| STATE OF INDIANA |) SS: VANDERBURGH CIRCUIT COURT |
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| COUNTY OF VANDERBURGH | SS: A FILED A |
| IN THE VANDERBU | JRGH CIRCUIT COURT 23 7011 |
| RANDALL WHITEHOUSE and DAVID MOSBY | Suran & Kink |
| v\$ | CAUSE NO. 82C01-1103-PL- <u>157</u> |
| VANDERBURGH COUNTY ELECTION BOARD and ALFRED M. LINDSEY |)) |

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

Comes now plaintiffs, Randall Whitehouse (hereinafter "Whitehouse") and David W.

Mosby (hereinafter "Mosby"), and for their cause of action would state as follows:

- That plaintiffs are residents of the City of Evansville, 6th Ward and are aggrieved parties with standing to bring this action.
- That defendant Vanderburgh County Election Board (hereinafter "Board") is a county election board constituted pursuant to I.C. 3-6-5-1.
- That defendant Alfred M. Lindsey (hereinafter "Lindsey") is a candidate in the
 2011 Democratic primary election for the Common Council of the City of Evansville 6th
 Ward.
- 4. That Whitehouse timely filed with the Board a challenge to Lindsey's candidacy based upon Lindsey's failure to meet the residency qualifications for election to the office he seeks (hereinafter referred to as "Challenge").
- 5. On March 5, 2011, the Board held a hearing on Whitehouse's Challenge and denied the Challenged by a vote of two the (2) Republican members to the (1) Democratic member.

- 6. On or about March 9, 2011, Plaintiffs requested preparation of the Record of the Board's proceedings of March 5, 2011 as it relates to the issues presented herein.
 - 7. I.C. 3-8-1-27 states:

A candidate for membership on common council of a second or third class city must:

(1) have resided in the city for at least one (1) year; and

- (2) have resided in the district in which seeking election; if applicable, for at least (6) months.
 - 8. I.C. 3-5-2-42.5 defines "residence as:
- (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.
- 9. For reasons more particularly set forth below, the Board's decision on the Challenge and the Complaint referred to in paragraph 23 below was arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, contrary to constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, and limitations, and short of statutory right without observance of procedure required by law and unsupported by substantial evidence.
- 10. The evidence before the election board was overwhelmingly of the force and effect that Alfred Lindsey's address has been and continues to be outside the corporate limits of the City of Evansville at 10410 New Harmony Road since 2008.
- 11. Most of the evidence presented to the Board in support of the Challenge consisted of readily available public records. There are numerous additional pieces of evidence pertinent to Lindsey's actual residence that were unavailable in proceedings before the Board but that can be obtained through the formal discovery process and which are further expected to demonstrate that Lindsey's actual residence is at 10410 New Harmony Rd.

- 12. There was evidence before the Board of irreconcilable inconsistencies in Lindsey's purported address over the past two years as generally set forth below!:
- a. February 5, 2008 Alfred Lindsey changed voter registration to 10410 New Harmony Rd.
- b. February 22, 2008 Domestic dispute incident police report at 10410 New Harmony Rd. showing Alfred Lindsey's "Home Address" as 10410 New Harmony Road.
- c. September 5, 2008 Krista Lindsey voter registration changed to 10410 New Harmony Rd.
- d. June 18 2009 Police incident report by Alfred Lindsey at 10410 New Harmony Rd showing Alfred Lindsey's "Home Address" as 10410 New Harmony Rd
- e. December 4, 2009 Alfred Lindsey changed voter registration to 4404 Nolan Ave.
- f. January 13, 2010 Alfred Lindsey renewed Contractor license using 10410 New Harmony Rd. address.
- g. March 31, 2010 Krista Lindsey changed voter registration to 4404 Nolan Ave which remains her voter registration address.
- h. April 11, 2010 Police incident report by Alfred Lindsey at 10410 New Harmony Rd. showing Alfred Lindsey's "Home Address" as 10410 New Harmony Rd
- April 26, 2010 Alfred Lindsey and Krista Lindsey signed warranty deed conveying away any interest in 4404 Nolan Ave. The Sales Disclosure form for the transaction dated April 26, 2010 signed under oath lists Lindseys' address as 10410 New Harmony Road²
- j. May 4, 2010 Alfred and Krista Lindsey voted in primary using 4404 Nolan Ave. address which they'd conveyed away more than a week before.
- k. October 5, 2010 Property Record Card for 1611 Cumberland lists owner as "LINDSEY, ALFRED" at the address of 10410 New Harmony Rd. This is also the case with 1615 Cumberland, 514 N. 4th Avc. and Frank Avc. properties all of which are titled solely in Lindsey's name listing an address for him of 10410 New Harmony Rd.
- 1. October 25, 2010 Date of "CERTIFICATE OF LIABILITY INSURANCE" filed with Building Commission by Alfred Lindsey bearing 10410 New Harmony Rd. address.

¹ A copy of Whitehouse's submission to the Board supporting this timeline is attached hereto as Exhibit "A" and incorporated herein by reference.

² A copy of the Disclosure form for this real estate transaction is attached hereto as Exhibit "B" and incorporated herein by reference.

- m. November 2, 2010 Alfred Lindsey voted in 2010 general election using 4404 Nolan Ave. address more than 6 months after conveying away his interest in that property through a Warranty Deed.
- n. December 1, 2010 Date of execution of apartment "lease" for 433 S. Bosse where Lindsey claims to have moved to approximately one month before.
- o. December 5, 2010 Date of Evansville Courier & Press Article quoted in challenge.
- p. December 28, 2010 Alfred Lindsey applied to change voter registration to apartment at 433 S. Bosse.
- q. December 28, 2010 Lindsey obtained new drivers license with address of the apartment at 433 S. Bosse.
- r. February 25, 2011 Alfred Lindsey renewed Contractor license using 10410 New Harmony Rd. address.

February 26, 2011 – Lindsey's Homestead property tax exemption on 10410 New Harmony Rd. still in place.

- 13. On Lindsey's voter's registration record, as of the March 5, 2011 hearing there are two telephone numbers, 812-428-4159 and 812-963-0982, neither of which are associated with Lindsey's purported address at the apartment address 433 S. Bosse.
- 14. Lindsey has conceded that his homestead property tax exemption has continuously been on the 10410 New Harmony Rd. property as was the case on March 5, 2011
- 15. Lindsey alleges that his only connection 10410 New Harmony Rd is that he utilizes it solely for commercial purposes for a contracting business. The records from the assessor's office show that property strictly as residential and show no commercial usage or structures on the property.

- 16. According to the records of Vanderburgh County, the address of record for the owners of 1041 New Harmony is singularly listed as "10410 New Harmony Rd." instead of the two separate addresses as alleged by Lindsey.
- 17. Assessor's records dated October 5, 2010 relating to other properties titled in Lindsey's name alone all show the owner's address to be 10410 New Harmony Rd. at a time when he purports to have been living in the 6th Ward.
- 18. In an article contained in Exhibit "A" hereto, Lindsey made admissions to at least one press outlet in December 2010 that his purported move into the City's 6th Ward is not a bona fide move of residence but is merely undertaken for the sole purposes of running for office there and that he has no intention whatsoever to reside in the 6th Ward if he loses the election. There was no evidence or allegation that Lindsey was misquoted in the article however one of the majority members of the Board summarily rejected consideration of Lindsey's previous statements against interest on the basis of a belief that news reports are inherently unworthy of credibility which constituted manifest error.
- 19. In retaliation and retribution for Whitehouse filing the Challenge, on February 25, 2011, Lindsey filed a Police Report and Petition for Protective Order which was Summarily denied by the Vanderburgh Superior Court.
- 20. At the hearing of March 5, 2011, Lindsey testified and, at the request of Lindsey's counsel, counsel for Whitehouse was refused the opportunity to cross examine Lindsey notwithstanding that Whitehouse voiced no objection to subjecting himself to cross-examination.
- 21. The Board's decision on the Challenge is also contrary to public policy in that it constitutes an open invitation for Vanderburgh County residents residing outside the

Evansville city limits who own rental property in the city or who have friends who reside in the city to switch their voter registration around at will in order to vote in city elections and/or to run for office in the city.

WHEREFORE, plaintiffs prays the court for declaratory judgment pursuant to I.C. 34-14-1-1, et seq., that

- A. As of May 4, 2010 Lindsey was a resident of 10410 New Harmony Road.
- . B. As of November 2, 2010 Lindsey was a resident of 10410 New Harmony Road
- C. As of March 5, 2011 was a resident of 10410 New Harmony Road.
- D. That Lindsey is disqualified from being a candidate in the 2011 Evansville Municipal Primary Election because he is not a resident of the City of Evansville, 6th Ward.
- E. In the alternative, if the Board's determination that Lindsey is currently a resident of the 6th Ward is upheld, a declaratory judgment to the effect that said residency did not commence until Lindsey purportedly occupied the 433 S. Bosse apartment which the evidence showed occurred, if at all, no earlier than December 2010 and therefore pursuant to I.C. 3-8-1-27(1) Lindsey is ineligible to be a candidate by virtue of being a resident of the City of Evansville for less than one (1) year prior to the General Election in which he seeks to run.
 - F. for all other relief just and proper in the premises.

I, Randall Whitchouse, swear or affirm under penalty for perjury that the foregoing facts are true to the best of my information and belief.

Randall Whitehouse

COUNT II

- Plaintiff Mosby re-alleges and incorporates herein by reference the allegations set forth in Count I above.
- 23. That on or about March 4, 2011 Mosby filed a complaint (hereinafter referred to as "Complaint") with the Board based upon Lindsey voting in the 2010 Primary and General Elections using an address of 4404 Nolan Ave at a time when has residence was actually at 10410 New Harmony Road and that a campaign advertisement of Lindsey's depicted him wearing an Evansville Fire Department uniform in violation of I.C. 3-14-1-6. A copy of the Complaint to which the offending advertisement was attached, is attached hereto as exhibit "C"
 - 24. IC 3-14-1-6 States as follows:

Solicitation, challenge, or performance of election function by state police department employee, police officer, or firefighter

- Sec. 6. (a) A state police department employee or a police officer or firefighter (including a special duty, auxiliary, or volunteer police officer or firefighter) of a political subdivision who recklessly:
 - (1) solicits votes or campaign funds;
 - (2) challenges voters; or
- (3) performs any other election related function; while wearing any identifying insignia or article of clothing that is part of an official uniform or while on duty commits a Class A misdemeanor.
 - (b) This section does not prohibit any of the following:
 - (1) A state police department civilian employee from voting while on duty.
- (2) A police officer or firefighter from voting while wearing any part of an official uniform or while on duty.
- (3) An individual described in subsection (a) from consenting to a photograph (or other visual depiction) of the individual wearing any part of the individual's official uniform appearing in an advertisement in support of a candidate or political party.
 - (4) An individual from serving as a pollbook holder under IC 3-6-6-36.
- (5) A police officer wearing any identifying insignia or article of clothing that is part of an official uniform or while on duty from serving as an absentee ballot courier appointed under IC 3-11.5-4-22.

As added by P.L.5-1986, SEC.10. Amended by P.L.16-1987, SEC.1; P.L.12-1989, SEC.1; P.L.3-1997, SEC.401; P.L.176-1999, SEC.117.

- 25. During the Board's hearing on Mosby's Complaint, the two majority of the members of the Board opined that Lindsey's appearance in uniform in his campaign ad was legal because under § (b)(3) of the statute Lindsey was "consenting to" his own request for his photograph to appear in uniform in his own campaign advertisement. This interpretation of the statute creates a giant loophole in the statute that swallows the entire statute, is illogical, contrary to the plain language of the statute, eviscerates the effectiveness of the statute in achieving its purpose and renders it inoperable by making it so easy to avoid the operation of its provisions.
- 26. Since the March 5, 2011 hearing on Mosby's complaint Lindsey has caused the offending advertisement to change and has replaced it with one containing an identical photograph of Lindsey with the insignia which identify his uniform as an Evansville Fire Department uniform removed. A true and accurate copy of the new advertisement is attached hereto as Exhibit "D"

WHEREFORE, plaintiff Mosby prays the court for declaratory judgment pursuant to I.C. 34-14-1-1, et seq., that

- A. As of May 4, 2010 Lindsey was a resident of 10410 New Harmony Road and he was not lawfully eligible to vote using the address of 4404 Nolan Ave.
- B. As of November 2, 2010 Lindsey was a resident of 10410 New Harmony Road and he was not lawfully eligible to vote using the address of 4404 Nolan Ave
- C. That IC 3-14-1-6 (b)(3) does not provide an exemption for public safety personnel described therein to avoid its operation by "consenting to" their own request for their photograph to appear in uniform in their own campaign advertisements.

- D. That IC 3-14-1-6 prohibits a firefighter such as Lindsey from appearing in uniform in their own campaign advertisements.
 - for all other relief just and proper in the premises.

I, David W. Mosby, swear or affirm under penalty for perjury that the foregoing facts are true to the best of my information and belief.

David W. Mosby

Robert R. Faulkner, #18625-82 400 Court Street P.O. Box 4208 Evansville, IN 47724 Telephone: (812) 464-3966

I hereby certify that the foregoing document complies with the requirements of Trial Rule 5(G) with regard to information excluded from the public record under Administrative Rule 9 (G).

Robert R. Faulkner

Robert 1 Truck

BEFORE THE VANDERBURGH COUNTY ELECTION BOARD

In Re: 2011 Evansville City Primary Election Challenge to Alfred Lindsey Elegibility for Candidacy for Common Council of the City of Evansville, Sixth Ward

Comes now challenger, Randall Whitehouse and for his Memorandum in Support of his challenge to the Eligibility of Alfred Lindsey (hereinafter "Lindsey") for Candidacy for Common Council of the City of Evansville, Sixth Ward would state as follows:

I.C. 3-8-1-27 states:

A candidate for membership on common council of a second or third class city must:

(1) have resided in the city for at least one (1) year; and

(2) have resided in the district in which seeking election; if applicable, for at least (6) months.

I.C. 3-5-2-42.5 defines "residence as:

- (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.

The evidence before the election board is overwhelmingly of the force and effect that Alfred Lindsey's address has been and continues to be 10410 New Harmony Road since 2008. In addition to the log which shows Lindsey continuously absent from his purported address on S. Bosse, the below timeline demonstrates the many fatal inconsistencies in Lindsey's story as to his residency.

February 5, 2008 - Alfred Lindsey changed voter registration to 10410 New Harmony Rd. (see exhibit "A")¹

February 22, 2008 – Domestic dispute incident police report at 10410 New Harmony Rd. showing Alfred Lindsey's "Home Address" as 10410 New Harmony Road. (see exhibit "B")

September 5, 2008 - Krista Lindsey voter registration changed to 10410 New Harmony Rd. (see exhibit "C")

June 18 2009 - Police incident report by Alfred Lindsey at 10410 New Harmony Rd showing Alfred Lindsey's "Home Address" as 10410 New Harmony Rd (see exhibit "D")

¹ Social Security No. redacted.

December 4, 2009 Alfred Lindsey changed voter registration to 4404 Nolan Ave. (see exhibit "A")

January 13, 2010 - Alfred Lindsey renewed Contractor license using 10410 New Harmony Rd. address. (see exhibit "E")

March 31, 2010 - Krista Lindsey changed voter registration to 4404 Nolan Ave.² To date that is her current voter registration address. (see exhibit "C")

April 11, 2010 - Police incident report by Alfred Lindsey at 10410 New Harmony Rd. showing Alfred Lindsey's "Home Address" as 10410 New Harmony Rd. (see exhibit "F")

April 26, 2010 - Alfred Lindsey and Krista Lindsey signed warranty deed conveying away any interest in 4404 Nolan Ave. (see exhibit "G")

May 4, 2010 - Alfred and Krista Lindsey voted in primary using 4404 Nolan Ave. address which they'd conveyed away more than a week before. (see exhibits "A" "C" and "G")

October 5, 2010 – Property Record Card for 1611 Cumberland lists owner as "LINDSEY, ALFRED" at 10410 New Harmony Rd. This is also the case with 1615 Cumberland, 514 N. 4th Ave. and Frank Ave. properties all of which are titled solely in Lindsey's name listing an address for him of 10410 New Harmony Rd. (see exhibits "H" through "K")

October 25, 2010 - Date of "CERTIFICATE OF LIABILITY INSURANCE" filed with Building Commission by Alfred Lindsey bearing 10410 New Harmony Rd. address. (see exhibit "L")

November 2, 2010 – Alfred Lindsey voted in 2010 general election using 4404 Nolan Ave. address more than 6 months after conveying away his interest in that property through a Warranty Deed. (see exhibits "A" and "G")

December 5, 2010 - Date of Evansville Courier & Press Article quoted in challenge. (see exhibit "M")

December 28, 2010 – Alfred Lindsey applied to change voter registration to 433 S. Bosse. (see exhibit "A")

February 25, 2011 - Alfred Lindsey filed retaliatory Police Report and Petition for Protective Order which was Summarily denied. (see exhibits "N" and "O")

February 25, 2011 - Alfred Lindsey renewed Contractor license using 10410 New Harmony Rd. address. (see exhibit "P")

² As of February 25, 2011 according to Voters Registration records, Krista Lindsey was still registered at 4404 Nolan Ave. address.

February 26, 2011 - Homestead property tax exemption on 10410 New Harmony Rd. still in place. (see exhibit "Q")

Lindsey's voter registration record attached hereto as exhibit A on its face undermines Lindsey's contention he is a resident of the 6th Ward. On the record there are two telephone numbers, 812-428-4159 and 812-963-0982, neither of which can be Lindsey's purported address on S. Bosse. A reverse lookup on 812-428-4159 shows that number is owned by Dustin J. Lindsey with a Stringtown Rd. address (see exhibit R). As shown by the police reports attached hereto as exhibits "B", "D", and "F", the 812-963-0982 nmber is the Lindseys' home telephone number at the 10410 New Harmony Rd. address.

Lindsey has conceded that his homestead exemption has continuously been on the 10410 New Harmony Rd. property (see also exhibit Q). He appears to claim that his connection with that property is solely as his business location. The records from the assessor's office dispute that. The property record card attached hereto as exhibit "S" states on the first page "RESIDENTIAL" [emphasis in original]. Under the heading 'Property Class' it states in relevant part, "Res. 1 fam unplatted 0-9.99 ac" In the "Improvement Data" section, no commercial building is listed. Nowhere on the entire document is any commercial use of the property listed. Further, as shown by the printout from www.evansvillegis.com land records attached hereto as exhibit "T" the "OWNER ADDRESS" is singularly listed as "10410 New Harmony Rd." instead of the two separate addresses alleged by Lindsey. Further, the Assessor's records relating to other properties titled in Lindsey's name alone all show the owner's address to be 10410 New Harmony Rd.

at a time when he purports to have been living in the 6th Ward (see exhibits "H" through "K").

As noted in the challenge, Lindsey's own statements to the press show that his purported move into the City's 6th Ward is not a bona fide move of residence but is merely a thinly veiled ruse to feign residency in the 6th Ward solely for purposes of running for office and that he has no intention whatsoever to reside in the 6th Ward if he loses the election.

Lindsey in the December 5, 2010 article claims that it was he alone in moving from the New Harmony Road address. If, as Lindsey claims, Krista Lindsey did not vacate the New Harmony Road address then it would be appropriate to investigate the propriety of her voting in the 2010 primary using the Nolan Ave. address.

Lindsey's extreme retaliatory reaction of filing a police report and seeking a protective order in response to this challenge seems to be an indication that Lindsey knows this challenge has merit. As noted by exhibit "N" hereto, Lindsey's petition for a protective order was summarily denied on its face. Its lack of merit is indicative of the actual motive behind its filing. As challenger has demonstrated he has had the opportunity to observe whether any vehicle belonging to Lindsey is present where Lindsey purports to live as the Challenger is a close neighbor of the property where Lindsey claims to reside and that Lindsey was never there. Making observations as one goes about one's day to day activities is far from the frivolous claims of "stalking" made by Lindsey. Further, it is logically impossible to stalk someone who is perpetually and continuously absent from the area of the alleged stalking. The police report filed by Lindsey is also conspicuous for its omission of Lindsey's address whereas the other 3 police reports list his address (see exhibits "B", "D",

"F" and "N"). Consequently, the Vanderburgh County Election Board should remove Lindsey from the ballot for the 2011 Primary Election for 6th Ward City Council.

I, Randall Whitehouse, swear or affirm under penalty for perjury that the foregoing facts are true to the best of my information and belief and that the attached exhibits are true, complete and accurate copies of what they are represented to be.

Randall Whitehouse

Robert R. Faulkner, #18625-82 400 Court Street P.O. Box 4208 Evansville, IN 47724

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| | IN THE VANDE | RBURGH CIRCUI | T COURT MAR 23 2011 |
| | NDALL WHITEHOUSE and AVID MOSBY |) | Susan K. K. CLERK |
| VS | |) CAUSE NO. | 82C01-1103-PL- <u>157</u> |
| | ANDERBURGH COUNTY ELECT: DARD and ALFRED M. LINDSEY | ION) | |
| | APPEARANCE B | Y ATTORNEY IN | CIVIL CASE |
| Par | rty Classification: Initiating X | Responding | Intervening |
| 1. | The undersigned attorney and all at the following party member(s): | ttorneys listed on th | is form now appear in this case for |
| | Plaintiffs | Randall Whitehouse | e and David Mosby |
| 2. | Applicable attorney information fo information as required by Trial Ru | r service as required ule 3.1 and 77(B) is | t by Trial Rule 5(B)(2) and for case as follows: |
| | P.O. Box 400 Cour Evansvill Tel: (812 | | 8625-82 |
| 4. 5. 6. 7. 8. | There are other party members: yell first initiating party filing this cale following Case Type under Admin I will accept service by FAX at the This case involves support issues. There are related cases: Yes No This form has been served on all of Additional information required by | ase, the Clerk is requisitrative Rule 8 (b) above noted numb Yes NoX NoX (If yes) ther parties. Certific | (3): er: YesNoX , list on continuation page) |
| T | hereby certify that the foregoing doc (G) with regard to information exclu | ded from the public Robert R. Fau | record under Admin. Rule 9 (G). |