

STATE OF INDIANA            )                    IN THE MARION COUNTY CIRCUIT COURT  
   )SS:            CAUSE NO. 49C01-1012-MI-055881  
 COUNTY OF MARION        )

IN RE ELECTION CONTEST FOR THE OFFICE OF    )  
 SECRETARY OF STATE                            )

INDIANA DEMOCRATIC PARTY, By its chairman,    )  
 DANIEL J. PARKER                                )

Petitioner.                                        )

V.    )

CHARLIE WHITE, in his Individual capacity, and    )  
 THOMAS E. WHEELER, BERNARD L. PYLITT, and    )  
 GORDON DURNIL, as members of the INDIANA    )  
 RECOUNT COMMISSION                         )

Respondents.                                    )

**FILED**  
 18 JAN 04 2012  
*Elizabeth A. White*  
 CLERK OF THE MARION CIRCUIT COURT

**ENTRY ON MOTION FOR STAY OF EXECUTION**

This matter comes before the Court on the Motions of the Respondents for a Stay of the execution of the judgment entered December 22, 2011 pending appeal. The parties submitted memoranda of law and assisted the court with oral argument. Representing the Petitioner was Karen Horseman and William Groth. Mr. David Brooks and Jonathan Sturgill appeared for Respondent Charlie White, while Betsy Isenberg and Jefferson Garn of the Office of the Indiana Attorney General appeared for the Indiana Recount Commission. The Court has reviewed all of the memoranda filed by the parties before 5:00pm this day. The Court appreciates the high quality of these submissions on such short notice.

A Motion for Stay is committed to the sound discretion of the trial court. In exercising that discretion in this case, the Court believes that the public interest is paramount to any other consideration, including the interests of the named parties. The Court must therefore carefully compare the likely consequences of granting or denying these Motions.

If the Court grants the stay and its decision is upheld, there will be irreparable harm to the public measured by the delay in implementing the trial court's decision. The appellate courts may, however, expedite the consideration of an appeal. Thus, whatever harm may result from a granting of the stay can be minimized by the appellate courts.

If the Court grants the stay and its decision is reversed, no harm would result.

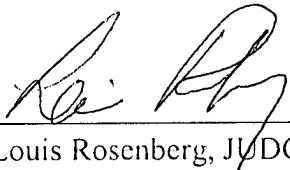
If the Court denies the stay and its decision is reversed, however, the negative consequences would be great and irreparable. If White were removed pursuant to this Court's Judgment and then reinstated as a result of reversal on appeal, key personnel currently serving under Mr. White might become unavailable in the interim. Important decisions might be twice reversed causing confusion on many important issues. The denial of a stay together with a subsequent reversal would unnecessarily weaken the performance of the Secretary of State regarding many critical functions, not the least of which is the oversight of the forthcoming general election.

It is true that turmoil may be unavoidable even if this Court grants the stay. If the criminal proceedings end in a conviction of White on felony charges, there may be a controversy as to how Mr. White's successor would be selected. This Court will not speculate, however, on how or even when that proceeding will conclude.

The Court rejects the Order tendered by the Petitioner. It unnecessarily injects the Court in issues not before it e.g. the method of selection of a successor to White, if he is convicted of a felony.

For all of the above reasons, the Court GRANTS THE Motions for Stay of Execution of its Judgment of December 22, 2011 pending appellate review. No Appellate bond is required.

It is so ORDERED this 3<sup>rd</sup> day of January, 2012.

  
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Louis Rosenberg, JUDGE  
Marion County Circuit Court