

Indiana Election Commission
Minutes
April 24, 2003

Members Present: Dudley Cruea, Chairman of the Indiana Election Commission (“Commission”); S. Anthony Long, Vice Chairman of the Commission; Claudia E. Cummings, member; Ted Tollefson, proxy for Butch Morgan, member.

Members Absent: Butch Morgan

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Kristi Robertson, Co-Director of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Pamela Potesta, Campaign Finance; Michelle Thompson, Campaign Finance; Michelle Brzycki, Precincts.

Also Attending: Ms. D. Montgomery; Ms. Sandy Green; The Honorable Carolyn Stohry, Shelby County Circuit Court Clerk.

1. Call to Order

The Chair called the April 24, 2003 meeting of the Commission to order at 1:00 p.m. in Indiana Government Center South Conference Center Room B, 402 West Washington Street, Indianapolis, Indiana.

The Chair noted that proper notice of the meeting had been given, as required by state law. A copy of the meeting notice, agenda, and designations of proxy are incorporated by reference in these minutes. *[Copies of all documents incorporated by reference are available for public inspection and copying at the Election Division Office.]*

2. Transaction of Business

The Commission transacted the business set forth in the Transcript of Proceedings prepared by Ms. Rhonda J. Hobbs, RPR, of Connor+Associates Reporting. A copy of this document is incorporated by reference in these minutes.

The following scrivener’s error in this document is corrected:

Page 45, line 10, delete “MVR-8” and insert “NVRA”


3. Adjournment

There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Mr. Burdick moved, seconded by Mr. Long, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. John, and Mr. Morgan), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 1:59 p.m.

Respectfully submitted,



Trent Deckard
Co-Director



J. Bradley King
Co-Director

APPROVED:



Daniel A. Dumezich
Chairman

1

2

INDIANA ELECTION COMMISSION
MEETING AGENDA

3

4

5

6

Conducted On: Thursday, April 24, 2003

7

8

9

10

11

Location: Indiana Government Center South
Conference Center, Room B
302 West Washington Street
Indianapolis, Indiana 46204

12

13

14

15

16

17

18

Rhonda J. Hobbs, RPR
Notary Public
Stenographic Reporter

19

20

21

22

23

24

Connor Reporting, Inc.
1650 One American Square
Indianapolis, IN 46282
(317) 236-6022

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

INDIANA ELECTION COMMISSION:

- Mr. Dudley Cruea - Chairman
- Mr. S. Anthony Long - Vice Chairman
- Mr. Ted Tollefson - (Proxy for Commission Member Butch Morgan)
- Ms. Claudia Cummings - Commission Member

INDIANA ELECTION DIVISION STAFF:

- Mr. Dale Simmons - Co-Legal Counsel
- Mr. Bradley King - Co-Director
- Ms. Kristi Robertson - Co-Director
- Ms. Pam Potesta
- Ms. Michelle Thompson

1 CHAIRMAN D. CRUEA: I call to order the
2 Indiana Election Commission meeting for
3 Thursday, April 24th, 2003. Let the record
4 reflect that proper notice of the meeting was
5 given. At the present time we have two
6 commission members here. We have Ted Tollefson,
7 as a proxy for commissioner Butch Morgan and
8 Claudia Cummings is not here at the present time
9 but she should be here shortly.

10 First of all, I have approval of the
11 December 9th, 2002, and January 27th, 2003 minutes.

12 VICE CHAIRMAN A. LONG: Since you are here,
13 if you'll make the motion, I'll second it.

14 CHAIRMAN D. CRUEA: Okay. I make a motion
15 that the December 9th and the January 27th
16 minutes be approved as presented.

17 VICE CHAIRMAN A. LONG: Second.

18 CHAIRMAN D. CRUEA: All those in favor,
19 signify by saying aye?

20 VICE CHAIRMAN A. LONG: Aye.

21 CHAIRMAN D. CRUEA: Aye. Let the record
22 reflect that Commissioner Cummings is now here,
23 so we have four present. Campaign finance
24 enforcement. Do you want to do the...

25 VICE CHAIRMAN A. LONG: Let's do all the

1 orders first.

2 CHAIRMAN D. CRUEA: Yeah, let's do the
3 orders first.

4 MS. M. THOMPSON: Mr. Chairman, Order
5 2003-35 through Order 2003-132 have been
6 prepared for actions taken at the March 6th
7 meeting. These orders are prepared -- are ready
8 for adoption at the pleasure of the commission.

9 VICE CHAIRMAN A. LONG: Let's see here.

10 CHAIRMAN D. CRUEA: Copies of those aren't
11 in our folder, are they -- are they?

12 MS. M. THOMPSON: That's the stack.

13 CHAIRMAN D. CRUEA: Okay, it's that stack
14 there. It's everything that we approved last
15 week.

16 MS. M. THOMPSON: These are the orders from
17 the last meeting.

18 CHAIRMAN D. CRUEA: Last meeting.

19 VICE CHAIRMAN A. LONG: Have you got the
20 numbers for -- did you give them; what are...

21 MS. M. THOMPSON: Order 2003-35 through
22 2003-132.

23 VICE CHAIRMAN A. LONG: I would move the
24 approval and adoption and the authorization to
25 affix signatures via the stamp.

1 COMMISSION MEMBER C. CUMMINGS: I second
2 that motion.

3 CHAIRMAN D. CRUEA: Any other discussion?
4 (No response.)

5 CHAIRMAN D. CRUEA: All those in favor,
6 signify by saying aye?

7 THE COMMISSION: Aye.

8 VICE CHAIRMAN A. LONG: Ted, I guess you'll
9 have to sign...

10 CHAIRMAN D. CRUEA: That's why you'll be
11 here until 4:30, and the rest of us -- okay,
12 delinquent 2003 campaign finance reports and
13 continued causes. If there's anyone here that's
14 going to be testifying today before this
15 commission, if you'd please stand at this time
16 and take an oath?

17 MR. B. KING: Please your right hand to
18 respond I do at the conclusion of the oath?

19 (Participants complied.)

20 MR. B. KING: I do solemnly swear that the
21 testimony I will give to the commission in the
22 causes today will be the truth, the whole truth,
23 and nothing but the truth?

24 THE PARTICIPANTS: I do.

25 MR. B. KING: Thank you.

1 CHAIRMAN D. CRUEA: And ma'am, if you want
2 to come forward, since you're the only one here
3 for a cause, we'll hear yours first. If you'll
4 let them know your cause number and then let
5 them give us a brief synopsis of the case and
6 then -- then you can address that.

7 MS. D. MONTGOMERY: My cause number is
8 03-4776-74.

9 MS. M. THOMPSON: Mr. Chairman, Mrs.
10 Montgomery for Indiana House of Representatives.
11 It is a continuance today. It's Cause No.
12 03-4776-74. She filed a report on January 24th.
13 She received your notice on February 21st. Been
14 before the board one other time and has a
15 proposed civil penalty of \$452.50 and there ask
16 a letter in your packet for you to read.

17 CHAIRMAN D. CRUEA: Okay. Go ahead.

18 MS. D. MONTGOMERY: I just wanted to say
19 with regard to the previous violation that I
20 had, I had my report prepared -- I'm not here on
21 that one today and I did not do anything except
22 pay the penalty, but I was a property manager
23 and someone did run into a garage and I had to
24 wait for the police to get there. Also, my son
25 is mentally challenged and I was having a lot of

1 difficulty with him and he was admitted to the
2 hospital that day, but I just paid the fine and
3 I didn't do anything about the first one.

4 This time, I was in Florida with my husband
5 who will be 80 on Tuesday and he knew that I had
6 come back to get work done. He came back on
7 Tuesday, January, I believe it was the 7th, on the
8 evening of January 8th, I got a call from a
9 neighbor saying that he had been taken to Southwest
10 Emergency Hospital in Fort Myers, and about 3:00 in
11 the morning I made a decision to get on a plane and
12 go back down there because he was still at the
13 hospital.

14 When I got back down there, I learned that he
15 couldn't travel for two days. And in an attempt to
16 try to get the report timely filed, I contacted Jet
17 Credit Union hoping they could fax something to me
18 so I could file it from down there.

19 And this -- I don't have enough to go around,
20 but this is a little note that I faxed them -- who
21 do I give this to you -- here's some extra ones,
22 and I did that before the day it was due, which was
23 on a Monday when I couldn't get back.

24 On January the 14th, they debited my account
25 for doing this work for me right here, and here's

1 some extra ones, but they didn't give me any
2 information until after the filing deadline the
3 next day and it came in at 1633, which was long
4 after noon on the 15th.

5 After I got back here, my son had been
6 involuntarily committed through -- to a state
7 hospital for six months and I was trying to prepare
8 for his release and that was the reason for the
9 delay and eventually filing it.

10 And I guess the only thing I can say was I
11 know the rule and I'm prepared to pay a fine but I
12 had an unforeseen emergency that caused me not to
13 be able to timely file it, and then during the last
14 hearing, when I asked for a continuance, I was
15 scheduled for some medical tests and I brought the
16 date of that for your records on march the 6th.

17 So if any consideration can be given, I would
18 appreciate it, and if not, I'll pay the fine.

19 Thank you.

20 CHAIRMAN D. CRUEA: Okay. Are there any
21 questions?

22 (No response.)

23 MS. D. MONTGOMERY: I do have one other
24 comment. I met with an accounting person and
25 paid them. I've hired them for next year.

1 CHAIRMAN D. CRUEA: Okay. I will let
2 you -- you can have these originals back since
3 you have given copies and all, let the copies be
4 entered for the record, okay.

5 MS. D. MONTGOMERY: Okay.

6 COMMISSION MEMBER C. CUMMINGS: I move that
7 we reduce the fines for Montgomery for Indiana
8 House of Representatives by 50 percent.

9 VICE CHAIRMAN A. LONG: Second, plus the
10 costs.

11 COMMISSION MEMBER C. CUMMINGS: Plus the
12 costs.

13 VICE CHAIRMAN A. LONG: Second.

14 CHAIRMAN D. CRUEA: Any discussion?

15 (No response.)

16 CHAIRMAN D. CRUEA: All those in favor,
17 signify by saying aye?

18 THE COMMISSION: Aye.

19 CHAIRMAN D. CRUEA: Okay. Anyone else to
20 testify in one of the causes?

21 (No response.)

22 CHAIRMAN D. CRUEA: Okay, then we're going
23 to go through -- what else?

24 VICE CHAIRMAN A. LONG: Do we have two
25 others?

1 CHAIRMAN D. CRUEA: Uh-huh.

2 MS. M. THOMPSON: There's only two others,
3 Mr. Chairman. We only have just the one
4 spreadsheet today. We have two that were late
5 on their annual, Constitution Party of Indiana
6 and Monroe County Democratic Party.

7 CHAIRMAN D. CRUEA: Okay. I'm going to
8 address one of them because we received a letter
9 and said they had filed it with the clerk and
10 we've always taken the position on political
11 parties in the counties, as long as they file
12 their report with the county, so I'll move that
13 Cause No. 03-4465-100 be dismissed.

14 VICE CHAIRMAN A. LONG: Second.

15 CHAIRMAN D. CRUEA: Any discussion?

16 (No response.)

17 CHAIRMAN D. CRUEA: All those in favor,
18 signify by saying aye.

19 THE COMMISSION: Aye.

20 CHAIRMAN D. CRUEA: Okay. Is there a
21 letter on the Constitution Party or not -- no,
22 okay.

23 COMMISSION MEMBER C. CUMMINGS: I move that
24 we reduce the fines on the Constitution Party to
25 25 percent of the total.

1 VICE CHAIRMAN A. LONG: By 25 percent.

2 COMMISSION MEMBER C. CUMMINGS: By 25
3 percent.

4 VICE CHAIRMAN A. LONG: To 75 percent.

5 COMMISSION MEMBER C. CUMMINGS: It's their
6 third offense?

7 CHAIRMAN D. CRUEA: It's their, yes, third
8 offense.

9 COMMISSION MEMBER C. CUMMINGS: Okay.

10 VICE CHAIRMAN A. LONG: To 75, wasn't it,
11 percent?

12 COMMISSION MEMBER C. CUMMINGS: Yes.

13 VICE CHAIRMAN A. LONG: I would second
14 that.

15 CHAIRMAN D. CRUEA: Okay.

16 VICE CHAIRMAN A. LONG: 37.50.

17 COMMISSION MEMBER C. CUMMINGS: With the
18 costs.

19 VICE CHAIRMAN A. LONG: Yes.

20 CHAIRMAN D. CRUEA: Okay. Any discussion?

21 (No response.)

22 CHAIRMAN D. CRUEA: All those in favor,
23 signify by saying aye?

24 THE COMMISSION: Aye.

25 CHAIRMAN D. CRUEA: Okay. Is that all we

1 have on -- under B, delinquent and continued?

2 MS. M. THOMPSON: Yeah.

3 CHAIRMAN D. CRUEA: Okay. Report regarding
4 disposition of complaints.

5 MS. M. THOMPSON: Mr. Chairman, other than
6 the one committee, Brooks LaPlante, all
7 complaints that were filed with this office
8 before the election have been resolved, all
9 reports have been amended.

10 CHAIRMAN D. CRUEA: Okay.

11 VICE CHAIRMAN A. LONG: Just a minute,
12 where -- where are we?

13 CHAIRMAN D. CRUEA: No. C.

14 MS. P. POTESTA: You don't have anything in
15 your packets.

16 MS. M. THOMPSON: There's nothing in your
17 packets on that.

18 VICE CHAIRMAN A. LONG: And we got a report
19 on the this -- I remember. I was going to ask
20 about the one complaint you all were
21 investigating the state representative from over
22 in the 8th District, I don't know his name.

23 CHAIRMAN D. CRUEA: Brooks LaPlante.

24 MS. M. THOMPSON: Brooks LaPlante.

25 CHAIRMAN D. CRUEA: That's the one. She

1 said they've all been settled except for that
2 one.

3 MS. M. THOMPSON: Except for that one.

4 VICE CHAIRMAN A. LONG: Except for that
5 one?

6 MS. M. THOMPSON: Except for that one, yes.

7 VICE CHAIRMAN A. LONG: Okay.

8 CHAIRMAN D. CRUEA: So we'll have a report
9 at the next meeting on that one?

10 MS. M. THOMPSON: Yes.

11 CHAIRMAN D. CRUEA: Okay.

12 MS. M. THOMPSON: We'll have a report on
13 that.

14 VICE CHAIRMAN A. LONG: Thank you. I'm
15 sorry, I missed it. I couldn't remember the
16 name. I just remember we had one in the 8th
17 District.

18 CHAIRMAN D. CRUEA: Okay. Report regarding
19 excess corporate and labor contributions.

20 MS. M. THOMPSON: Mr. Chairman, at our next
21 meeting, we'll be bringing reported
22 commissions -- corporations that have exceeded
23 their limits for the Year 200_ -- 2000 and 2001.
24 Right now, we have five corporations in 2000
25 that exceeded their limits and 12 corporations

1 in 2001. Those will be brought before the board
2 at the next meeting.

3 We're presently working on corporate
4 contributions that exceeded their limits in 2003
5 right now, and I'm not for sure how many we'll
6 have.

7 CHAIRMAN D. CRUEA: You mean 2?

8 MS. M. THOMPSON: 2002, yes.

9 CHAIRMAN D. CRUEA: 2002. Okay, you're
10 working on that now?

11 MS. M. THOMPSON: Yeah.

12 CHAIRMAN D. CRUEA: Okay. So there's five
13 in 2000, and 12 in 2001?

14 MS. M. THOMPSON: Yeah.

15 CHAIRMAN D. CRUEA: And you'll have a
16 report at the next meeting?

17 MS. M. THOMPSON: Yes. We'll be bringing
18 those before the board at the next meeting.

19 CHAIRMAN D. CRUEA: Okay. Is that it for
20 campaign finance?

21 MS. M. THOMPSON: Yeah, I did -- Mr.
22 Chairman, you did ask me to do an attorney
23 general update. Right now, we have no cases in
24 court as far as campaign finance goes on this.

25 They are in the process of sending a demand

1 letter to the ones that I sent from the last
2 meeting out to those committees to try to collect.
3 I hope to have somebody from the attorney general's
4 office here at the next meeting to give a better
5 update.

6 CHAIRMAN D. CRUEA: Okay. Great. Thank
7 you. Okay, voting system certifications.

8 MR. B. KING: Mr. Chairman, and Members of
9 the Commission, there's a memo from the
10 co-directors behind the voting systems tab in
11 your binder.

12 There are three voting systems on the agenda.
13 The first, simply, a report back from the last
14 commission meeting on March the 6th. This was with
15 regard to the ES&S Election Reporting Manager
16 Version 6.3.1.0 and the Data Acquisition Manager.

17 The commission approved the upgrade of that
18 system pending documentation of escrow. We have
19 since received documentation of escrow so no
20 further action is necessary.

21 The second item on the agenda is the Election
22 Systems & Software Model 650 (Version 1.1.9.1). We
23 had initially thought there would be a
24 demonstration of that system today, but ES&S has
25 advised us that they would like to have this

1 application placed on hold until after July 1st,
2 2003.

3 They're in the process of going back to the
4 ITA to have a still newer software upgrade version
5 tested and approved and so wanted to defer action
6 or demonstration at this time.

7 VICE CHAIRMAN A. LONG: Question: If they
8 do that, do they amend this application or are
9 they required to file a new application?

10 MR. B. KING: Commissioner, they would
11 amend their current application. We had that
12 same question come up with regard to Voting
13 Technologies International where they were
14 allowed to amend their application.

15 VICE CHAIRMAN A. LONG: I thought that
16 would be a -- that's why they would want to just
17 put it on hold?

18 MR. B. KING: Yes, sir.

19 CHAIRMAN D. CRUEA: Okay.

20 VICE CHAIRMAN A. LONG: Thank you.

21 MR. B. KING: The third and final voting
22 system on the agenda for today is the Hart
23 InterCivic eSlate, Direct Record and Electronic
24 Voting System (Version 2.1) and Ballot Now
25 Absentee Paper Ballot System.

1 This system was previously certified by the
2 commission on January 10th of 2002. In March of
3 this year, Hart InterCivic submitted an application
4 for an upgrade. Hart had indicated to me on the
5 telephone that they would come to this meeting
6 perhaps with copies of escrow but they did not have
7 that documentation prepared at the time this memo
8 was put together.

9 The underlying system was demonstrated to the
10 commission on January 1, 2002. Hart has also
11 submitted letters from CIBER, the software
12 independent testing authority, and from Wyle
13 Laboratories, the independent testing authority
14 that does hardware and firmware. Both letters are
15 in the material and indicate that the laboratories
16 found the system upgrade would comply with FEC
17 standards.

18 Therefore, based on the information set forth
19 in the application, the results of the testing
20 conducted by the independent testing authorities
21 and reviewed by co-general counsel, the
22 co-directors would recommend that the commission
23 find that the voting system complies with the
24 applicable state laws and this voting system be
25 approved for use in Indiana elections for a

1 five-year period, expiring April 24th, 2008,
2 subject to the proviso that Hart InterCivic would
3 file documentation signed by its escrow agent no
4 later than the end of May stating that the software
5 and source codes referenced have been escrowed.

6 And I believe there is a representative here
7 today from Hart InterCivic who can elaborate on
8 that and provide further...

9 CHAIRMAN D. CRUEA: Okay.

10 MS. S. GREEN: We have just an advisory for
11 escrow with ESI (indiscernible), and we should
12 be getting that report within five days.

13 CHAIRMAN D. CRUEA: Okay. Would you state
14 your name for the record, please?

15 MS. S. GREEN: Sandy Green.

16 CHAIRMAN D. CRUEA: Okay. Thanks.

17 MS. S. GREEN: So it has been filed, she
18 has received an (indiscernible), and it should
19 be within the paperwork within five business
20 days.

21 CHAIRMAN D. CRUEA: Okay. Is there any
22 questions?

23 COMMISSION MEMBER C. CUMMINGS: I actually
24 have a question. What does this today, your
25 upgrade?

1 MS. S. GREEN: It basically added a stroke
2 to 11 by 17 paper and added a little more space
3 for, character space for the titles, the
4 precincts, contact titles, so it's just
5 basically some enhancements to the system.

6 COMMISSION MEMBER C. CUMMINGS: The
7 character spaces on the DRE or on the paper
8 ballot?

9 MS. S. GREEN: On the DRE, but the DRE and
10 paper ballot are all set up together as one
11 program.

12 COMMISSION MEMBER C. CUMMINGS: Okay.

13 MS. S. GREEN: It allows it to add extra
14 character spaces. With the DRE, you're also
15 allowed to have extra character space to your
16 paper system.

17 COMMISSION MEMBER C. CUMMINGS: And your
18 paper system runs through a scanner or...

19 MS. S. GREEN: Official scanner, so it's
20 basically a computer software program that
21 process the subject ballots.

22 COMMISSION MEMBER C. CUMMINGS: Were
23 those -- are those the only two changes?

24 MS. S. GREEN: Those are the only two major
25 changes. I did send in change documentation to

1 Indiana. Some of them were just basic fixes
2 after you ran 2,000 of our MBBs, which is our
3 Mobile Ballot Box. It's a little flash memory
4 card which holds counts and records. Sometimes
5 occasionally, you would get an error so they
6 fixed that. Basically, those are -- nothing
7 changed on that standard system or the
8 performance of the system.

9 CHAIRMAN D. CRUEA: Okay. Any other
10 questions?

11 VICE CHAIRMAN A. LONG: Are you ready for a
12 motion?

13 CHAIRMAN D. CRUEA: Uh-huh.

14 VICE CHAIRMAN A. LONG: Do I have to
15 restate it all or can I move the adoption of the
16 recommendation of the co-directors?

17 CHAIRMAN D. CRUEA: Well, provided that
18 they do the escrow like we did, (indiscernible).

19 VICE CHAIRMAN A. LONG: Which is --
20 includes the proviso of the escrow
21 certification.

22 CHAIRMAN D. CRUEA: Okay.

23 COMMISSION MEMBER C. CUMMINGS: I'll second
24 that.

25 CHAIRMAN D. CRUEA: Okay. Any discussion?

1 (No response.)

2 CHAIRMAN D. CRUEA: All those in favor,
3 signify by saying aye?

4 THE COMMISSION: Aye.

5 CHAIRMAN D. CRUEA: Okay. County precinct
6 boundary order for Shelby County.

7 MS. M. BRZYCKI: Mr. Chairman, and Members
8 of the Commission, I'd like to present Shelby
9 County to you. It's a bit more confusing than
10 normal counties. There are 40 total precincts
11 that they'll have after this approval has been
12 approved.

13 I am presenting 22 precincts, none of which
14 are in the City of Shelbyville. Nineteen of the
15 precincts will be approved immediately --
16 effectively immediately, three of the precincts
17 will be effective after the municipal election in
18 November. This has been reviewed by the Office of
19 Census Data and all of their typical comments have
20 been taken care of.

21 VICE CHAIRMAN A. LONG: Welcome back.

22 MS. M. BRZYCKI: Thank you.

23 CHAIRMAN D. CRUEA: Is there any questions?

24 COMMISSION MEMBER C. CUMMINGS: Actually, I
25 do have a question. I remember Shelby County

1 and Shelbyville from the last meeting, before
2 your term is out, and I can't remember what the
3 story was, why they're separate?

4 MS. M. BRZYCKI: They -- the county had
5 believed that their entire county was being
6 passed. When they arrived they found out that
7 only Shelbyville was being passed.

8 COMMISSION MEMBER C. CUMMINGS: Okay.

9 MS. M. BRZYCKI: Therefore, they were --
10 Carolyn, (Phonetic) my predecessor, on reviewing
11 the Shelby County precincts looked outside the
12 City of Shelbyville, and that's the one that's
13 presented today. I do like to give credit where
14 it's due, and also thank Carolyn Coroliz
15 (Phonetic) and Mark Schratner, LCDM's precincts.

16 COMMISSION MEMBER C. CUMMINGS: Thank you.

17 VICE CHAIRMAN A. LONG: This brings Shelby
18 County to a conclusion then?

19 MS. M. BRZYCKI: Yes, it does, until they
20 want to make more changes.

21 CHAIRMAN D. CRUEA: Okay.

22 VICE CHAIRMAN A. LONG: You said they want
23 to make some more or unless they want to make
24 some more?

25 MS. M. BRZYCKI: Unless they want to make

1 some more.

2 VICE CHAIRMAN A. LONG: Okay.

3 CHAIRMAN D. CRUEA: Okay. The
4 representatives from Shelby County, do you have
5 anything you want to say?

6 (No response.)

7 CHAIRMAN D. CRUEA: No. Okay.

8 UNIDENTIFIED SPEAKER: (Indiscernible.)

9 MS. M. BRZYCKI: We do have (indiscernible)
10 of the county commissioners. That was recently
11 passed on April 21st of this year.

12 CHAIRMAN D. CRUEA: Okay.

13 COMMISSION MEMBER C. CUMMINGS: I move that
14 we pass the Shelby County precincts as outlined
15 by Michelle.

16 VICE CHAIRMAN A. LONG: Do you want to get
17 your...

18 COMMISSION MEMBER C. CUMMINGS: Order No.
19 2003-135.

20 VICE CHAIRMAN A. LONG: Second.

21 COMMISSION MEMBER C. CUMMINGS: And 16,
22 2003 --

23 MR. B. KING: I'm sorry, that's not...

24 COMMISSION MEMBER C. CUMMINGS: Forget the
25 16, just 135.

1 VICE CHAIRMAN A. LONG: Okay. The one I
2 had in my -- I didn't have a number yet. Okay,
3 135 is...

4 CHAIRMAN D. CRUEA: Shelby County.

5 VICE CHAIRMAN A. LONG: Shelby County.

6 CHAIRMAN D. CRUEA: Yes.

7 VICE CHAIRMAN A. LONG: Right. I'll second
8 that.

9 CHAIRMAN D. CRUEA: Okay. Any discussion?

10 (No response.)

11 CHAIRMAN D. CRUEA: All those in favor,
12 signify by saying aye?

13 THE COMMISSION: Aye.

14 MS. C. STOHR: Thank you.

15 MR. B. KING: Mr. Chairman, I think the
16 packet also includes the submitted order
17 regarding only Huntington County, and perhaps
18 Mr. Simmons can provide information on that.

19 MR. D. SIMMONS: Mr. Chairman, Members of
20 the Commission, Huntington County precincts were
21 first presented to the commission on
22 January 27th. At that time there was an
23 order -- well, at least a motion on record that
24 contained an exception.

25 At the last meeting we revisited that and

1 there was some discussion about the bowling alley
2 and --

3 CHAIRMAN D. CRUEA: I was going to say, is
4 this the bowling alley case?

5 VICE CHAIRMAN A. LONG: Yeah.

6 MR. D. SIMMONS: That affected both
7 precincts, and the result of that discussion,
8 the commission went ahead to move to approve all
9 the precincts in Huntington and the amended
10 (indiscernible). That 16 order reflects the
11 discussion and action taken at the last meeting
12 to approve all the precincts in Huntington.

13 CHAIRMAN D. CRUEA: Okay. Are there any
14 questions?

15 COMMISSION MEMBER C. CUMMINGS: I actually
16 have a question. So just let me make sure I
17 have it straight, this in effect is approving
18 the new construction of the bowling alley
19 precinct. The other ones will continue to be as
20 they were when we saw them in January, the
21 precincts?

22 MR. D. SIMMONS: Well, the --

23 COMMISSION MEMBER C. CUMMINGS: Because we
24 approved them in January, didn't we?

25 MR. D. SIMMONS: Yes.

1 COMMISSION MEMBER C. CUMMINGS: All except
2 for the bowling alley?

3 MR. D. SIMMONS: Yes.

4 COMMISSION MEMBER C. CUMMINGS: Okay.

5 MR. D. SIMMONS: And the reason why we came
6 back to discuss it is that involved two
7 precincts --

8 COMMISSION MEMBER C. CUMMINGS: Okay.

9 MR. D. SIMMONS: -- and we just -- you
10 know, there's one line between two precincts,
11 and we approved that line, in essence, but we
12 only approved one of the precincts.

13 COMMISSION MEMBER C. CUMMINGS: Okay.

14 MR. D. SIMMONS: And if we approve the
15 line, we should approve both precincts and
16 that's why we came back --

17 COMMISSION MEMBER C. CUMMINGS: Okay.

18 MR. D. SIMMONS: -- to do that at the last
19 meeting.

20 COMMISSION MEMBER C. CUMMINGS: Okay. I
21 move that we approve Order 2003-16.

22 VICE CHAIRMAN A. LONG: Amend it?

23 COMMISSION MEMBER C. CUMMINGS: Amend it.

24 VICE CHAIRMAN A. LONG: Second.

25 CHAIRMAN D. CRUEA: Okay. Any discussion?

1 (No response.)

2 CHAIRMAN D. CRUEA: All those in favor of
3 the motion, signify by saying aye?

4 THE COMMISSION: Aye.

5 CHAIRMAN D. CRUEA: Okay. Is that all we
6 have, and we can move on -- I think it is --
7 okay, ready for a report by co-directors.

8 MR. B. KING: Mr. Chairman, I'll start with
9 No. 8, the voter registration file, a final
10 compilation and final format. We're very
11 pleased to report that we were able to have a
12 county voter registration submission from all 92
13 counties, was compiled by our member request
14 information system into a disk.

15 The vendor noted during the preparation
16 process that many more counties were following the
17 commission's approved format, that there were fewer
18 problems that had to be addressed at the vendor
19 level.

20 We had one county that you may remember,
21 Franklin, that had a change in vendor, and the old
22 vendor was not cooperating with the county or the
23 new vendor. The new vendor was subsequently able
24 to get the voter registration records and put it in
25 proper shape for the file.

1 We have already sold the county voter, or the
2 state voter file compilation to both state
3 committees shortly after the first of this month,
4 and I think silence may be golden. We have not had
5 any concerns or problems expressed with the data,
6 so I would report it as a marked improvement for
7 previous years.

8 The final item I had to say on that with
9 regard to file format was that we did receive some
10 suggestions from state committee staff and others
11 regarding ways that the format could be improved in
12 future years, and so at some point during the later
13 part of this year, we'll plan to bring to you a
14 revised file format that would reflect those
15 suggestions for upgrade for the file that will be
16 prepared in February 2004.

17 VICE CHAIRMAN A. LONG: Do you send that
18 out to both state committees for their input, I
19 think that's -- or all three state committees, I
20 guess, and I think, Brad...

21 MR. B. KING: We will do that.

22 VICE CHAIRMAN A. LONG: the voter file in
23 Vanderburgh County, does it -- is there a
24 problem with that in the in the -- as it works
25 into the state file?

1 MR. B. KING: No, not that I have been
2 informed or heard about. I would say that we
3 did have the vendor prepare lists that
4 identified significant questions about any
5 particular county's file, like if they're
6 missing addresses or something, but I don't
7 recall anything with regard to Vanderburgh that
8 was significant problem.

9 VICE CHAIRMAN A. LONG: I had received an
10 e-mail this week between their local party and
11 our state party -- I just got a copy of it, and
12 there was some questions as to whether or not
13 Vanderburgh County's voter file formats were
14 utilizable in the format that they had them.

15 MR. B. KING: I'll be more than happy to
16 check and report back for you on that.

17 CHAIRMAN D. CRUEA: Okay.

18 MS. K. ROBERTSON: Mr. Chairman and
19 Members of the Commission, first of all, I'd
20 like to say that we've had staff change, as you
21 may have noticed. We'd like to thank Carolyn
22 Harowitz (Phonetic) for her brief time with us,
23 but she helped us out at an incredibly busy time
24 and came in and helped us with the precincts,
25 and we do appreciate her help. And we'd like to

1 welcome back Michelle Brzycki. We are, I think,
2 very fortunate to have her back. She's come in
3 and hit the ground running, helping us with
4 precincts and other various projects we have
5 going on so I'd like to welcome her back.

6 On the Voter Bill of Rights, you all at the
7 last meeting approved the text for the Voter Bill
8 of Rights. This is something that the Secretary of
9 State has now had printed into poster format to be
10 distributed to all the counties -- that's going on
11 this week and next week so that all the counties
12 will have poster size Voter Bill of Rights to post
13 in each polling place. We also have it available
14 on our website so we're hoping that that will help
15 some of the voters on understanding their rights.

16 VICE CHAIRMAN A. LONG: Did you indicate in
17 your memo that you were going to send us a copy
18 of the poster?

19 MS. K. ROBERTSON: We can definitely do
20 that.

21 VICE CHAIRMAN A. LONG: That would be nice
22 to have. I'd like to see one.

23 MS. K. ROBERTSON: Sure. Do you have
24 anything further to add on the Voter Bill of
25 Rights?

1 MR. B. KING: Yeah, I was going to say, in
2 fact, I know that the Voter's Bill of Rights'
3 posters have just come in today from the
4 printer's and the Secretary of State's office is
5 planning to send those to the commissioners at
6 their homes, and I should add, too, they will be
7 both in English and Spanish.

8 MS. K. ROBERTSON: Yes.

9 CHAIRMAN D. CRUEA: Future precinct
10 boundary submissions.

11 MR. B. KING: Mr. Chairman, and Members of
12 the Commission, there's a memo to the
13 co-directors, in the tab behind report for
14 co-directors, in which we note the clerks of 11
15 counties whose precinct boundary submissions
16 were not approved last year, have advised the
17 Election Division they will be willing to work
18 with us to bring these submissions forward to
19 the commission during the next several months.
20 They're listed there on the first page of the
21 memo.

22 Two additional counties have already begun the
23 process of submitting their changes for review.
24 Jefferson County has had its initial review
25 completed by the Office of Census Data, and as you

1 know Shelby was presented to the commission today.
2 There are two other counties that were contacted
3 but people are on vacation and so we don't have
4 confirmation from two of them. I know -- I know we
5 don't from Steuben, and Michelle, I don't know if
6 you heard anything further from Lawrence.

7 MS. M. BRZYCKI: Yes, from Lawrence.

8 MR. B. KING: Yes, from Lawrence?

9 MS. M. BRZYCKI: Uh-huh, and I don't see
10 anything for Steuben.

11 MR. B. KING: Right. And so we would note
12 that there will actually then be 12, in addition
13 to the 11 listed above that we anticipate
14 bringing to the commission during the next
15 several months. Marion County has not been
16 contacted by the Election Division at this time.

17 VICE CHAIRMAN A. LONG: Is there a plan to
18 do that, discuss that with Marion? I'd like
19 to -- I think it would be a goal to me to see
20 all 92 counties approved if we could get our
21 partisan factions in Marion County together and
22 come up with a plan and get it approved, that'd
23 sure make me happy, then we'll put this one to
24 rest.

25 MR. B. KING: I'd be more than happy to

1 contact the circuit court clerk as maybe the
2 starting point for that.

3 CHAIRMAN D. CRUEA: That would be great.

4 COMMISSION MEMBER C. CUMMINGS: Maybe the
5 Mayor's office.

6 VICE CHAIRMAN A. LONG: The Mayor's office.

7 MR. B. KING: And the Mayor's office. I
8 think we...

9 VICE CHAIRMAN A. LONG: And perhaps the
10 three county chairmen here, you know, to get
11 them past their impasses that were obvious, and
12 I'm not -- I'm sure there's enough blame to go
13 around. I'm not making blame. I'm just -- I
14 just think it -- they should get it resolved.
15 That's an awfully lot of money we spent on a
16 plan that there ought to be some plan completed.

17 CHAIRMAN D. CRUEA: Okay.

18 MR. B. KING: And then Mr. Chairman, just
19 to note, we do have six additional counties who
20 are approved counties but have additional
21 changes to make.

22 Clark and Monroe, for example, I had contacted
23 as early as this year, and I don't have details
24 about the others. But we will begin the process
25 with the Hancock, Jackson and Tippecanoe counties

1 initially and wrapping up Jefferson, and then as I
2 said, we would plan to bring these forward -- as
3 many of the counties as possible before the
4 November 2003 elections, again with the
5 understanding that for those that have the
6 precincts in cities, those would not take effect
7 until after November 2003.

8 The co-directors are planning to send another
9 memorandum to all the counties outlining the
10 precinct boundary approval process and sending
11 deadlines as we did previously for counties to
12 submit changes to us.

13 We're also planning to work with the Office of
14 Census Data to determine what deadline that office
15 would want for its review to be completed. I just
16 want to call your attention to the fact that under
17 Indiana law, January 21st, 2004, which is the first
18 date for candidates to file for the 2004 primary,
19 is the final date for the effectiveness for
20 precinct boundary changes.

21 CHAIRMAN D. CRUEA: Okay.

22 VICE CHAIRMAN A. LONG: Could I ask a
23 question?

24 CHAIRMAN D. CRUEA: Uh-huh.

25 VICE CHAIRMAN A. LONG: Does this mean that

1 we're -- I believe what you said, Brad, is we've
2 got two counties that we don't know and
3 everybody else is in the process -- we don't
4 know and Steuben and Marion?

5 MR. B. KING: Yes, that's correct.

6 CHAIRMAN D. CRUEA: Okay.

7 MS. K. ROBERTSON: Mr. Chairman, and
8 Members of the Commission, just a status report
9 on the Help America Vote Act of 2002, and that
10 implementation (indiscernible). Basically,
11 we've got two processes going on, one
12 legislative and one administrative of the vote
13 Indiana team.

14 We are in the very final stages possibly in
15 the legislative process. There's talk about
16 finishing that today. Their statutory deadline is
17 April 29th on Tuesday. So we are in the final
18 stages of that. This is legislation currently
19 alive and in the works that would implement the
20 Help America Vote Act in Indiana.

21 The Vote Indiana Team is working weekly, still
22 meeting to come up with Indiana's plan that we will
23 certify to the federal government on how Indiana
24 will implement that. Legislation will answer some
25 of the questions, but there is other activity and

1 questions that will have to be answered by the Vote
2 Indiana Team, and so that is going forward.

3 And of course, all of the meeting notes and
4 minutes and everything from that meeting is on our
5 website. So if you have any questions or anything
6 that you would like us to put before the Vote
7 Indiana Team, both Brad and I are members of that
8 and are happy to do that for the commission.

9 CHAIRMAN D. CRUEA: Okay.

10 MR. B. KING: Mr. Chairman, I would close
11 the co-directors' report by noting Kristi's memo
12 as the item behind the co-directors' report tab
13 with regard to the commission meeting date.
14 We've discussed the question of pending business
15 with the campaign finance and other staff
16 members.

17 At this point, I recommend, if the commission
18 saw fit, there would not be a need for a May
19 meeting, but there would certainly be a need for a
20 June meeting.

21 CHAIRMAN D. CRUEA: Okay.

22 VICE CHAIRMAN A. LONG: The -- just FYI,
23 September 25th, you'll need a proxy for me.

24 MS. K. ROBERTSON: Okay.

25 VICE CHAIRMAN A. LONG: And if we don't

1 have a meeting, somebody needs to tell the
2 parking garage for our ticket sticker cards, has
3 threatened me two or three times, they're going
4 to take my card away, and I didn't think that
5 she was big enough to do it, but if you don't
6 come up here every month, they suspend your
7 parking, and I allowed -- I would keep my card
8 anyway.

9 MS. K. ROBERTSON: It's my understanding
10 from parking services, you may need to
11 reactivate it, but it should still be valid.
12 You may just need to ask them to reactivate it,
13 but they shouldn't take it away or you wouldn't
14 be able to do that, but we'll track on that
15 and...

16 VICE CHAIRMAN A. LONG: She was sure a
17 pretty surly lady.

18 CHAIRMAN D. CRUEA: It was two months ago
19 that I got that problem.

20 MS. K. ROBERTSON: Oh, really?

21 CHAIRMAN D. CRUEA: Yeah.

22 MS. K. ROBERTSON: Okay. We'll follow up
23 on that and make sure that that...

24 CHAIRMAN D. CRUEA: But, yeah, get that
25 taken care of.

1 VICE CHAIRMAN A. LONG: Of course, that's
2 the kind of thing you need to get your day
3 started right.

4 CHAIRMAN D. CRUEA: I've been up here, it's
5 been more than a month, and it worked today.

6 VICE CHAIRMAN A. LONG: A good -- a good
7 quarrel starts the juices flowing.

8 CHAIRMAN D. CRUEA: I was -- I was afraid I
9 was going to have problems today but I didn't.
10 So does anyone have a problem with us cancelling
11 the May meeting?

12 VICE CHAIRMAN A. LONG: May meeting is
13 cancelled, as far as I'm concerned.

14 CHAIRMAN D. CRUEA: Okay.

15 VICE CHAIRMAN A. LONG: If that's your
16 wish, Mr. Chairman, I'll support you completely
17 in that decision.

18 CHAIRMAN D. CRUEA: Okay, we'll meet on
19 June 26th. Okay, it looks like we've got some
20 forms here.

21 MS. K. ROBERTSON: Mr. Chairman, Members of
22 the Commission, basically the first order
23 2___ -- actually, that should be 2003-133. This
24 is -- that these two forms are current forms
25 used primarily at the Election Division level.

1 The IEC-3 is the agreement that someone wishing
2 to purchase the statewide voter file from the
3 Election Division would have to sign in order to
4 obtain that. The IEC-11 is the application that
5 voting systems vendors have to make in order to
6 come before the commission for a voting system
7 approval.

8 These are forms that we did not have
9 electronically that we would like to have available
10 on our website, available to get out
11 electronically. So there isn't really any
12 substantive change between the brief versions and
13 the current versions. They're just now we have
14 electronic version and thought that we probably
15 ought to approve the new version.

16 CHAIRMAN D. CRUEA: Okay.

17 MS. K. ROBERTSON: And in Order -- again,
18 this is Order 2002-134, on absentee ballots.
19 Thanks to Vicki Kivitt, the Clerk in Morgan
20 County, who pointed that we did have a typo on
21 the ABS-7 which is the absentee ballot security
22 envelope used for voting by -- voting by
23 Traveling Board and in the clerk's office.

24 It just had a typo on that so this corrects
25 that typo but also grandfathers in the version

1 that's already out there, since it's not a
2 substantive change, so any of the forms that are
3 being used for this election would be used. Also,
4 on the order, you'll notice in Section 3,
5 grandfathering in the previous version, as well as
6 the current version of the ABS-1 form -- this is
7 the application for absentee ballot.

8 What we have heard from some of the counties
9 is that voters have been sending in the previous
10 version of the ABS-1 to request absentee ballots by
11 mail. Usually you have to use the current version
12 of the form or whatever you're trying to do is
13 rejected.

14 We thought that was extremely harsh when the
15 only substantive change on these forms was in
16 regards to voting in the clerk's office where it
17 took off the reasons that you would have to state
18 for voting by mail.

19 Those reasons are still on there so that was
20 not a change to that part of the form. So in order
21 to accommodate this problem that, hopefully, will
22 be fixed by the end of this year, this will
23 grandfather in a previous version, but it would
24 only be able to be used for this year's election
25 and only to request an absentee ballot by mail.

1 In the Clerk's Office or by Traveling Board,
2 you still will need to use the current version of
3 the form, but we believe the counties are happy to
4 have this form, but we just don't people, if that
5 that's the only problem, they just got an older
6 version of the form, not to be able to vote.

7 COMMISSION MEMBER C. CUMMINGS: I do have a
8 question on that one, Kristi?

9 MS. K. ROBERTSON: Yes.

10 COMMISSION MEMBER C. CUMMINGS: When you
11 say an older version, do you mean the previous
12 primary, the 2002 primary application, because
13 it designates your party on it; correct?

14 MS. K. ROBERTSON: The previous version
15 would be the one that was approved for the 2002
16 election.

17 COMMISSION MEMBER C. CUMMINGS: Okay. I
18 maybe think -- I don't -- since we don't have a
19 copy of it in front of us, I don't think I know
20 what it looks like, so I've always seen the
21 Marion County specific, so this one would have
22 the party designation on it regardless of the
23 election type?

24 MS. K. ROBERTSON: That's correct.

25 COMMISSION MEMBER C. CUMMINGS: Okay.

1 MS. K. ROBERTSON: And this would not
2 affect Marion County's forms because they do
3 have separate forms so this only be for the --
4 these versions of the precinct counties.

5 COMMISSION MEMBER C. CUMMINGS: I want to
6 make sure if they could still gather that
7 critical information for the primaries?

8 MS. K. ROBERTSON: Sure. Exactly.

9 COMMISSION MEMBER C. CUMMINGS: Okay.

10 CHAIRMAN D. CRUEA: Okay. Is there any
11 questions on -- any other questions on these
12 forms?

13 (No response.)

14 VICE CHAIRMAN A. LONG: Are you ready for a
15 motion?

16 CHAIRMAN D. CRUEA: Uh-huh.

17 VICE CHAIRMAN A. LONG: I move the adoption
18 of Orders 2003-133 and 134.

19 COMMISSION MEMBER C. CUMMINGS: I second.

20 CHAIRMAN D. CRUEA: Any discussion.

21 (No response.)

22 CHAIRMAN D. CRUEA: All those in favor,
23 signify by saying aye.

24 THE COMMISSION: Aye.

25 CHAIRMAN D. CRUEA: Okay, litigation

1 update.

2 MR. D. SIMMONS: Mr. Chairman, and Members
3 of the Commission, I have four cases to report
4 to the commission on. The first one is not a
5 litigation case. It's a co-director
6 investigation. This started with a person who
7 voted with a receipt at the 2002 November
8 election. They had gone to a BMV and received a
9 registration form there. They didn't have them
10 on the record in Hendricks County, but the voter
11 had a receipt and presented it to
12 (indiscernible), the VRG-6, and they were
13 allowed to vote.

14 The statutes require the clerk to forward that
15 receipt to the co-directors for investigation under
16 the code. The co-directors started that
17 investigation. We reported at the last meeting
18 that we had begun that investigation.

19 We've now included in the packet a response we
20 received from the BMV. We asked them to do an
21 investigation as to what their -- what information
22 they could provide us as to why this voter had a
23 receipt and the Hendricks County Voter Registration
24 Office didn't have a registration.

25 Their investigation revealed that they

1 don't -- they didn't -- they don't have it, the
2 mail-in form. They were able to look at their
3 records and determine this fellow who came in to
4 register wasn't asking to renew his license or
5 wasn't getting a license, operator's license to be
6 begin with or a renewal, and so they wouldn't
7 automatically fill out the VRG-6 as required under
8 the code.

9 What the code envisioned is that they would
10 mail-in forms available to that voter to say we can
11 go ahead and register by mail and here's -- here's
12 the form. Well, they didn't have the mail-in form
13 so they just handed the voter a VRG-6.

14 Now what they do is -- apparently, in this
15 office is tell the voter they can get the VRG-6
16 after they fill out back to the BMV or take it with
17 them. According to their review of the copy of the
18 VRG-6, they say they stamped the ones they take
19 back -- they said well, there's not a stamp on this
20 one -- they don't think they took this one back,
21 and the speculation is that they gave the voter the
22 VRG-6 form which includes a receipt and he walked
23 out with it.

24 He had to -- he had the form. He either
25 filled it out and mailed in the bottom part, the

1 registration part, or he didn't, or he did and it
2 got lost. But for whatever reason, he never got on
3 the records, never got registered in Hendricks
4 County. And so at this point the -- under the code
5 that the co-directors are to conclude their
6 investigation and determine whether an NVRA
7 violation has occurred.

8 There probably needs to be one more step to
9 this, an official determination by the
10 co-directors, whether there's an MVR-8 violation
11 and perhaps some feedback to the BMV on the
12 procedures they're using in this -- in this case,
13 just giving the voter the VRG-6 to take with him,
14 because that's going to reflect, poorly, I think,
15 upon the BMV if they do that because they have no
16 control after the person has the receipt and
17 they're really going to get the blame for it,
18 because if they do that often, people are going to
19 have receipts and there's -- they're going to get
20 blamed -- the BMV will get blamed for it, not doing
21 their job and the voter goes ahead and submit it
22 themselves so that's the status of that today.

23 COMMISSION MEMBER C. CUMMINGS: Dale?

24 MR. D. SIMMONS: Yes.

25 COMMISSION MEMBER C. CUMMINGS: Is the

1 VRG-6, is the receipt attached to that and it's
2 detachable or...

3 MR. D. SIMMONS: Yeah, it's the top part of
4 the form.

5 COMMISSION MEMBER C. CUMMINGS: Okay.

6 MR. D. SIMMONS: The VRG-6 is the top part
7 of the receipt. The bottom part is the actual
8 registration form.

9 COMMISSION MEMBER C. CUMMINGS: So in
10 theory, the BMV should complete the form, tear
11 off the receipt and hand it back to the client.

12 MR. D. SIMMONS: And instead, they gave the
13 whole thing to the voter so the voter has the
14 receipt and they can fill it out. Matter of
15 fact, the BMV indicated that the handwriting on
16 the VRG-6 at the top of the form was not the
17 handwriting of anybody in their office. They
18 assumed it was the handwriting of the voter who
19 filled out the receipt as well so...

20 VICE CHAIRMAN A. LONG: Procedurally, I --
21 just a question, they should fill it out,
22 complete it themselves and that would solve the
23 problem?

24 MR. D. SIMMONS: Yeah.

25 VICE CHAIRMAN A. LONG: But the VRG-6,

1 that's the general registration form, isn't it?

2 MR. D. SIMMONS: That's -- no, that's the
3 special BMV.

4 VICE CHAIRMAN A. LONG: For the BMV only?

5 MR. D. SIMMONS: Right.

6 VICE CHAIRMAN A. LONG: Okay.

7 MR. D. SIMMONS: The general registration
8 or mail-in form is the VRG-7, and so if -- they
9 wouldn't automatically fill that out unless the
10 person was -- I need a license or I need to
11 renew my license.

12 They wouldn't do the VRG-6, their agency.
13 They would say well, here's a mail-in form, you can
14 fill that out and mail that in. Instead, they gave
15 this person, instead of filling it out for him, to
16 use as a mail-in form. Well, it's not the mail-in
17 form. It's the form with the receipt on the top.

18 COMMISSION MEMBER C. CUMMINGS: If I can
19 throw out some suggestions for the co-directors'
20 report. I guess I would, or a determination, it
21 fits in an appropriate place, a suggestion might
22 be made that the BMV be -- I don't want to be
23 someone to overburden government. I recognize
24 the BMV is a very busy place, if all you want to
25 do is register to vote, then maybe the person

1 doesn't have time to fill out the application,
2 but surely, someone should understand the
3 importance of receipt control.

4 So if they want to have the person fill out
5 the application on their own by hand, they should
6 retain the receipt until they receive back the
7 form, I would think would be perhaps a nice
8 compromise in that case.

9 Rather than to hand the entire form and
10 receipt at one time to the client, they could
11 detach, then hand the form, let them fill it out
12 and then give them the receipt when they've
13 received it back, would be a suggestion, that maybe
14 you contact the BMV directly or include it in their
15 findings.

16 MS. K. ROBERTSON: Mr. Chairman, and
17 Members of the Commission, if I can, I think why
18 this is getting a little confusing now is used
19 to the BMV would have the VRG-7 mail-in forms
20 for people doing other transactions. They
21 aren't doing that right now because used to they
22 got this for free from us.

23 And when we -- when the law changed so we
24 didn't have to do it on card stock, we made copies
25 available for people, for anyone to make copies,

1 and so they've decided to do away with that as an
2 economic savings and having any of the mail-in
3 forms available even as the paper copy, and I think
4 that might be leading to some of the confusion.

5 I think ordinarily, they would give somebody
6 like in this situation the mail-in form and I
7 think -- so I think kind of the concern here is
8 that they're using the wrong form for the wrong
9 purpose and this is like somebody falling through
10 the cracks on the process.

11 CHAIRMAN D. CRUEA: Okay.

12 MR. D. SIMMONS: The next case that I have
13 a report on is a case we've been attacking for
14 quite some time now. It's the Lee versus Abell
15 case. It's been challenged by legally putting a
16 candidate through the disclaimer law, the law in
17 Indiana that requires some people go off of
18 political advertising, that says paid for by and
19 authorized or not authorized by.

20 We originally won that in district court, we
21 won that case. It was appealed to the Seventh
22 Circuit Court of Appeals. The Seventh Circuit said
23 well, before we consider the merits of whether this
24 disclaimer law violates the First Amendment, we
25 want to hear the opinion of the Indiana Supreme

1 Court on the interpretation of the word "person" in
2 the disclaimer law. The disclaimer requires a
3 person who distributes such material to include the
4 disclaimer on the material.

5 And, specifically, they want to add -- they've
6 asked the Supreme Court does this mean -- do you
7 mean persons as in a person who are committees or
8 involved in the political process as a political
9 action committee, a candidate, or another
10 committee, or do you mean individuals as well who
11 are not candidates? If your average person just
12 wants to have -- endorse somebody, their candidate,
13 if you have to include a disclaimer as well?

14 So they certified that particular question to
15 the Indiana Supreme Court. The Indiana Supreme
16 Court asked both sides to brief that. Our attorney
17 general attorney briefed that. The briefs were due
18 Monday, they briefed that Monday, and we're
19 expecting a decision on that. Perhaps at the next
20 meeting we'll have a decision on the Indiana
21 Supreme Court's interpretation of person.

22 Once they do that, it'll go back to the
23 Seventh Circuit to consider the merits of the
24 argument -- they'll accept the Supreme Court's
25 interpretation, then they'll consider the merits of

1 the argument about whether the statute violates the
2 First Amendment.

3 The next case I want to report on is the Ogden
4 case. This was filed by Mr. Ogden as a plaintiff
5 in the Indiana Right to Life Act. Mr. Ogden was a
6 candidate for Circuit Clerk of Marion County, who
7 was a Republican candidate in the Republican
8 primary. He was distributing leaflets with his
9 name and McAtee's name, Joe McAtee's name for
10 sheriff. And the complaint was brought to the
11 Marion County Election Board who considered whether
12 this particular leaflet violated the slating law.

13 There's a statute in 3-14-1-2 that says if you
14 distribute a slate, the slate being a list of
15 candidates for a sample ballot, something with a
16 number of candidates and endorsing those
17 candidates, you must have the written consent, and
18 this is only applies to a primary race, you must
19 have the written consent of the candidates on the
20 slate and you must file that written consent with
21 the county election board at least five days before
22 it's distributed.

23 In this case, Mr. Ogden didn't do that. He
24 was distributing the leaflets and the Marion County
25 Election Board had a hearing and they actually

1 ended up confiscating the leaflets. Mr. Ogden is
2 joined by the Indiana Right to Life PAC, and their
3 interests that they're asserting is that well, we
4 want to endorse a list of candidates ourselves
5 under our organization's name and we don't want to
6 have to go to the candidates to get their prior
7 consent in writing and have to file that.

8 Judge Tinder over here in the Southern
9 District granted a preliminary injunction, the
10 plaintiffs asked for a preliminary injunction to join
11 the parties, and the commission is a party as well,
12 from enforcing this statute, and Judge Tinder
13 granted that injunction. So his ruling is that
14 that statute is not constitutional under the First
15 Amendment and should not be enforced.

16 The statute itself is a criminal statute so
17 there's really not a lot of enforcing and I don't
18 know if there's any precedent or anybody ever
19 bringing a slating issue to the commission so
20 there's not -- really not a lot of enforcement.
21 The Marion County Election Board, however, enforced
22 it in a -- in a manner here because they had them
23 legally confiscated, but in any event, that's the
24 status of the case.

25 Now the preliminary injunction was granted.

1 The judge said I will grant a permanent injunction
2 in this case, it's virtually certain I will, but
3 there are some outstanding issues with respect to
4 some remedies that the plaintiffs have asked for
5 against Marion County so we're going to have an
6 expedited trial to those remedies before we wrap
7 the case up, but that's the status as of today. I
8 don't know if you have any questions on that, in
9 case you might have been -- witnessed some of the
10 events on that.

11 The last case I want to report on is not a
12 case where the commission is a party, but it's a
13 case that may be of interest to the commission and
14 one particular commission member; specifically,
15 Mr. Morgan, because he was involved in the case.
16 This case is entitled Waite versus St. Joseph
17 County Election Board.

18 This was a candidate for mayor in the
19 Democratic, this year's Democratic Party primary.
20 This Democratic candidate, however, had
21 voted -- the last time he voted in a primary, voted
22 in a Republican primary.

23 Well, Mr. Morgan, Commissioner Morgan is -- in
24 fact, he is the St. Joseph County chair, challenged
25 this candidate under 3-8-2-7 which defines party

1 affiliation as a -- as not affiliated with the
2 Democratic Party.

3 The challenge was sustained by the county
4 election board, said Mr. Morgan you're right, they
5 don't meet that definition. In fact, this
6 candidate did not meet that definition so their
7 decision was correct under the statute.

8 The candidate went ahead, though, and filed an
9 action in Federal District Court, and this is in
10 the Northern District, challenging the
11 constitutionality of that statute -- it's 3-8-2-7,
12 and arguing that it violated his due process rights
13 under the Fourteenth Amendment because it didn't
14 provide Mr. Morgan any standards for making his
15 decision about whether this person was affiliated
16 with the Democratic Party.

17 The judge in his analysis, and I think we've
18 included a copy of that case in your packet, his
19 analysis, and this is really a thumbnail, I guess,
20 summary, said well, look, the board is
21 giving -- given an objective standard to judge your
22 affiliation by No. 1, that it's your last vote in
23 the primary.

24 This last determination by the county chair,
25 whether he's going to certify you as a member of

1 the party, really is -- is something additional and
2 it's appropriate and it doesn't violate the
3 Constitution, and really, it's supported by some
4 precedent; particularly, the precedent in the
5 California Democratic Party, when they sued
6 California for the open primary, and it was a
7 Supreme Court case that said well, you know, the
8 party has a lot of ability, a lot of responsibility
9 to determine who they want to affiliate with, and
10 when they're making those determinations, their
11 acting as -- in a private capacity and not as state
12 actors, and so the judge sort of weaved the
13 reasoning from that case into this case -- you
14 know, that 3-8-2-7 does not violate the
15 constitution so I just thought that might be of
16 interest to the commission since the commission has
17 applied that statute in the past.

18 CHAIRMAN D. CRUEA: Okay.

19 MR. D. SIMMONS: Actually, that concludes
20 my report.

21 VICE CHAIRMAN A. LONG: Nice job.

22 CHAIRMAN D. CRUEA: Any other business?

23 VICE CHAIRMAN A. LONG: Any other business?

24 I don't have anything.

25 CHAIRMAN D. CRUEA: Nobody?

1 MR. B. KING: Just ask, Mr. Chairman, if
2 your consent to use the signature stamp will
3 apply to the other orders you approved today?

4 CHAIRMAN D. CRUEA: Fine with me.

5 VICE CHAIRMAN A. LONG: If you want them
6 signed, it does.

7 CHAIRMAN D. CRUEA: All right.

8 MR. B. KING: There you go. Thank you, Mr.
9 Chairman.

10 CHAIRMAN D. CRUEA: Is there a motion to
11 adjourn?

12 VICE CHAIRMAN A. LONG: So moved.

13 CHAIRMAN D. CRUEA: Second.

14 COMMISSION MEMBER C. CUMMINGS: Second.

15 CHAIRMAN D. CRUEA: Okay. We're adjourned.
16 Thank you very much.

17 (At this time the proceedings were adjourned.)
18
19
20
21
22
23
24
25