, Mr. White was contacted by his former employer asking Mr. White if he wanted to pick-up his last paycheck. (Petitioner's Ex. 2, KD 49). On that same date, Mr. White asked his former employer to mail the check to the Overview condo. (Petitioner's Ex. 2, KD 48; Tr. 75-76)

54. On February 21, his former employer asked Mr. White if he had received the check in the mail. (Petitioner's Ex. 3, KD 47) On February 22, 2010, Mr. White responded that he had received the check. *Id.*

55. On February 26, 2010, Mr. White executed closing and financing documents under penalties for perjury for a condominium located at 13086 Overview Drive, Unit 5-B, Fishers, Indiana. (Stipulated Fact ¶ 15)

56. The Corporate Warranty Deed for Parcel No. # 13-11-26-00-32-

008.000 (Unit Number 5-B, block 1, Phase 1 of One Thirty One Plaza Condominiums, a Horizontal Property Regime in Hamilton County, Indiana), dated February 26, 2010, and recorded March 3, 2010, in the records of the Hamilton County, Indiana Recorder, is authentic. (Stipulated Fact ¶ 28)

57. The Indiana Sales Disclosure Form signed by Mr. White on February 26, 2010, is authentic. (Stipulated Fact ¶ 16)

58. The Sales Disclosure Form indicates that the Overview condo will be his primary residence because Mr. White thought he would be married in March and was intending to make Overview condo his primary residence after he was married. (Tr. 138-39; Stipulated Ex. 11, at 428)

59. At the time Mr. White signed the Sales Tax Disclosure Form indicating the Overview condo as his primary residence address, he testified that he intended to occupy the Overview condo residence after his marriage in March of 2010. (Tr. 138)

60. When filing out the paperwork to purchase the Overview condo Mr. White testified that he reviewed the materials for accuracy on income, debts, name and social security number before signing, but deferred to his mortgage broker as to the accuracy of the rest. (Tr. 129-30, 161)

61. Mr. White and Ms. Quigley-White's wedding was delayed from March of 2010 to May of 2010 because of Mr. White's campaign schedule. (Tr. 124)

62. While running for Secretary of State, Mr. White traveled around the

state, from city to town, outside of Hamilton County, sometimes staying in those locations. (Tr. 111)

63. Mr. White did not change his voter registration information prior to the May, 2010, primary election. (Stipulated Fact ¶ 17)

64. Mr. White voted in the 2010 primary election held on May 4, 2010, at Hamilton County Delaware Township, Precinct 12. (Stipulated Fact ¶¶ 18; 30)

65. On May 11, 2010, Mr. White filed his Declaration of Candidacy with the Indiana Republican Party, indicating that the Broad Leaf house was his address. (Tr. 146-47; Respondent's Ex. QQ)

66. On May 18, 2010, Mr. White submitted his delegate form to the Indiana State Republican Party, indicating the Broad Leaf house was his address. (Tr. 147; Respondent's Ex. RR)

67. The marriage license application filed with the Hamilton County Clerk on May 18, 2010 is authentic. (Stipulated Fact ¶ 20)

68. The May 18, 2010, marriage application indicated that the Broad Leaf house was then Mr. White's residence address and that the new address would be the Overview condo. (Tr. 148-50; Stipulated Ex. 4, at 224)

69. Receipts for the wedding reception at The Columbia Club were sent to the Overview condo because Mr. White believed it was inappropriate to send reception receipts to his ex-wife's house at Broad Leaf. (Tr. 151; Respondent's Ex. TT)

70. Mr. White and Ms. Quigley-White were married on May 28, 2010.

(Stipulated Fact ¶¶ 19, 32)

71. Mr. White moved his “stuff” from the Broad Leaf house to the Overview condo after returning from his honeymoon in early June of 2010 and established the Overview condo as his principal residence. (Tr. 133, 211, 218, 227, 239, 255-56)

72. Mr. White was nominated by the Republican Party as its candidate for Indiana Secretary of State, and the Republican State Committee filed a certificate of nomination (CAN-23) with the Indiana Election Division on June 19, 2010. (Stipulated Fact ¶ 21)

73. The CAN-23 was required to be filed with the Indiana Election Division on or before July 15, 2010. (Stipulated Fact ¶ 22)

74. The CAN-23 form (State Party Chairman Certification of Democratic, Libertarian, and Republican Party State Convention Nominee) dated June 19, 2010, and filed with the Indiana Election Commission June 22, 2010, is authentic. (Stipulated Fact ¶ 31)

75. The CAN-23 form reflected Mr. White’s new address at the Overview condo but also listed the Broad Leaf house address as the mailing address. (Tr. 152-53; Stipulated Ex. 1, at 148)

76. On September 22, 2010, Mr. White completed a voter registration application indicating that the Overview condo (Fishers/Fall Creek, Precinct 5) was his residence address and that the Broad Leaf house (Delaware Township, Precinct 12) was his previous address. (Stipulated Fact ¶ 24)

77. On September 20, 2010, Mr. White changed his driver's license to reflect the Overview condo address. (Tr. 137-138)

78. In 2009 and until his resignation in September 2010, Mr. White was a member of the Fishers Town Council. (Tr. 77-78) Mr. White began serving on the Fishers Town Council in 2001. (Tr. 79) Mr. White's gross pay for serving on the Fishers Town Council was \$1,000.00 per month. (DT 79) He did not receive any health insurance benefits. The total amount he received in 2009 was \$12,000. (Stip. Ex. 66)

79. Mr. White earned \$78,801 while employed by the State of Indiana in calendar year 2009. (Stip. Ex. 65)

80. The Overview condominium was not within the district from which Mr. White had been elected to serve on the town council. (Tr. 94-95)

81. The Commission requested and received, without objection by either party, Respondent's Exhibit ZZ, which is the Church memo.

82. The Church memo states: "A discussion of whether White failed a residency requirement to serve on the Town Council is omitted from this memo, because (1) White has admitted that he was not eligible to serve on the Council; and (2) Indiana statutory and case law and Fishers ordinances provide that Mr. White was ineligible to serve on the Council." (Respondent's Ex. ZZ, p. 1)

83. The Church memo also states: "A discussion of White's compensation is omitted, because he has agreed to return all compensation paid to him by the Town since he became ineligible to serve." (Respondent's Ex. ZZ, p.

1, n. 1)

84. In the November 2010 general election held on November 3, 2010 (“General Election”), respondent Charlie White (“White”) and Vop Osili (“Osili”) were both on the ballot as candidates for Indiana Secretary of State.

85. The final certified numbers for the White/Osili race in the General Election were as follows:

Vop Osili	632,129
Mike Wherry	100,795
Charlie White	976,810

II. Conclusions of Law

1. Any conclusions of law that are stated in the findings of fact are hereby incorporated into these conclusions as if they were stated herein.

2. This contest proceeding arises under I.C. § 3-12-11-3(b)(4)(A), specifically, “[t]hat the petitioner in good faith believes that . . . [t]he person declared nominated or elected does not comply with a specific constitutional or statutory requirement set forth in the petition that is applicable to a candidate for office.”

3. Indiana election law is to be applied “consistent with the longstanding respect for the right of the people to free and equal elections,” and with “the reluctance . . . to remove from office a person duly elected by the voters.” *Burke v. Bennett*, 907 N.E.2d 529, 532 (Ind. 2009). The courts “have

refused to remove an elected officer on claims of ineligibility unless the electorate had notice or knowledge of the ineligibility.” *Id.*, 907 N.E.2d at 533. Absent proof that “the voters willfully threw away their ballots on a candidate they knew could not lawfully be elected, the mere fact that the one who received the largest vote was ineligible to be elected . . . is not enough to give the candidate who received a less number the right to the office.” *Id.* (quoting *Fields v. Nicholson*, 150 N.E. 53, 55 (Ind. 1925)).

4. The Petitioner alleges that Mr. White was in violation of I.C. § 3-8-1-1(b), which states that “[a] person is not qualified to run for: (1) a state office; . . . unless the person is registered to vote in the election district the person seeks to represent not later than the deadline for filing the declaration or petition of candidacy or certificate of nomination.”

5. As interpreted by the Marion County Circuit Court on April 7, 2011, I.C. § 3-8-1-1(b) requires a lawful voter registration, and “a knowing and/or fraudulent failure on the part of White to register to vote in conformity with Indiana election law” in order to make Mr. White ineligible to be a candidate under IC § 3-8-1-1(b). (April 7, 2011, Order, at 7)

6. I.C. § 3-7-13-1 states that: “A person who: [1] will be at least eighteen (18) years of age at the next general, municipal, or special election; [2] is a United States citizen; and [3] resides in a precinct continuously before a general, municipal, or special election for at least thirty (30) days; may, upon making a proper application under this article, register to vote in that precinct.”

7. I.C. § 3-5-2-45.2 defines “Residence” as: “[T]he place: [1] where a person has a person’s true, fixed and permanent home and principal establishment; and [2] to which the person has, whenever absent, the intention of returning.”

8. “The residency requirement . . . insures that candidates have had the opportunity to acquaint themselves with the people of Indiana and have a sufficient stake in the state they wish to govern.” *State Election Board v. Bayh*, 521 N.E.2d 1313, 1316 (Ind. 1988).

9. The Indiana Supreme Court in *Bayh* held that residence means domicile. *Id.*, 521 N.E.2d at 1317.

10. “Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. . . . ‘There must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in a new place in order to accomplish a change of domicile.’” *Bayh*, 521 N.E.2d at 1317 (*quoting Flaughner v. Rogers*, 77 N.E.2d 594, 595-96 (Ind. 1948)).

11. “Residency requires a definite intention and ‘evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable.’” *Bayh*, 521 N.E.2d at 1317 (*quoting In Re Evard*, 333 N.E.2d 765, 767 (Ind. 1975)).

12. Indiana’s voter residency requirements as articulated in *Bayh* have been codified in I.C. § 3-5-5, “Standards for Determining Residency.”

13. I.C. § 3-5-5-7 through 3-5-5-17 “establish presumptions regarding

the residency of a person in a precinct” that can be rebutted “by demonstrating intent to reside in another precinct and conduct taken to implement that intent.”

I.C. § 3-5-5-6.

14. I.C. § 3-5-5-4 states that: “A person who has a residence in a precinct retains residency in that precinct until the person abandons the residency by: [1] Having the intent to abandon the residence; [2] Having the intent to establish a new residence; and [3] Acting as provided in this intent by establishing a residence in a new precinct.”

15. I.C. § 3-5-5-10 states: “If a person moves into another precinct in Indiana with the intention of making that precinct the person’s residence, the person loses residency in the precinct that the person left.”

16. I.C. § 3-5-5-11 states, in relevant part, that “[t]he place where a person’s immediate family resides is the person’s residence.”

17. I.C. § 3-7-39-1 states that: “A voter who changes residence shall transfer the voter’s registration to the address where the voter currently resides by sending a transfer of registration on a prescribed form to the circuit court clerk or board of registration.”

18. I.C. § 3-7-39-2 states, in relevant part, that: “A voter may change the residence address on the voter’s registration to an address within the same county at any time during the registration period prescribed in this article.”

19. The registration period prior to general elections begins “fourteen (14) days after primary election day and continues through the twenty-ninth day

before the date a general or municipal election is schedule under this article.” I.C. § 3-7-13-10(c).

20. The deadline for transferring registration before a general election is “the close of business on the twenty-ninth day before the election is scheduled to occur.” I.C. § 3-7-13-11.

21. Mr. White intended to abandon the Pintail apartment on June 1, 2009.

22. There is no evidence that the Broad Leaf house was not Mr. White’s residence on June 1, 2009.

23. Mr. White acted in accordance with his intent to abandon the Pintail apartment and reside at Broad Leaf house on June 1, 2009, by vacating the Pintail apartment, moving into the Broad Leaf house basement, changing his driver’s license to reflect the Broad Leaf house address, and forwarding his bills and mail to the Broad Leaf house.

24. Mr. White changed his voter registration address from the Pintail apartment to the Broad Leaf house in November 2009.

25. After June 1, 2009, Mr. White did not intend to abandon the Broad Leaf house until after his marriage on May 28, 2010.

26. There is no evidence that Mr. White did not intend to make the Overview condo his residence until after his marriage on May 28, 2010.

27. Mr. White’s intention not to abandon the Broad Leaf house and make the Overview condo his residence until after May 28, 2010, is evidenced by

the fact that, prior to May 28, 2010, he did not move his belongings into the Overview condo; he only slept on the couch at the Overview condo one or two times a week in accordance with his agreement with Ms. Quigley-White; he did not change his voter's registration address for the May 2010 primary election; he continued to receive his mail at the Broad Leaf house; and he used the Broad Leaf address on his May 11, 2010, Declaration of Candidacy, his May 18, 2010, Delegate Form, and his May 18, 2010, marriage application.

28. Mr. White's residence from June 1, 2009 until May 28, 2010, was at the Broad Leaf house because his immediate family, his son, resided at Broad Leaf.

29. After his marriage on May 28, 2010, Mr. White intended to abandon his residence at the Broad Leaf house.

30. After his marriage on May 28, 2010, Mr. White intended to make the Overview condo his residence.

31. Mr. White acted in accordance with his intent to abandon the Broad Leaf house and reside at the Overview condo after his marriage May 28, 2010, by moving his belongings into the Overview condo, forwarding his mail there, indicating the Overview condo address on the June 19, 2010, CAN-23, and listing the Overview condo as his marital address on the May 18, 2010, marriage application.

32. After his marriage to Ms. Quigley-White on May 28, 2010, Mr. White's residence was at the Overview condo because his immediate family

became Ms. Quigley-White, who resided at the Overview condo.

33. Under Indiana's election law Mr. White could change his voter registration from the Broad Leaf house to the Overview condo up until twenty-nine days prior to the 2010 general election, that is, October 4, 2010.

34. Mr. White changed his voter registration address from the Broad Leaf house to the Overview condo on September 22, 2010, well within the statutorily mandated time period.

35. Mr. White was qualified to run for the office of Secretary of State under I.C. § 3-8-1-1(b) because he was "registered to vote in the election district [he sought] to represent," namely, Indiana, "not later than the deadline for filing the declaration or petition of candidacy or certificate of nomination," that is, July 15, 2010.

36. Mr. White was eligible to be a candidate for the office of Secretary of State in 2010.

**Before the
INDIANA RECOUNT COMMISSION**

In re Election Contest

**INDIANA DEMOCRATIC PARTY,
by its Chairperson, DANIEL J. PARKER
Petitioner,**

v.

**CHARLIE WHITE,
Respondent.**

CONCURRING OPINION

Bernard L. Pylitt, Commissioner, concurring.

I concur with the Indiana Recount Commission's opinion finding that under current Indiana law, Charlie White, met the eligibility requirements for candidacy for the office of Secretary of State and was not, as alleged by the Petitioner, the Indiana Democratic Party, ineligible under Indiana Code § 3-8-1-1(b). I write separately in order to fully set forth my reasons for doing so.

First, as stated by this Commission on a number of occasions, this proceeding was not and is not about party politics. It is not about Democrats versus Republicans, or a pending criminal case, despite the efforts by some to make it so. It is about the application of the law, as enacted by the Indiana Legislature¹ and interpreted by the Indiana Courts, to the facts established or not established through the argument, testimony, and over 500 pages of stipulated exhibits presented by the Indiana Democratic Party and Charlie White. In the end, there was insufficient

¹ The Indiana General Assembly is encouraged to examine the current conflicting statutory framework and whether a candidate must be a "registered voter" or a "legally registered voter" at the time he or she declares his candidacy to be eligible for public office and to avoid any future problems. In today's mobile society with a large number of dissolved marriages and blended families, the issue needs to be addressed without any further delay.

evidence to find for the Petitioner.

Commission Chairman, Thomas Wheeler, opened the June 21, 2009, hearing quoting from the Indiana Supreme Court's decision in *Burke v. Bennett*. It is apropos to repeat the Indiana Supreme Court's admonition in this opinion:

This application of the Indiana disqualification statute is consistent with the longstanding respect for the right of the people to free and equal elections, Ind. Const. art. 2, § 1, and the reluctance of this Court to remove from office a person duly elected by the voters. [T]his Court has long held that statutes providing for contesting elections should be liberally construed in order that the will of the people in the choice of public officers may not be defeated by any merely formal or technical objections. Properly qualified voters may not be disfranchised except by their own willful or deliberate act to the extent that one who did not receive the highest vote cast may still be declared elected. Past cases have refused to remove an elected officer on claims of ineligibility unless the electorate had notice or knowledge of the ineligibility or disqualification. [I]n the absence of proof that the voters willfully threw away their ballots on a candidate they knew could not lawfully be elected, the mere fact that the one who received the largest vote was ineligible to be elected ... is not enough to give the candidate who received a less number the right to the office.

Burke v. Bennett, 907 N.E.2d 529, 532-533 (Ind. 2009) (internal citations and quotations omitted).

Petitioner contends that Mr. White was not eligible to run for the office of Indiana Secretary of State because Mr. White “does not comply with the specific statutory requirement set forth in I.C. 3-8-1-1(b)(1), i.e. that he be legally registered to vote at the address at which he resided as of July 15, 2010, the deadline for filing the certificate of nomination.” Verified Petition for Election Contest (“Pet.”), ¶ 3 (emphasis added). Petitioner also contends that Mr. White was “ineligible to be nominated or elected” because he “was not legally registered to vote at the Broad Leaf Residence and/or because he fraudulently registered to vote at the Broad Leaf Residence.” Pet., ¶ 5 (emphasis added).

Indiana Code § 3-8-1-1(b)(1) provides: “A person is not qualified to run for: (1) a state office; ... unless the person is registered to vote in the election district the person seeks to

represent not later than the deadline for filing the declaration or petition of candidacy or certificate of nomination.” The term “legally” is notably absent from the statute.

This Commissioner agrees with Judge Louis Rosenberg’s statement set forth in his well-reasoned Judgment and Opinion issued in this matter April 7, 2011, that “[o]ne would assume that when the law commands or authorizes acts, an implicit condition is that those acts be performed honestly and in compliance with relevant laws.” April 7, 2011 Opinion, p. 3. However, this Commissioner cannot overlook the fact that the Indiana Legislature could have easily inserted the word “legally” in front of the word registered in this statute as it has in Indiana Code § 3-7-48-1 which specifically uses the phrase “legally registered in the precinct where the voter resides.”² With regard to statutory interpretation, Indiana courts have espoused the following principal: “[w]e will not read into a statute that which is not the manifest intent of the legislature. For this reason, it is as important to recognize not only what a statute says, but also what a statute does not say.” *In re Estate of Jackson*, 938 N.E.2d 1200 (Ind. Ct. App. 2010) (quoting, *Cox v. Cantrell*, 866 N.E.2d 798, 809 (Ind. Ct. App. 2007)). Nonetheless, logic and common sense suggests that one must be “legally” registered to be a candidate for political office. (See, footnote 1 supra.)

In the only Indiana case to consider a challenge to a candidate’s eligibility based on Indiana Code § 3-8-1-1(b), *Mason v. Gohmann*, the Indiana Court of Appeals concluded that any legal issue as to the validity of a candidate’s voters registration “must be decided by the same legal standards that govern the validity of any voter’s registration and any voter’s qualification and right to vote.” *Mason v. Gohmann*, 498 N.E.2d 1344, 1351 (Ind. Ct. App. 1986). The

² Indiana Code § 3-7-48-1 provides: “(a) Except as otherwise provided by NVRA [the National Voters Registration Act] or in this chapter, a person whose name does not appear on the registration record may not vote, unless the circuit court clerk or board of registration provides a signed certificate of error in the office where the permanent registration record is kept showing that the voter is legally registered in the precinct where the voter resides.” (emphasis added).

Mason Court went on to state:

With respect to the validity of a voter's registration and a voter's qualification and right to vote, the governing rule in Indiana is that, '[i]n the absence of fraud, election statutes generally will be liberally construed to guarantee to the elector an opportunity to freely cast his ballot, to prevent his disenfranchisement, and to uphold the will of the electorate.'

Id., (quoting, *Howell v. Blackburn*, 139 N.E.2d 905, 909 (Ind. 1957) (emphasis added); *Brown v. Grzeskowiak* 101 N.E.2d 639, 649 (Ind. 1951)). The *Mason* Court concluded that because Steven Goldsmith was a registered voter of Marion County – the district he sought to represent, and as such, his candidacy for the Marion County office he sought to hold was legal. *Mason*, 498 N.E.2d at 1346. The district encompassed by the office of Indiana Secretary of State is the State of Indiana. Mr. White's voter registration records show that on July 15, 2010, he was registered to vote in the State of Indiana – albeit, not in the precinct where he was residing.

Indiana Code § 3-7-39-1 provides in pertinent part: "A voter may change the residence address on the voter's registration to an address within the same county at any time during the registration period prescribed in this article." The registration period for a general election starts on December 1 of each year and with the exception of 29 days before and 13 days after a primary election, runs until the 29th day before the election is scheduled to occur. IND. CODE § 3-7-13-10. Mr. White changed his voter's registration address from the Broad Leaf address to the Overview Condo address on September 22, 2010, well within the prescribed registration period.

The underlying issue in this election contest has been Mr. White's residency from June 1, 2009 through May 28, 2010. Petitioner asserts that at various time Mr. White's residence was different than that listed on his voter's registration forms. Indiana Code § 3-5-2-42.5 defines "residence" as "the place: (1) where a person has the person's true, fixed, and permanent home and principal establishment; and (2) to which the person has, whenever absent, the intention of returning." One manner of establishing residency is through one's "intent and conduct taken to

implement the intent.” IND. CODE § 3-5-5-2. In addition to setting forth the general definition of residence and manner of establishing residency, Indiana Code recognizes a number of different circumstances by which residency may be determined. The following statutes are relevant to this matter:

IC 3-5-5-11

Location of immediate family as residence

Sec. 11. The place where a person's immediate family³ resides is the person's residence, unless the family's residence is:

- (1) a temporary location for the person's immediate family; or
- (2) for transient purposes.

IC 3-5-5-18

Nontraditional residence

Sec. 18. Notwithstanding IC 3-5-2-42.5, an individual with a nontraditional residence whose residence is within a precinct, but is not fixed or permanent, resides in that precinct.

Further, once a person has residency in a particular precinct that person “retains residency in that precinct until the person abandons the residence by: (1) having the intent to abandon the residence; (2) having the intent to establish a new residence; and (3) acting as provided in this intent by establishing a residence in a new precinct.

The uncontroverted facts show that around the time of his divorce in late 2006, Mr. White moved from the Broad Leaf marital residence to the Pintail apartment located in Delaware Township Precinct 14. He subsequently quit claimed the Broad Leaf house to his ex-wife. He changed his voter’s registration to the Pintail apartment in January 24, 2007. While residing at the Pintail apartment, in January 2009, White formed a campaign committee with respect to his candidacy for Secretary of State and filed an initial report with the Indiana Election Division. In March of 2009, White gave notice of his intent to abandon the Pintail apartment at the end of his lease. White resided at the Pintail apartment until May 31, 2009.

With the permission of his ex-wife, Mr. White initially had his mail forwarded to the

³ Mr. White’s son is a member of his immediate family.

Broad Leaf house, and on December 8, 2009, Mr. White changed his Indiana driver's license from the Pintail apartment to the Broad Leaf house. Mr. White was provided with access to and stayed, according to testimony, anywhere from 0-5 nights per week at the Broad Leaf house in the finished basement while he was in town. The Broad Leaf house is the home of Mr. White's son, his most immediate family member at that time. When Mr. White voted in the November 2009 special election, he indicated on the poll book that his address had changed to the Broad Leaf house.

On June 5, 2009, Mr. White became engaged to his current wife. Thereafter, they began looking for a place to live once they were married. She had bad credit at the time. In early November 2009, Mr. White entered into a lease for the 3-bedroom Overview condo which he eventually purchased.⁴ His then fiancé and her 13 year old daughter moved into the Overview condo. Thereafter, in addition to staying at the Broad Leaf house, while campaigning, Mr. White also stayed 1-2 nights per week at the Overview condo. Both Mr. White and his current wife testified that they intended that the Overview condo would be their marital residence and that they were not going to live together until such time as they were in fact married. Mr. White and his current wife married May 28, 2010, and Mr. White moved his "stuff" out of the Broad Leaf home and into the Overview condo and began residing there upon returning from his honeymoon in June.

There is no dispute that Mr. White abandoned his residence at the Pintail apartment at the end of May 2009. The question then is "what was Mr. White's residence after he moved out of

⁴ Various documents signed by Mr. White, including sales disclosure forms and loan applications entered into with respect to the lease and subsequent purchase of Overview condo list the Overview condo as the Mr. White's current or intended residence. Various tax documents also show some discrepancies with Mr. White's address. These documents show actions taken by Mr. White in moving forward with his intent to establish a new residence with his fiancé after they were married – an explanation that was not disproven by the Petitioner. Mr. White is a lawyer. While Mr. White's verification on those documents present an issue for the various entities charged with overseeing such forms, it is not for this Commission to determine whether Mr. White committed any crimes in verifying the information provided on any of the documents as that is a matter that is best left to the various enforcement agencies and a criminal jury in Hamilton County.

Pintail?” While campaigning for office, Mr. White testified that he “lived out of his car.” The statutes provide that one’s residence can be where one’s immediate family lives (IND. CODE § 3-5-5-11). Mr. White’s son lived at Broad Leaf. While some may classify his living arrangement with his ex-wife as “nontraditional,” under Indiana Code § 3-5-5-18, Mr. White’s residence could be considered at Broad Leaf. While outside observers may not believe the testimony as given, it was not refuted by the Petitioner.

“A change of domicile [or residence] requires an actual moving with an intent to go to a given place and remain there.” *State Election Bd. v. Bayh*, 521 N.E.2d 1313, 1317 (Ind. 1988). “[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.” *Id.* (quoting *State ex rel. Flaughner v. Rogers* 226 Ind. 32, 77 N.E.2d 594, 595-96 (Ind. 1948)). In *Matter of Evrard*, the Indiana Supreme Court said,

[t]he law requires that the person definitely intend to make a particular place his permanent residence and act upon that intention in good faith. The person must show to the court evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable.

Matter of Evrard, 263 Ind. 435, 333 N.E.2d 765, 768 (Ind. 1975). *See also, Bayh*, 521 N.E.2d at 1318.

Nothing has been put forth that contradicts Mr. White’s testimony concerning his intent, after abandoning the Pintail apartment, and while essentially “living out of his car,” to establish residency at the home of his immediate family – his son. After his engagement to his current wife, Mr. White took actions in furtherance of his intent to establish a new residence after he was married - he began looking for and ultimately purchased what was to be the marital residence. While Mr. White was observed staying at the Overview condo and both he and his current wife freely admitted that he did indeed stay there 1-2 days per week with his son, Mr. White and his

current wife offered an explanation for not living together until they were married that was not overcome by any evidence submitted by Petitioner. Further, Mr. White's intent of establishing a new residence did not come to fruition until he took permanent residence in the Overview condo in early June 2010 after returning from his honeymoon.

The Indiana Supreme Court has reminded triers of fact "not to board the bus to topsy-turvy land." *Martin v. Richey*, 711 N.E.2d 1273, 1284 (Ind. 1999). The Supreme Court was referring to a quote by Justice Jerome Frank who made the following reference to "Alice-in-Wonderland Through-the-Looking Glass" logic:

Except in topsy-turvy land, you can't die before you are conceived, or be divorced before ever you marry, or harvest a crop never planted, or burn down a house never built, or miss a train running on a non-existent railroad.

Martin v. Richey, 711 N.E.2d 1273, FN 12 (Ind. 1999) (quoting, *Dincher v. Marlin Firearms Co.*, 198 F.2d 821, 823 (2d Cir.1952) (Frank, J., dissenting)). Likewise, one cannot establish a new residence without first having the intent to abandon the old residence and the intent to establish a new residence. Mr. White testified that he intended to permanently establish his residence at the Overview Condo upon his marriage to current wife; he took action toward effectuating that intent, namely leasing and then purchasing what was to be his marital residence; and he began permanently residing at the Overview Condo after he married. As shown by Mr. White's voter's registration records, Mr. White subsequently changed his voter registration to reflect his change of address to the Overview Condo within the time allotted under Indiana Code § 3-7-39-1.

Petitioner's challenge was that Mr. White fraudulently concealed his residence at the Overview condo in order to keep his remuneration obtained through his position on the Fishers Town Council. One piece of evidence that might have helpful to resolve this entire matter would have been the introduction into evidence of Mr. White's 2009 and 2010 State and US tax returns

with all attachments as Mr. White's financial condition was placed in issue. Further, although the October 4, 2010 memo authored by Doug Church (Resp. Ex. ZZ, the "Church Memo") stated in a footnote that Mr. White had admitted that he was ineligible to serve on the Fishers Town Council, it also notes that "the exact time when White moved [the date he would have become ineligible] is unknown." A reading of the Church Memo suggests that there may be additional evidence out there that was not presented to this Commission that may have been relevant to this matter, such evidence as to when the relevant Fisher's ordinances were signed and by which council members, or evidence of how much of Mr. White's compensation was repaid to the Town of Fishers (4 months? 6 months? or more?). Since the Church Memo was received into evidence after the hearing was closed, the parties did not have an opportunity to inquire further into what if anything it signified.

Absent evidence of fraud, the Commission's focus was on whether Mr. White was a registered voter in the election district for which he sought political office - *i.e.*, the State of Indiana. Therefore, it was irrelevant which Hamilton County precinct he resided in. Had the Petitioner brought forth sufficient proof that Mr. White concealed the fact that he resided at the Overview Condo for the purpose of receiving \$1,000 a month from his position on the Fisher's Town Council, this Commissioner's vote would have been different. However, this Commissioner is constrained by the evidence presented and the statutes as written, and must in accordance with existing law, concur that Mr. White was eligible to run for the office of Indiana Secretary of State.


Bernard L. Pylitt, Commissioner

Date: June 28, 2011

Before the
INDIANA RECOUNT COMMISSION

In re Election Contest

INDIANA DEMOCRATIC PARTY,
by its Chairperson, DANIEL J. PARKER
Petitioner,

v.

CHARLIE WHITE,
Respondent.


Order 2011-14

Having reviewed Petitioner's *Verified Petition for Election Contest*, hearing evidence regarding the same, and having adopted Findings of Fact and Conclusions of Law, which are incorporated by reference into this Order, the Indiana Recount Commission, pursuant to Indiana Code 3-12-11-18(b), makes the final determination that Respondent Charlie White was eligible to run as a candidate for Secretary of State in 2010.

Therefore, the relief requested in Petitioner's *Verified Petition for Election Contest* is **DENIED**.

SO ORDERED, this the 28th day of June, 2011.

THE INDIANA STATE RECOUNT COMMISSION:



Thomas E. Wheeler, II, Chairman



Gordon K. Durnil, Member



Bernard Pylitt, Member