

# Indiana Election Commission

## Minutes

### September 18, 2009

**Members Present:** Thomas E. Wheeler, II, Chairman of the Indiana Election Commission ("Commission"); S. Anthony Long, Vice Chairman of the Commission; Daniel A. Dumezich, member of the Commission; Sarah Steele Riordan, member of the Commission.

**Members Absent:** None

**Staff Attending:** J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Pamela Potesta, Co-Director of the Election Division; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Abbey Taylor, campaign finance staff, Election Division; Michelle Thompson, campaign finance staff, Election Division.

**Also Attending:** Dr. Raymond Scheele, Co-Director of the Voting System Technical Oversight Program (VSTOP), Ball State University; Dr. Joseph Losco, Chair, Political Science Department, Ball State University; Dr. Jay Bagga, Co-Director of VSTOP, Ball State University; Mr. Ian Piper, *formerly of* Premier Election Solutions, currently employed by Election Systems & Software; Mr. Kyle D. Conrad, Governmental Business Systems; The Honorable Pam Mishler-Fish, Porter County Circuit Court Clerk; The Honorable Susie Kirk, Vanderburgh County Circuit Court Clerk; The Honorable Donna Butler, Posey County Circuit Court Clerk; The Honorable Rita Glenn, St. Joseph County Circuit Court Clerk; Ms. Angie Nussmeyer, Marion County Election Board; Ms. Kate Cruikshank, chair of the Monroe County Voting Systems Advisory Council; Ms. Jennifer Ping.

#### 1. Call to Order

The Chair called the September 18, 2009 meeting of the Commission to order at 9:30 a.m. in Room 233 of the Indiana State House, 200 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 and Associates, Inc. A copy of this document is incorporated by reference in these minutes.

The following corrections of scrivener's errors in this document are approved by the Commission:

Page 5, lines 21 through 23 are amended to read "replacement ballots if those initials happen to be absent. If it's the pleasure of the Commission,"

Page 5, line 25 is amended to read "incorporated as an amendment to Order 2009-313. I'll."

Page 8, line 15, replace "only on" with "on any of".

Page 16, line 25, replace "advocate" with "abdicate".

Page 23, line 15, replace "Cyber" with "Ciber".

Page 24, lines 7, 13, 15, and 22, replace "Cyber" with "Ciber".

Page 25, line 12, replace "Cyber" with "Ciber".

Page 27, line 18, replace "Cyber" with "Ciber".

Page 38, line 1, replace "mustard" with "muster".

Page 54, line 4, delete "(Phonetic)".

Page 60, line 17, replace "Wiley" with "Wyle".

Page 70, line 1, replace "the staff or" with "as the staff of".

Page 74, line 7, replace "Kinnesaw" with "Kennesaw".

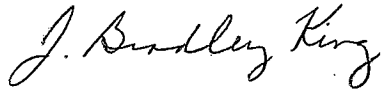
Page 75, line 13, delete "(Phonetic)".

Page 100, line 3, delete "(Phonetic)".

### **3. Adjournment**

There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Mr. Dumezich moved, seconded by Ms. Riordan, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting "aye" (Mr. Wheeler, Mr. Long, Mr. Dumezich and Ms. Riordan), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 11:30 a.m.

Respectfully submitted,

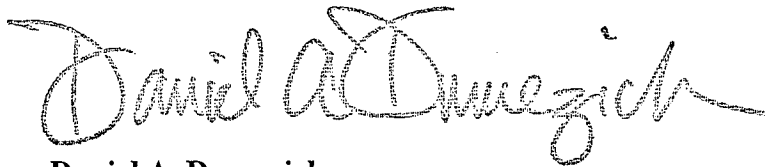


J. Bradley King  
Co-Director



Pamela Potesta  
Co-Director

**APPROVED:**



**Daniel A. Dumezich**  
**Chairman**

**ORIGINAL**

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INDIANA ELECTION COMMISSION  
PUBLIC MEETING AGENDA

Date: Friday, September 18, 2009

At: Indiana State House  
200 West Washington Street  
Room 233  
Indianapolis, Indiana 46204

A STENOGRAPHIC RECORD BY:  
Rhonda J. Hobbs, RPR  
Notary Public  
Stenographic Reporter

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

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**INDIANA ELECTION COMMISSION**

Mr. Thomas E. Wheeler, II (Chairman)  
Mr. S. Anthony Long, Commission Member  
Mr. Daniel A. Dumezich, Commission Member  
Ms. Sarah Steele Riordan, Commission Member

**INDIANA ELECTION DIVISION**

Mr. Dale Simmons - Co-General Counsel  
Ms. Leslie Barnes - Co-General Counsel  
Mr. Bradley King - Co-Director  
Ms. Pamela Potesta - Co Director  
Ms. Michelle Thompson  
Ms. Abby Taylor

1           **CHAIRMAN T. WHEELER:** We'll go ahead and  
2           convene the public session of the Indiana  
3           Election Commission. We are meeting in the  
4           Indiana State House, Room 233, pursuant to prior  
5           notice. I note that we do have a quorum. All  
6           four commissioners are here and present.

7           First item of business on our agenda is the  
8           approval of the minutes of the August 6th, 2009  
9           meeting, and the September 18th, 2009 executive  
10          session.

11          **VICE CHAIR A. LONG:** So moved.

12          **COMMISSIONER D. DUMEZICH:** Second it.

13          **CHAIRMAN T. WHEELER:** Motion has been made  
14          and seconded to approve the minutes. All those  
15          in favor, signify by saying aye?

16          **THE COMMISSIONERS:** Aye.

17          **CHAIRMAN T. WHEELER:** Those opposed, same  
18          sign?

19          *(No response.)*

20          **CHAIRMAN T. WHEELER:** Motion carries.

21          Next on the agenda is Order 2009-311,  
22          Approval of Absentee, Campaign Finance, and  
23          Candidate Forms. Brad, Pam, who's...

24          **MR. B. KING:** Mr. Chairman, I'm going to  
25          refer to my colleague, Miss Potesta, to answer

1 questions in that regard.

2 **MS. P. POTESA:** Mr. Chairman and  
3 Commissioners, you have before you a series of  
4 forms that have been updated recently. Brad has  
5 done all the leg work on it. We have absentee  
6 forms, campaign finance forms, and some  
7 candidate forms for your review and approval.

8 **CHAIRMAN T. WHEELER:** On the absentee form,  
9 what were the changes -- I see we have English  
10 and Spanish, what were the changes on the  
11 absentee forms?

12 **MS. P. POTESA:** Brad, do you answer that?

13 **MR. B. KING:** Sure. Mr. Chairman and  
14 Members of the Commission, in 2009 session of  
15 the general assembly, a new reason or new  
16 qualification was added to permit a voter to  
17 cast an absentee ballot by mail, and that was a  
18 public safety officer or a member of the  
19 military, and so that box has been added to the  
20 absentee form, and that's the only change.

21 **CHAIRMAN T. WHEELER:** There's no provision  
22 for a photo ID?

23 **MR. B. KING:** There is no provision for a  
24 photo ID.

25 **CHAIRMAN T. WHEELER:** That is part of the

1 Court of Appeals' decision that indicated that  
2 absentee ballots were a differential  
3 classification, and therefore, struck down one  
4 or two days ago. Any other questions on the  
5 absentee forms or the campaign finance?

6 **VICE CHAIR A. LONG:** We have ABS-1 and  
7 ABS-2.

8 **CHAIRMAN T. WHEELER:** As I understand it, 1  
9 is in person, and the other one is by mail;  
10 correct?

11 **MS. P. POTESTA:** Correct.

12 **MR. B. KING:** Mr. Chairman, the ABS-1 have  
13 all the options available in person or by mail.  
14 The ABS-2 is --

15 **CHAIRMAN T. WHEELER:** Is only by mail?

16 **MR. B. KING:** Is only by mail. It's used a  
17 lot by political parties or campaign members.

18 **VICE CHAIR A. LONG:** Are we going to talk  
19 about all of the forms, the CFA?

20 **CHAIRMAN T. WHEELER:** Absolutely. Brad, do  
21 you just want to go through them?

22 **MR. B. KING:** Sure. The campaign finance  
23 forms are amended to give an updated e-mail  
24 address for the commission and also to correct a  
25 typo with regard to the Federal Election



1 Commission. That's CFA 1, 2 and 3, the  
2 statements of organizations for different types  
3 of committees.

4 **CHAIRMAN T. WHEELER:** So the changes there  
5 are just an e-mail address and the type of  
6 committee?

7 **MR. B. KING:** Yes, that's correct, and then  
8 the candidate forms are for the primary. The  
9 CAN-2, the Declaration of Candidacy, the CAN-9,  
10 the Legal Notice, is filed by the candidates for  
11 primary elections, and CAN-10, the Primary  
12 Election Candidate Withdrawal.

13 On each of those, the dates have been  
14 updated to 2010, or in the case of the legal  
15 notice, it's been made generic so we won't have  
16 to come back and ask for a change in that form  
17 in years, and that's it, Mr. Chairman.

18 **CHAIRMAN T. WHEELER:** And these  
19 declarations, that applies to both state and  
20 federal candidates?

21 **MR. B. KING:** Yes, that's correct.

22 **VICE CHAIR A. LONG:** Motion to approve.

23 **CHAIRMAN T. WHEELER:** I've got a motion to  
24 approve, any seconds?

25 **COMMISSIONER D. DUMEZICH:** Second.

1           **CHAIRMAN T. WHEELER:** Motion's been made  
2 and seconded, any further discussion?

3           *(No response.)*

4           **CHAIRMAN T. WHEELER:** Hearing none, all in  
5 favor, signify by saying aye?

6           **THE COMMISSIONERS:** Aye.

7           **CHAIRMAN T. WHEELER:** Those opposed, same  
8 sign?

9           *(No response.)*

10          **CHAIRMAN T. WHEELER:** Commissioner Riordan,  
11 did you...

12          **VICE CHAIR A. LONG:** She voted.

13          **COMMISSIONER S. RIORDAN:** Yes,  
14 Mr. Chairman.

15          **CHAIRMAN T. WHEELER:** Motion passes  
16 unanimously. Order No. 2009-311 has been  
17 approved. We now have Ratification of Campaign  
18 Finance Settlement. I guess.

19          **MS. M. THOMPSON:** Yes, Mr. Chairman and  
20 Members of the Commission, behind the form  
21 there's one settlement agreement that we have to  
22 ratify, that has agreed to pay the settlement  
23 and waive the hearing.

24          **CHAIRMAN T. WHEELER:** Any questions  
25 regarding the settlement agreement?

1           *(No response.)*

2           **CHAIRMAN T. WHEELER:** All in favor of  
3 ratifying the campaign finance settlement  
4 agreement for Richard Wood for State  
5 Superintendent, signify by saying aye?

6           **THE COMMISSIONERS:** Aye.

7           **CHAIRMAN T. WHEELER:** Those opposed, same  
8 sign?

9           *(No response.)*

10          **CHAIRMAN T. WHEELER:** Motion carries. It  
11 is approved. No. 5 on the agenda is Voting  
12 System Certification Applications, which I  
13 assume that most of the people are here for. As  
14 I understand it, the way we've got this set up  
15 is Ball State is going to make a brief  
16 presentation as to their oversight  
17 responsibility. This is a new responsibility  
18 that Ball State has undertaken for the  
19 Commission, and Ray, if you're ready to go,  
20 introduce your people, and give us an idea of  
21 how well you guys are doing?

22          **MR. R. SCHEELE:** Yes. Thank you, Mr.  
23 Chairman. I'm Ray Scheele from Ball State  
24 University and the Voting Center for Public  
25 Affairs, which I co-direct. I'd like to

1       introduce as well my colleagues. This is Dr.  
2       Joe Losco, who is part of our project as well,  
3       who also serves as the chairperson of the  
4       Political Science Department at Ball State. I  
5       am also the project co-director of the Voting  
6       System Technical Oversight Program, along with  
7       Dr. Jay Bagga, who is a professor of computer  
8       science there at Ball State University.

9                You -- in the three-ring binder that you  
10       have in front of you, we've prepared an  
11       appendix. If you go to the appendix tab there,  
12       you will find several documents that -- the  
13       first one provides a chronology of the project,  
14       as well as a protocol that we developed in  
15       cooperation with the co-directors of the  
16       Election Division, Brad and Pam.

17               Second, are the procedures that we would  
18       follow with respect to the recertification and  
19       certification requests from the vendors of  
20       voting systems. Also, you will find in there  
21       different working papers that we developed,  
22       again, with a lot of cooperation from staff,  
23       checklists.

24               We are charged primarily with taking a look  
25       at all of the documentation that the vendors

1 have with respect to the operations and  
2 functions of their voting systems and also  
3 focusing primarily upon the Indiana statutory  
4 requirements; that is, the federal labs will  
5 test at federal standards, but we have no real  
6 checklists, no real follow through with respect  
7 to how the vendors were addressing some of these  
8 statutory requirements here in Indiana, so  
9 that's what we focused on directly.

10 There's other working papers in there -- we  
11 also have other working papers, that if there's  
12 anything you would like to see -- we didn't want  
13 to put everything here in the binders, but we  
14 have spreadsheets that categorized all of these  
15 checklists, and we can certainly make any of  
16 those working papers available to you as well.

17 We also have a log that we haven't shared  
18 in your packet of all of the vendor  
19 communications that we have had through time --  
20 e-mails, as well as telephone conversations.

21 **CHAIRMAN T. WHEELER:** So you kept track of  
22 all that?

23 **MR. R. SCHEELE:** Correct.

24 **CHAIRMAN T. WHEELER:** Not just certified  
25 mail, but every communication that you've had

1 with the vendors?

2 **MR. R. SCHEELE:** Correct. So with that, we  
3 will leave for your nighttime reading the  
4 appendices, but if you have any questions at any  
5 time, feel free to contact any of the three of  
6 us.

7 **CHAIRMAN T. WHEELER:** Actually, I've  
8 skimmed the appendices. I want to talk a little  
9 about some of the information that's in the  
10 appendices because --

11 **MR. R. SCHEELE:** Sure.

12 **CHAIRMAN T. WHEELER:** -- I think it's  
13 relevant to what we're going to do in a minute.  
14 No. 1, just as a general matter, as I understand  
15 it, Ball State has agreed to step in through the  
16 VSTOP Program to handle some of the stuff that  
17 this Commission and the Division was handling  
18 before, in terms of reviewing the applications,  
19 and in particular, getting a demonstration of  
20 the machinery.

21 We used to have -- the vendors would come  
22 in and actually demonstrate the machines to us,  
23 which frankly -- well, we all tend to be very  
24 perfunctory, and we certainly appreciate Ball  
25 State stepping in and doing it. I assume yours

1 is not a perfunctory review. When you have a  
2 demonstration of this, you go through and --  
3 when you do a demonstration, what are you  
4 looking for -- I know you schedule them for  
5 multiple days, I think 14 to 16 to bring them in  
6 and demonstrate?

7 **MR. R. SCHEELE:** Very good. Let me quickly  
8 summarize the way we did this. First off, we  
9 contacted all of the vendors and we gave them  
10 some dates earlier this month in September to  
11 come in with their equipment that they had  
12 applied for recertification or new  
13 certifications.

14 **CHAIRMAN T. WHEELER:** Ray, can I back you  
15 up just a little bit? As I understand it, in  
16 your appendices, one of the things you say --  
17 that early in the process when you became the  
18 vendor to do this, you began a notification  
19 process for all of the election vendors to tell  
20 them that you have -- that you are now the  
21 person to do this and then you gave them an idea  
22 what the deadlines were and what the process  
23 would be; correct?

24 **MR. R. SCHEELE:** Correct.

25 **CHAIRMAN T. WHEELER:** And you documented

1 all of that, in terms of certified letters and  
2 information?

3 **MR. R. SCHEELE:** Correct, we have a log of  
4 all of the vendor communications.

5 **CHAIRMAN T. WHEELER:** So there wouldn't be  
6 an excuse for the vendors to say we didn't  
7 understand, we didn't know, etc.?

8 **MR. R. SCHEELE:** Correct.

9 **CHAIRMAN T. WHEELER:** And you indicated  
10 here that you advised them that the deadline was  
11 October 1st for recertification for election  
12 systems; is that correct?

13 **MR. R. SCHEELE:** Correct.

14 **CHAIRMAN T. WHEELER:** And you sent them  
15 certified mail, and you discuss in here, and I  
16 don't know if you're going to go through that  
17 right now in your appendices, your efforts to  
18 contact and deal with the various vendors.

19 **MR. R. SCHEELE:** Correct. There is a copy  
20 of the vendor correspondence that we sent out  
21 initially notifying them of this process,  
22 correct.

23 **CHAIRMAN T. WHEELER:** And then if you can  
24 go through -- I just skimmed through the  
25 appendices, go through that process then -- you



1 advised them, and then what did you do?

2 **MR. R. SCHEELE:** Correct. We advised them  
3 of their applications that we were now taking a  
4 look at the documentation records that the  
5 vendors had of their voting systems, and again,  
6 with the focus on the Indiana standards, but we  
7 also wanted to take a look at all of the lab  
8 results that they had from the federal labs,  
9 because often, of course, there would be some  
10 overlap.

11 What we then did is we got back to the  
12 vendors -- if they didn't reply promptly, we got  
13 back with them and reminded them again. Brad  
14 and Pam, when they received communications from  
15 the vendors, they referred the vendors to us as  
16 well. Consequently, we ended up with two  
17 vendors bringing their equipment.

18 **CHAIRMAN T. WHEELER:** Let me back you up.  
19 The original notification went to four vendors,  
20 as I understand it, from your appendices?

21 **MR. R. SCHEELE:** Correct.

22 **CHAIRMAN T. WHEELER:** Hart InterCivic,  
23 ES&S, MicroVote and Premier?

24 **MR. R. SCHEELE:** Correct.

25 **CHAIRMAN T. WHEELER:** And you requested a

1 series of documentation, requested documentation  
2 from them?

3 MR. R. SCHEELE: Correct.

4 CHAIRMAN T. WHEELER: As I understand your  
5 note, you scheduled them -- to quote your  
6 appendices, scheduling an appointment to  
7 demonstrate their respective voting systems  
8 during the period September 14-16 on the campus  
9 of Ball State.

10 MR. R. SCHEELE: Correct.

11 CHAIRMAN T. WHEELER: So you gave them  
12 notice that that was the time you were going to  
13 have these and they should bring their equipment  
14 in and do that?

15 MR. R. SCHEELE: Correct.

16 CHAIRMAN T. WHEELER: And you talked about  
17 how they would be tested, and you gave them a  
18 sample ballot, which I think is at the end.

19 MR. R. SCHEELE: It's at the end.

20 CHAIRMAN T. WHEELER: It's a Tippecanoe  
21 ballot?

22 MR. R. SCHEELE: Correct.

23 CHAIRMAN T. WHEELER: And then as I  
24 understand it, two responded and two didn't?

25 MR. R. SCHEELE: Correct. Two said they

1 could meet those deadlines and two other vendors  
2 said that they -- it was impossible to meet the  
3 September deadlines.

4 **CHAIRMAN T. WHEELER:** Who said they could?

5 **MR. R. SCHEELE:** The two that said that  
6 they could not was Premier and ES&S. We have  
7 tentative dates trying to accommodate them for  
8 October but...

9 **CHAIRMAN T. WHEELER:** That's past the  
10 October 1st deadline?

11 **MR. R. SCHEELE:** That's correct, that's  
12 past the October 1st deadline. MicroVote and  
13 Hart InterCivic did come to the September dates  
14 with their equipment and set it up, and we saw  
15 the demonstration. We self-test. We went  
16 through sample ballots. We went through  
17 disability checklists, so we covered it.

18 **CHAIRMAN T. WHEELER:** And you feel that's a  
19 pretty necessary process?

20 **MR. R. SCHEELE:** Yes.

21 **CHAIRMAN T. WHEELER:** It's been the statute  
22 that they should demonstrate to us, you guys are  
23 doing that, and two of the vendors said  
24 basically we don't have the time to do it?

25 **VICE CHAIR A. LONG:** How do we advocate our

1 duty? Maybe I've missed the boat here. It  
2 seems to me from reading the contract that this  
3 entire operation in the State House is out of  
4 the loop down, the State Office Building.

5 The contract notices for the State all go  
6 to the Secretary of State, the grantee, the  
7 contractor, Ball State -- I didn't know anything  
8 about this process until it was already signed,  
9 and I certainly have never voted to assign my  
10 duties as a commissioner to Ball State.

11 As long as I've known Ray Scheele -- I  
12 certainly don't have anything against him, but  
13 the last I saw, the governor signed a  
14 certificate saying I was a commissioner, not  
15 Ball State University.

16 And I mean, I don't know, what's the  
17 Division doing now? I don't understand. It was  
18 my understanding from when I saw this they're  
19 doing a technical analysis to see if the  
20 equipment meets the State's standards.

21 I think the -- further from that, the rest  
22 of that falls upon us as commissioners. I have  
23 serious concern that we would -- I mean, I'd  
24 hate to get up at 4:00 in the morning to come up  
25 here and say I vote to approve what these folks

1 have already done, which I think is my job, and  
2 I won't do that.

3 I just -- maybe I'm just in the back woods  
4 here, but I got this when I walked in here  
5 today. It's the first I've seen it. I did get  
6 a copy of the statute and the contract that --  
7 when I found out about it, I didn't know what it  
8 was for.

9 I wasn't aware of the statute that was  
10 enacted or who authorized it, but I don't see  
11 why the Election Division is out of the loop and  
12 I don't intend to see as a commissioner that  
13 we're out of the loop, but I'm only one vote.

14 It seems to me like you're making the  
15 report for him -- I know that's probably to  
16 expedite us through that, but the net result is  
17 it seems like they get the application, they do  
18 all the communications, they do all the  
19 approvals, and we come down here and it's a  
20 rubber stamp, and that's a waste of my time.  
21 You don't need me or this entire commission to  
22 do that.

23 When the legislature sends that duty over  
24 to Ball State or the Secretary of State, then  
25 fine. I don't see it as -- our folks, I don't

1 see anything, that our people have been involved  
2 in any of these applications that I could ask  
3 and turn to them and say what have you found,  
4 what review have you had of this application? I  
5 sort of like the idea that the Division reports  
6 to us. That's all I've got.

7 **CHAIRMAN T. WHEELER:** If you could,  
8 continue through the process -- as I understand  
9 it right now, I just want to talk about the  
10 process, not the reports.

11 **MR. R. SCHEELE:** Sure, okay. Let me add  
12 one thing, the application, of course, were  
13 filed in the Division. We took copies of those,  
14 the Division still has the original  
15 applications, and we copied all of the CDs and  
16 all the hard paper copies and we took those to  
17 our voting center and that's the, quote, record  
18 that we're working with. So the originals are  
19 still here where they belong. We then created  
20 in cooperation with the staff the checklists --

21 **COMMISSIONER S. RIORDAN:** The Division  
22 staff?

23 **MR. R. SCHEELE:** Correct. Pam and Brad  
24 both reviewed the checklists to make sure that  
25 we hadn't missed anything and made some

1 suggestions which we incorporated.

2 VICE CHAIR A. LONG: Did the lawyers review  
3 it and report on it?

4 MR. R. SCHEELE: Excuse me?

5 VICE CHAIR A. LONG: Did the Division  
6 lawyers report it -- the review and participate  
7 in it?

8 MR. R. SCHEELE: We worked some with Dale.

9 VICE CHAIR A. LONG: Let me introduce you  
10 to Leslie Barnes. She's the Democratic attorney  
11 for the Division. Maybe you'd like to meet her  
12 process.

13 MR. R. SCHEELE: Yes, we've met. At any  
14 rate, we have tried to stay in the loop with the  
15 staff. If we have fumbled the ball there at  
16 all, then we'll certainly do everything we can  
17 to correct it.

18 CHAIRMAN T. WHEELER: You had the testing  
19 on the 15th and the 16th, two of them brought --  
20 MicroVote and Hart InterCivic came to the  
21 demonstrations?

22 MR. R. SCHEELE: Right.

23 CHAIRMAN T. WHEELER: The other two did not  
24 do that; correct?

25 MR. R. SCHEELE: Correct.

1           **CHAIRMAN T. WHEELER:** Now from a process  
2 standpoint, either Brad or Pam, are you going to  
3 present the application -- what I'd like to do  
4 is do them one at a time?

5           **MR. B. KING:** Mr. Chairman, I was prepared  
6 to present the application by reading it into  
7 the record as we have done at previous meetings  
8 and then to yield to Ball State with regard to  
9 the information they prepared to the report.

10          **CHAIRMAN T. WHEELER:** The first one I have  
11 on the agenda is MicroVote Infinity Direct  
12 Record Electronic Voting System, Hardware:  
13 VP-1, Revision C; Firmware 3.10; Software  
14 Infinity Management System 3.1.1.0, and this is,  
15 as I understand it, to be a recertification  
16 application?

17          **MR. B. KING:** Yes, Mr. Chairman, that is  
18 correct. The MicroVote system with the  
19 hardware, firmware, and software versions that  
20 you read in the record is a system that was  
21 previously certified by the Commission pursuant  
22 to state law and that certification expires  
23 October 1, 2009. MicroVote is seeking a  
24 recertification of its existing direct record  
25 electronic voting system.



1           **CHAIRMAN T. WHEELER:** Then as I understand  
2 it, we have a report from Ball State on  
3 MicroVote application; is that correct?

4           **MR. R. SCHEELE:** Correct.

5           **MR. B. KING:** Correct.

6           **VICE CHAIR A. LONG:** Am I in the wrong  
7 book?

8           **CHAIRMAN T. WHEELER:** You're in the wrong  
9 book.

10          **VICE CHAIR A. LONG:** I've got to get to  
11 another book.

12          **CHAIRMAN T. WHEELER:** Page 2.

13          **VICE CHAIR A. LONG:** Is this the Infinity,  
14 the first one here?

15          **MR. R. SCHEELE:** Yes. On the agenda here  
16 they are in the order of the applications, so  
17 this was the first application received by  
18 MicroVote for renewal of their previously  
19 improved system, the Infinity VP-1.

20                 We met with representatives from MicroVote  
21 on September 15th to review the independent lab  
22 reports as they pertain to this application, and  
23 on that same date our team contacted hands-on  
24 testing with the MicroVote Infinity DRE.

25                 The application form specifies the voting

1 system to be considered for recertification, and  
2 it's the MicroVote Infinity VP-1 Revision C  
3 Firmware 3.10, and the Software Infinity  
4 Management System 3.3.3.0.

5 No independent laboratory results were made  
6 available for this voting system with these  
7 particular components. An independent  
8 laboratory report pertaining to the Infinity  
9 3.07 voting system was made available to us.

10 Our team was informed that the only  
11 difference between these two versions was the  
12 correction of software pertaining to the  
13 straight party ballot option specified in the  
14 Indiana Code.

15 Copies of letters were presented to Cyber  
16 labs, to the IEC attesting that changes in the  
17 original voting system had been tested and found  
18 to comply with the 2002 federal standards.

19 However, the actual test results and the  
20 lab report were not made available. The  
21 disability features were also tested and found  
22 to comply with all applicable standards,  
23 statutory provisions and standards.

24 Because the lab reports made available to  
25 us pertained to system 3.07, instead of system

1 3.10, which is the system under consideration  
2 for recertification, it's not possible at this  
3 time to find that the 3.10 system meets all  
4 statutory requirements.

5 **CHAIRMAN T. WHEELER:** So they came in, they  
6 demonstrated, and the basic problem with them is  
7 they didn't provide Cyber certification on 3.10?

8 **MR. R. SCHEELE:** Correct.

9 **CHAIRMAN T. WHEELER:** And what they told  
10 you at least was basically it was just a couple  
11 of software changes?

12 **MR. R. SCHEELE:** Correct. They -- they  
13 explained to us in some detail that Cyber was  
14 discredited as a federal testing lab, and we saw  
15 a letter from a person that had moved from Cyber  
16 to another testing lab that said yes, we tested  
17 it, but there was nothing in that letter that  
18 said -- that he could testify to as having met  
19 the standards. So really, it's a documentation  
20 problem here.

21 They said they would be working to try to  
22 get that Cyber report to the Commission and to  
23 the Division, but until we receive it and are  
24 able to assess it and evaluate it, we cannot say  
25 that it meets the statutory standard.

1           **CHAIRMAN T. WHEELER:** And Brad or Pam,  
2 someone correct me if I'm wrong, didn't this  
3 happen during the last recertification of  
4 MicroVote and they promised us the same  
5 documentation and we still haven't got it?

6           **MR. B. KING:** Mr. Chairman, my recollection  
7 is that the Commission in the past has approved  
8 an application for certification without a full  
9 report being present on the condition that it be  
10 furnished by the vendor, and in this case, I  
11 don't believe you've been furnished with the  
12 report for 3.10 by Cyber.

13           **VICE CHAIR A. LONG:** It seems to me they  
14 decided to come forward with their application  
15 before they were ready. I think the way we get  
16 around this is we don't have to cause everybody  
17 to have a lot to do, we just deny it, would be  
18 my opinion, and then let file another  
19 application and pay the filing fee and then  
20 maybe they'll be more prepared the next time,  
21 and that would be a message to them in the  
22 future.

23           **COMMISSIONER S. RIORDAN:** I have just a  
24 couple of questions to kind of walk through this  
25 basically. When we talk about the Infinity VP-1

1 DRE, what is that machine like, tell me what  
2 you're talking about here?

3 MR. R. SCHEELE: The DRE machines are the  
4 touch screen, the direct recording equipment,  
5 and Jay Bagga, my co-director, can explain a lot  
6 more of the technical side of the voting  
7 equipment. So Jay, do you want to explain a  
8 little more?

9 COMMISSIONER S. RIORDAN: I understand -- I  
10 understand that. I just wanted everybody who  
11 was here on the record to know what we're  
12 talking about.

13 MR. R. SCHEELE: Oh, sure.

14 COMMISSIONER S. RIORDAN: So then my -- my  
15 next question is: The correction of software  
16 pertaining to the straight party ballot option,  
17 do you know what the problem was that needed to  
18 be corrected?

19 MR. R. SCHEELE: Yes. As I understand  
20 it -- of course, as you know, the Indiana  
21 statutes provide that you can vote straight  
22 ticket Republican, Democrat, Libertarian or  
23 whatever party happens to be on the ticket, and  
24 then that casts the ballot for every one of  
25 those party members on down the ballot.

1           There's only five states with that option,  
2 called a straight ballot, a straight ticket  
3 ballot option, and so a lot of the vendors  
4 didn't program their machines for that because  
5 most of the states don't have that option, and  
6 so MicroVote was one of those, as they explained  
7 to us.

8           Then when they saw the Indiana statute  
9 requiring that option, they had to go back and  
10 try to correct it, okay, in their software.

11           **COMMISSIONER S. RIORDAN:** Pardon me, do we  
12 have any reason to believe that the state party,  
13 or the straight party ticket option was not  
14 provided by MicroVote in the past?

15           **MR. R. SCHEELE:** No, they said that it was  
16 corrected; is that correct -- it was corrected,  
17 but that is part of the problem, is that they --  
18 the old Cyber or the old 3.07 --

19           **CHAIRMAN T. WHEELER:** Can I interrupt just  
20 a minute?

21           **MR. R. SCHEELE:** Sure.

22           **CHAIRMAN T. WHEELER:** This is the core of  
23 the administration litigation, as you know.  
24 They went in last time, didn't ask for any  
25 permission, simply made the changes to allow the

1 straight ticket balloting, and of course, did  
2 not get the various approvals they needed to get  
3 and just did it, which is the core of the  
4 Secretary of State and actually this  
5 Commission's involvement.

6 And the disturbing part now, that I find  
7 about this is two years later after all that  
8 litigation and everything else, the Commission  
9 has sanctioned MicroVote, they still can't us a  
10 report and that's -- sorry, I didn't mean to  
11 interrupt.

12 **COMMISSIONER S. RIORDAN:** Thank you for  
13 your responses. My only point is this is a  
14 pretty big deal. I mean, it's compliance with  
15 Indiana law to give voters the right to vote a  
16 straight party ticket and they need to get it  
17 straight so I am not going to approve this  
18 application.

19 **VICE CHAIR A. LONG:** I think we need public  
20 comment.

21 **CHAIRMAN T. WHEELER:** We do. Is -- are you  
22 done?

23 **MR. R. SCHEELE:** Yes.

24 **CHAIRMAN T. WHEELER:** Is there anybody who  
25 would like to comment on the MicroVote

1 application?

2 (No response.)

3 **VICE CHAIR A. LONG:** You mean they're not  
4 here.

5 **CHAIRMAN T. WHEELER:** Apparently,  
6 MicroVote -- there's nobody from MicroVote here  
7 at all?

8 (No response.)

9 **VICE CHAIR A. LONG:** I move we disallow the  
10 application for renewal.

11 **COMMISSIONER D. DUMEZICH:** Second it.

12 **CHAIRMAN T. WHEELER:** The motion's been  
13 made and seconded to deny the application of  
14 MicroVote's renewal of previously approved  
15 system, the Infinity VP-1. Any further  
16 discussion?

17 (No response.)

18 **CHAIRMAN T. WHEELER:** Hearing none, all in  
19 favor, signify by saying aye?

20 **THE COMMISSIONERS:** Aye.

21 **CHAIRMAN T. WHEELER:** Those opposed, same  
22 sign?

23 (No response.)

24 **CHAIRMAN T. WHEELER:** Motion carries. Let  
25 me note just for the record that the denial of



1 the renewal does not preclude MicroVote, the  
2 counties from using the MicroVote machines -- as  
3 an example, I believe Lake County is using the  
4 MicroVote machines.

5 **MS. P. POTESA:** Lake County is using...

6 **CHAIRMAN T. WHEELER:** From using the 3.07  
7 system, just not the software upgrade, the 3.10,  
8 which as you have indicated, was a fairly minor,  
9 dealing with a straight party ballot; correct?

10 **MR. R. SCHEELE:** Correct.

11 **CHAIRMAN T. WHEELER:** And as I understand  
12 it, to the extent Lake County may be using it in  
13 November, I believe the only thing on the ballot  
14 for Lake County, if things continue, is the  
15 region transportation district, although  
16 apparently, they don't have the money to run  
17 that anyway.

18 **VICE CHAIR A. LONG:** They're not going to  
19 have the -- that's what I understood them to  
20 say.

21 **CHAIRMAN T. WHEELER:** They can use these  
22 machines, not just the upgrade, so we're not  
23 precluding Lake County from running the election  
24 as they had planned, if the commissioners find  
25 some money for them to do that. All right, that

1 is the MicroVote application. Next on my agenda  
2 is the Hart InterCivic DRE system optical scan  
3 ballot card voting system. Who is doing that  
4 one?

5 **MR. B. KING:** Mr. Chairman, I'm going to do  
6 it. Hart InterCivic is an application for  
7 renewal for a combination of different types of  
8 voting systems. As you note, there is the  
9 direct record electronic, which is the touch  
10 screen, the optical scan ballot card voting  
11 system, and an optical scan central count unit,  
12 meaning where the optical scan ballots are  
13 tabulated upon location, typically, in the  
14 county courthouse.

15 There are various hardware, firmware and  
16 software that are listed on the agenda. This  
17 system was previously approved by the Commission  
18 for certification. It expires on October 1,  
19 2009.

20 **MR. R. SCHEELE:** As the document is clear,  
21 we reviewed the documents provided by the  
22 vendor, Hart InterCivic, and we evaluated the  
23 results of the self-tests and the voting system  
24 demonstrations at the voting center at Ball  
25 State.

1           We found after a thorough review of all of  
2           the federal lab reports, as well as the  
3           demonstration and the checklists of the Indiana  
4           statutory requirements, that the voting system  
5           referenced here meets the requirements for use  
6           in the State of Indiana.

7           **CHAIRMAN T. WHEELER:** But MicroVote and  
8           Hart came in and did their testing?

9           **MR. R. SCHEELE:** Correct.

10          **CHAIRMAN T. WHEELER:** Comments from the  
11          commissioners, questions?

12          **VICE CHAIR A. LONG:** Have you, Leslie,  
13          reviewed their application from a legal  
14          significance?

15          **MS. L. BARNES:** No, I have not seen or  
16          reviewed the application, and -- and one point,  
17          not only for MicroVote but Hart InterCivic, the  
18          renewals are required by state law. Before the  
19          commission can grant a renewal, the vendor, Ball  
20          State, must indicate that the hardware, firmware  
21          and software are all identical as to what was  
22          previously approved by the Commission,  
23          otherwise, the -- there's a full-blown  
24          investigation and certification that would need  
25          to take place.

1           And so I have not reviewed the application  
2           for legal compliance with state statute and I  
3           also would encourage the Commission to ask the  
4           vendor if the vendor can verify that the  
5           previously certified system is exactly identical  
6           to the system that Hart InterCivic is asking to  
7           be renewed and certified.

8           **CHAIRMAN T. WHEELER:** And when you're using  
9           those terms...

10          **VICE CHAIR A. LONG:** By vendor, that  
11          means...

12          **MS. L. BARNES:** Oh, I'm sorry, Ball State.

13          **VICE CHAIR A. LONG:** I don't think we  
14          should call Ball State the vendor.

15          **MS. L. BARNES:** No, sorry.

16          **MR. R. SCHEELE:** At least...

17          **VICE CHAIR A. LONG:** The record would be in  
18          a terrible state.

19          **MS. L. BARNES:** When I said that...

20          **VICE CHAIR A. LONG:** Can you certify that  
21          to us?

22          **MR. R. SCHEELE:** Yes. I quickly explained  
23          the process by which we did that. When they  
24          would set up their voting systems for our  
25          demonstration, okay, we had the federal lab

1 reports, okay, that came -- that they had  
2 supplied to the Commission, we had copied, and  
3 part of the diagnostic tests is that we would  
4 certify on that machine that we were looking at  
5 the exact same machine that had been previously  
6 certified, okay, down to even if there were --  
7 if we had any records of even serial numbers on  
8 them, which we usually didn't, but we had the  
9 model number, and we were very confident that  
10 the machines we were looking at and going to  
11 test were the exact same machines.

12 **VICE CHAIR A. LONG:** How would we verify  
13 that, Leslie, if Ball State wasn't in the loop?

14 **MS. L. BARNES:** From my understanding, the  
15 vendor would submit photographs, diagrams, the  
16 software program, and I guess we would compare  
17 it to their earlier certification from four  
18 years ago. I was not involved four years ago  
19 nor have I seen the application or the  
20 documentation that the vendor has submitted  
21 currently.

22 **COMMISSIONER S. RIORDAN:** And again --

23 **COMMISSIONER D. DUMEZICH:** Would you repeat  
24 that again, I'm sorry?

25 **MS. L. BARNES:** The state law requires a

1 voting system vendor to supply diagrams,  
2 photographs, an explanation of how the system  
3 works, and my understanding would be we would  
4 compare that the current application contains  
5 the same documentation as their prior  
6 application and documentation did.

7 **CHAIRMAN T. WHEELER:** And as I understand  
8 what you said, part of that, when you were first  
9 answering the first part of Tony's question, is  
10 the reason you haven't gone back and reviewed  
11 the initial application is because there's no  
12 reason to review the initial application if  
13 there's a certification that it's the same  
14 equipment being recertified, correct?

15 **MS. L. BARNES:** I think there would be a  
16 need to review the actual application and the  
17 supporting documentation to make sure that the  
18 two are identical, and that is not what -- I  
19 have not had the opportunity or been asked to  
20 review the current application to see whether it  
21 complies with State standards for certification.

22 **COMMISSIONER D. DUMEZICH:** Mr. King, was  
23 that information available to the Democrat  
24 commissioners and their staff?

25 **MR. B. KING:** Mr. Commissioner, the

1 original applications with the agreement of  
2 Democratic co-director were provided to Ball  
3 State, an opportunity was given and has been  
4 given for anyone to review them.

5 COMMISSIONER D. DUMEZICH: Thank you.

6 COMMISSIONER S. RIORDAN: I have a  
7 question, just again for clarity sake, how  
8 many -- do we know how many counties are  
9 serviced by Hart InterCivic?

10 MR. R. SCHEELE: One.

11 COMMISSIONER S. RIORDAN: Just one.

12 CHAIRMAN T. WHEELER: Which county?

13 MR. R. SCHEELE: Cass.

14 COMMISSIONER S. RIORDAN: And what we're  
15 talking about here is the whole package, the  
16 machine itself, the software, and Hart  
17 InterCivic puts together the whole bundle and  
18 that's what that county uses?

19 MR. R. SCHEELE: Correct.

20 COMMISSIONER S. RIORDAN: Okay.

21 CHAIRMAN T. WHEELER: And as I understand  
22 it, Cass is one of the former VTI counties that  
23 switched to Hart InterCivic. Any other  
24 questions from the commissioners?

25 (No response.)

1           **CHAIRMAN T. WHEELER:** All right. Is there  
2 someone from Hart InterCivic or anybody who  
3 wants to make public comment on the Hart  
4 InterCivic recertification application?

5           *(No response.)*

6           **CHAIRMAN T. WHEELER:** Hearing none, do I  
7 have a motion?

8           **COMMISSIONER D. DUMEZICH:** I make a motion  
9 to approve the Hart InterCivic application for  
10 voting system certification, Model No. 6.2.1.

11           **CHAIRMAN T. WHEELER:** Do I have a second --  
12 the Chair will second a motion for the purposes  
13 of placing it on the table. Any discussion --  
14 the motion's been made and seconded, any  
15 discussion?

16           **VICE CHAIR A. LONG:** My discussion is I'm  
17 not comfortable with the procedural system put  
18 in place by Ball State by circumventing, not  
19 utilizing, or whatever the right word is, the  
20 Democrat side of the equation and setting new  
21 procedures.

22           This is a bipartisan Commission, and I  
23 don't think it's been by standard or  
24 bipartisanship. Unless -- until I'm comfortable  
25 that the procedures that are utilized meets the



1           mustard of both sides of the equation, I'm not  
2           inclined to vote for a recommendation of Ball  
3           State.

4           That doesn't mean I'm precluding voting for  
5           it at a later date, but given the past here  
6           today, I would probably move to table it until  
7           that issue can be resolved, and they don't have  
8           to review anything, hopefully.

9           **COMMISSIONER S. RIORDAN:** My point for  
10          discussion is I don't have any reason to doubt  
11          the quality and the depth of the work done by  
12          Ball State -- I don't doubt that at all. I  
13          think it's a good idea. I've always worried if  
14          I had to be the person to go over all these  
15          certifications as a member of the staff, I  
16          wouldn't do a very good job because I don't know  
17          all those things, but the idea of delegating to  
18          people who are experts, I like that.

19          I have to agree with Commissioner Long that  
20          we were kind of in the dark about that, and as  
21          long as we can be assured that all aspects of  
22          this certification process are touched by both  
23          parties, I'm okay with it, and I would vote in  
24          favor of it, but I'm not going to vote in favor  
25          of this application for those reasons because I

1 don't know that both parties have had an  
2 opportunity to sign off on all of these  
3 critically important things.

4 And I've said this before about voting  
5 system certification -- I mean, we're talking  
6 about stuff that happens inside a machine that  
7 is basically magic for those of us who are not  
8 so schooled, but it is the most important thing  
9 that it's done correctly, because the right to  
10 vote means everything, and we have to be sure  
11 that it's done perfectly, and we have to rely on  
12 people like you to do that, but I want to make  
13 sure that as a Democrat and as a representative  
14 of my party and my voters that everybody, both  
15 sides get a chance to be in on that approval  
16 process.

17 **VICE CHAIR A. LONG:** I don't -- I'm excited  
18 by Ball State being in here, too. I've known  
19 Ray Scheele for many many years, have great  
20 respect for him and consider him a friend, but  
21 at the same token, I think that's just where we  
22 are. I mean, I've been beating on this drum  
23 that we needed professional help on our side and  
24 I'm glad -- I'm really glad it's here, but I  
25 think we're almost to the point of being perfect

1 in my mind but not quite.

2 **CHAIRMAN T. WHEELER:** Far from being  
3 perfect, I mean, the -- I share the two  
4 commissioners' desire for bipartisanship. It  
5 was my understanding and has been my  
6 understanding that the Democratic side of the  
7 Division has been fully involved in the process.  
8 Perhaps I'm mistaken.

9 I'm going -- I'm going to turn to Brad, the  
10 Republican co-director to clarify that, if  
11 there's been a point in the process where the  
12 Democratic section of the Division has not been  
13 in the process, I think that's an area of  
14 concern, but I don't understand that to be the  
15 case.

16 **MR. B. KING:** Mr. Chairman, Members of the  
17 Commission, the contractual duty that Ball State  
18 has with regard to voting systems' certification  
19 is to accomplish this task, that is to provide  
20 the Commission with technical advice.

21 From the beginning of the process, when  
22 Ball State began this work, my counterpart, Pam  
23 Potesta, who serves as the Democratic  
24 co-director has been notified by e-mail. In  
25 cases where she's not been copied on e-mail, I

1 made a point of forwarding that to her so that  
2 she could involved.

3 I as a Republican co-director made a  
4 decision to delegate certain tasks to my  
5 co-general counsel, Dale Simmons, but I've not  
6 viewed his particular involvement as necessary  
7 for me to be able to endorse the recommendations  
8 that Ball State may have.

9 **MS. P. POTESA:** Commissioner?

10 **CHAIRMAN T. WHEELER:** Oh, please, I'm  
11 sorry. It's up to you how you want to speak. I  
12 don't think you have to turn them on and off.

13 **MS. P. POTESA:** I would just like to say  
14 that I agree with Brad, that I have been a part  
15 of every decision on down the line. We've met  
16 with Ray several times. I thought, as my  
17 position as co-director, in deciding to take on  
18 Ball State, I felt that was a wonderful  
19 decision.

20 I've admired the work that they have done.  
21 It's very technical, and as Sarah had mentioned,  
22 that is something that us as laypeople, if you  
23 want to call it that, would have difficulty  
24 testing to the degree that you did, and I  
25 thought the natural process then was for you to

1 submit your report, explain your testing, and  
2 present it to the commissioners for approval or  
3 disapproval, so if I've not done my job, then  
4 I've just now found that out.

5 **CHAIRMAN T. WHEELER:** I guess what I heard  
6 is I think -- I continue to believe, and as long  
7 as I'm Chair of this Commission, bipartisanship  
8 is -- one is it's necessary to operate because  
9 there's two on each side and so nothing's going  
10 to pass if we vote on party lines, No. 1.

11 No. 2, I think it's important, despite the  
12 partisan nature of what we all do in the real  
13 word within this Commission, we've been fairly  
14 bipartisan, and Tony and Sarah, if you want  
15 to -- if you want to take more time on these to  
16 make sure that the process -- you guys are  
17 comfortable with the process, I'm comfortable  
18 with that, because I want to make sure that that  
19 process works, that Pam's in the loop. I  
20 thought Pam was in the loop, and I think I heard  
21 from Pam that she's been in the loop?

22 **MS. P. POTESTA:** Correct.

23 **CHAIRMAN T. WHEELER:** So certainly, there's  
24 not been a deliberate attempt to not be in the  
25 loop. I'm certainly comfortable -- I don't

1 believe that Cass County has anything on anyway  
2 for this election cycle. I don't believe they  
3 have even a referendum or anything like that.

4 So perhaps to table -- I certainly -- well,  
5 it's not my motion, I'm sorry, but I believe  
6 Commissioner Dumezich will accept a friendly  
7 motion, a friendly amendment to table Hart  
8 InterCivic pending resolution of these issues so  
9 we can make sure that all the commissioners are  
10 comfortable with the process or something that's  
11 being reported to us -- certainly, me.

12 **COMMISSIONER D. DUMEZICH:** Agreed.

13 **VICE CHAIR A. LONG:** Yes, I would agree  
14 with that. We're going to convene again. I  
15 don't -- Ray, you and your staff, I'm not  
16 challenging or questioning the integrity of what  
17 you're doing.

18 **MR. R. SCHEELE:** I understand.

19 **VICE CHAIR A. LONG:** I just -- I want to be  
20 a little more comfortable from our side of the  
21 equation because I have -- enough said.

22 **CHAIRMAN T. WHEELER:** I will take  
23 Commissioner Long's comments as a friendly  
24 motion to amend the prior motion, to make --  
25 instead of approving the motion, to approve the

1 motion to table the Hart InterCivic application  
2 until the Commission's next meeting.

3 **VICE CHAIR A. LONG:** That's correct. I  
4 agree that's what I would like to see happen.

5 **CHAIRMAN T. WHEELER:** And I think with the  
6 request that the co-directors and co-counsel get  
7 together and make sure everybody's in the loop  
8 and there's full cooperation back and forth.  
9 You guys don't have to agree on anything, but at  
10 least everybody's clear on the process, at least  
11 from my standpoint; fair direction?

12 **VICE CHAIR A. LONG:** Fair.

13 **CHAIRMAN T. WHEELER:** All right. Motion --  
14 will you withdraw your prior motion?

15 **COMMISSIONER D. DUMEZICH:** I will.

16 **CHAIRMAN T. WHEELER:** And will you make a  
17 motion to table Hart InterCivic.

18 **VICE CHAIR A. LONG:** Didn't you do that  
19 already?

20 **CHAIRMAN T. WHEELER:** I was trying to  
21 figure that out procedurally. I thought...

22 **COMMISSIONER D. DUMEZICH:** Yeah, you  
23 already did.

24 **MS. P. POTESTA:** Two times.

25 **CHAIRMAN T. WHEELER:** But procedurally, the

1 motion's been withdrawn to approve, a new motion  
2 is on the table to table the Hart InterCivic  
3 applications until the Commission's next  
4 meeting; do I have a second on that motion?

5 COMMISSIONER D. DUMEZICH: Who made the  
6 motion?

7 VICE CHAIR A. LONG: You did.

8 COMMISSIONER D. DUMEZICH: I did.

9 VICE CHAIR A. LONG: I second it.

10 COMMISSIONER D. DUMEZICH: I guess I've got  
11 to vote for it now.

12 CHAIRMAN T. WHEELER: All those in favor,  
13 signify by saying aye?

14 THE COMMISSIONERS: Aye.

15 CHAIRMAN T. WHEELER: Those opposed, same  
16 sign?

17 *(No response.)*

18 VICE CHAIR A. LONG: Mr. Chairman, thank  
19 you for your leadership.

20 CHAIRMAN T. WHEELER: The Hart InterCivic  
21 motion has been tabled. Next on there is the  
22 Election Systems & Software Unity 3.0.1.0 as  
23 amended.

24 VICE CHAIR A. LONG: I don't think there's  
25 anything before us. Until they make a



1 recommendation, I don't think there's anything  
2 before us.

3 **COMMISSIONER D. DUMEZICH:** That's what I  
4 was thinking.

5 **VICE CHAIR A. LONG:** That's sort of what I  
6 feel -- I mean, maybe the...

7 **CHAIRMAN T. WHEELER:** And the point is you  
8 can't make a recommendation; correct?

9 **VICE CHAIR A. LONG:** They're just reporting  
10 that they've got an application and they're  
11 still in the process on it.

12 **MR. R. SCHEELE:** And they could not meet  
13 the September meeting times, so consequently,  
14 they're tentatively scheduled for October, but  
15 that's not been totally confirmed. Part of the  
16 complication is merging with ES&S.

17 **COMMISSIONER S. RIORDAN:** I have a  
18 question: How many counties use this system?

19 **MR. R. SCHEELE:** You know, I can't answer  
20 that precisely right now. We have a list.

21 **COMMISSIONER S. RIORDAN:** Any big ones who  
22 may have a referendum in November?

23 **MR. R. SCHEELE:** Yes.

24 **COMMISSIONER S. RIORDAN:** And you use ES&S,  
25 and you have a referendum in November?

1           **VICE CHAIR A. LONG:** Which county?

2           **UNIDENTIFIED VOICE:** We're not using them  
3 during the special election.

4           **COMMISSIONER S. RIORDAN:** I'm sorry?

5           **UNIDENTIFIED VOICE:** We are not using the  
6 system.

7           **COMMISSIONER D. DUMEZICH:** Have her state  
8 her name for the record.

9           **CHAIRMAN T. WHEELER:** Let's hold that for  
10 just a second, in terms of -- because I want  
11 public comment, and I do want to hear that, but  
12 I want you up at the mike so we can -- I do want  
13 to be on the record with some of this stuff, but  
14 I guess the answer to your question is yes. Is  
15 there anybody from ES&S here?

16           *(No response.)*

17           **CHAIRMAN T. WHEELER:** Okay. Let's do this  
18 process. Right now, as I understand it, because  
19 they haven't -- you're not in a position to give  
20 us any kind of report on any of the ES&S  
21 applications; correct?

22           **MR. R. SCHEELE:** Correct.

23           **CHAIRMAN T. WHEELER:** And the same for  
24 Premier?

25           **MR. R. SCHEELE:** Correct.

1           **CHAIRMAN T. WHEELER:** And as I understand  
2 it from the appendices, you've indicated to us  
3 that ES&S doesn't have any relationship with  
4 Premier; correct?

5           **MR. R. SCHEELE:** Correct.

6           **CHAIRMAN T. WHEELER:** So Premier is really  
7 ES&S at this point?

8           **MR. R. SCHEELE:** That's being worked on as  
9 we speak, and Brad and I as recently as  
10 yesterday exchanged some e-mails because they  
11 were e-mailing him and I think we're getting it  
12 ironed out as to which company and which  
13 representatives we actually communicate with  
14 this.

15           But late yesterday afternoon, I had  
16 permission from Premier to share some  
17 information with ES&S, for example, and we did  
18 not want to do that until we had authorization  
19 from them.

20           **CHAIRMAN T. WHEELER:** So for our purposes,  
21 they're still separate?

22           **MR. R. SCHEELE:** That's correct.

23           **CHAIRMAN T. WHEELER:** So let's do the two  
24 ES&S applications. With respect to ES&S, my  
25 understanding is based upon the information you

1 provided us, they have not come in for testing  
2 and you're not in a position to give us a report  
3 at this point in time?

4 **MR. R. SCHEELE:** That's correct.

5 **CHAIRMAN T. WHEELER:** And for our  
6 purposes -- so that means they haven't  
7 demonstrated anything to you as a sample?

8 **MR. R. SCHEELE:** That's correct.

9 **CHAIRMAN T. WHEELER:** They haven't come in  
10 and demonstrated to us. Anything further from  
11 Ball State on the two ES&S applications?

12 **MR. R. SCHEELE:** No.

13 **CHAIRMAN T. WHEELER:** Questions from the  
14 commissioners on Ball State?

15 **COMMISSIONER S. RIORDAN:** Are there  
16 any -- no.

17 **VICE CHAIR A. LONG:** You've done nothing  
18 other than just receive material that they filed  
19 with the Division?

20 **MR. R. SCHEELE:** Right.

21 **VICE CHAIR A. LONG:** And you've not --  
22 you've scheduled something for them in the  
23 future, it's not that they came in and were  
24 short and were going to come back with more?

25 **MR. R. SCHEELE:** No.

1           **VICE CHAIR A. LONG:** You're still in the  
2 initial stage of review?

3           **MR. R. SCHEELE:** Yes. We have no  
4 assessment whatsoever and we have received  
5 material from the Commission.

6           **CHAIRMAN T. WHEELER:** Now as I understand  
7 it, from your appendices, you provided early  
8 notice that this is the process -- you told them  
9 October 1st was the deadline for  
10 recertification, and basically, ES&S said sorry,  
11 we can't get around to you guys?

12           **MR. R. SCHEELE:** Correct, their schedules  
13 didn't accommodate our September...

14           **CHAIRMAN T. WHEELER:** It looks like their  
15 schedule didn't accommodate our statutory  
16 deadline.

17           **VICE CHAIR A. LONG:** I mean, they may  
18 not -- come October, if we've not had a meeting  
19 to approve them, they're uncertified?

20           **CHAIRMAN T. WHEELER:** That's correct.

21           **VICE CHAIR A. LONG:** So that's their  
22 problem.

23           **COMMISSIONER S. RIORDAN:** Mr. Chairman, I'm  
24 interested in finding out how significant a  
25 problem it poses for counties that have

1 referendum?

2           **CHAIRMAN T. WHEELER:** That's the next step  
3 in the process. I want to -- but right now, I  
4 want to make it clear that ES&S had full  
5 notification, they had the opportunity to come  
6 in, you have a complete trail, as I understand  
7 it, of your communications?

8           **MR. R. SCHEELE:** Correct.

9           **CHAIRMAN T. WHEELER:** Some of that is in  
10 the appendices that we've been given?

11           **MR. R. SCHEELE:** Correct.

12           **CHAIRMAN T. WHEELER:** Is there a date set  
13 at this point?

14           **MR. R. SCHEELE:** Only tentative, between  
15 the 7th and 9th of October, but that was by, I  
16 think, from ES&S, and we haven't had  
17 confirmation.

18           **CHAIRMAN T. WHEELER:** Nothing from Premier  
19 at all?

20           **MR. R. SCHEELE:** Premier, we've been in  
21 touch with, but they haven't confirmed the  
22 actual dates on their calendar, okay.

23           **VICE CHAIR A. LONG:** You raised a point, a  
24 really good one, the trail of communication,  
25 once it comes to a point, do you transfer that

1 then, copies of all that to the Division for  
2 their file?

3 **MR. R. SCHEELE:** Sure, you bet. In fact,  
4 we might have copies as early this week right  
5 here with us.

6 **VICE CHAIR A. LONG:** Okay.

7 **CHAIRMAN T. WHEELER:** Do you want to hear  
8 from the counties or do you want to hear from  
9 ES&S?

10 **COMMISSIONER S. RIORDAN:** I do. I'd like  
11 to hear from the counties.

12 **CHAIRMAN T. WHEELER:** All right. There are  
13 counties here that want to speak on the ES&S  
14 applications.

15 **COMMISSIONER D. DUMEZICH:** Can we hear from  
16 ES&S first?

17 **CHAIRMAN T. WHEELER:** All right, ES&S.

18 **MR. I. PIPER:** I'm actually from --  
19 formerly from Premier so I'm familiar with the  
20 ES&S applications.

21 **CHAIRMAN T. WHEELER:** So you're here to  
22 speak for Premier?

23 **MR. I. PIPER:** Because you're dealing with  
24 them separately, yes.

25 **CHAIRMAN T. WHEELER:** You're not in a

1 position to speak on ES&S's application;  
2 correct?

3 MR. I. PIPER: I work for them now but...

4 CHAIRMAN T. WHEELER: But you can't  
5 speak -- so you'll have the opportunity to take  
6 this message back to ES&S with regard to this?

7 MR. I. PIPER: Pardon me?

8 COMMISSIONER D. DUMEZICH: You can tell  
9 them what we said?

10 MR. I. PIPER: Correct.

11 CHAIRMAN T. WHEELER: All right. There's  
12 nobody here to speak on ES&S's behalf on the  
13 applications; correct -- anybody else?

14 *(No response.)*

15 CHAIRMAN T. WHEELER: All right. Are there  
16 any other public comments on the ES&S  
17 application -- come on up, state your name, and  
18 whatever capacity you're in?

19 MS. P. MISHLER FISH: Good morning. I'm  
20 Pam Mishler Fish, Porter County Clerk.

21 CHAIRMAN T. WHEELER: Can you spell your  
22 name?

23 MS. P. MISHLER FISH: M-I-S-H-L-E-R, space,  
24 Fish, F-I-S-H.

25 COMMISSIONER D. DUMEZICH: Which county?



1           **MS. P. MISHLER FISH:** Porter County Clerk.  
2 We have a referendum election November 3rd, we  
3 have chosen to use paper ballots and count them,  
4 as opposed to using our M-100 (Phonetic) optical  
5 scan.

6           However, for our handicapped individuals,  
7 we have an AutoMARK machine, which is a machine  
8 from ES&S, and we are currently having those  
9 machines programmed, and we need to make sure  
10 that those machines will be approved for the  
11 November 3rd election. That's all I have to  
12 say.

13           **CHAIRMAN T. WHEELER:** Have you had any  
14 communication with ES&S about the approval  
15 process, the Ball State process?

16           **MS. P. MISHLER FISH:** No, I have not.

17           **CHAIRMAN T. WHEELER:** You understand our  
18 concerns; right?

19           **MS. P. MISHLER FISH:** Absolutely.

20           **CHAIRMAN T. WHEELER:** Here's the concern  
21 that I have as a commissioner, the individual  
22 counties have the power to contract with various  
23 vendors?

24           **MS. P. MISHLER FISH:** Yes.

25           **CHAIRMAN T. WHEELER:** There appear to be

1 less vendors as we move along every day. But at  
2 this point, the only power we have is for them  
3 to comply statutorily with the requirements.

4 For whatever reason, ES&S seems to have  
5 chosen not to -- not only not to comply, but not  
6 really -- certainly, not to work with Ball  
7 State, from what I've heard from Ball State, and  
8 not to comply with our deadlines.

9 What I'm struggling with as a commissioner  
10 is how do I deal with this, and I will say that  
11 is a repetitive problem with all of these  
12 vendors.

13 MicroVote, we gave them a conditional  
14 approval two years ago, and they still have  
15 never filed a piece of paper from Cyber, despite  
16 the fact that there's six different labs that  
17 can approve them.

18 ES&S has apparently made a determination  
19 for whatever reason that they're not interested  
20 in coming in and going through our approval  
21 process based on our statutory time frame.

22 And I understand that presents an  
23 individual problem with counties that contract  
24 with these guys, but from our standpoint, how do  
25 we exercise our responsibilities?

1           **MS. P. MISHLER FISH:** I understand. Our  
2 concern is we want to make sure that voters in  
3 our county who are disabled and cannot strike a  
4 paper ballot, that their rights are not  
5 infringed upon, and I guess we are a little bit  
6 between a rock and a hard place on this.

7           I don't know if there are other options  
8 besides using those special machines at this  
9 point. I guess we have to talk to the people  
10 that represent the disabled individuals. Maybe  
11 there is another option. Maybe we don't have to  
12 use those AutoMARK machines. I don't know what  
13 that option would be.

14           **VICE CHAIR A. LONG:** Have you spoken with  
15 your county attorney about enforcing that  
16 obligation?

17           **MS. P. MISHLER FISH:** This just came up.  
18 We just became aware of this.

19           **VICE CHAIR A. LONG:** There may some things,  
20 if you act quickly, that you might be able to do  
21 to accommodate them, and see if your  
22 liability -- it depends on where ES&S is at. I  
23 would certainly recommend doing that.

24           **COMMISSIONER S. RIORDAN:** Mr. Chairman, I  
25 understand from Leslie Barnes that the counties

1 can still use the system?

2 CHAIRMAN T. WHEELER: Absolutely.

3 COMMISSIONER D. DUMEZICH: Yeah.

4 COMMISSIONER S. RIORDAN: The issue is that  
5 the vendor just can't sell it?

6 CHAIRMAN T. WHEELER: Not just sell it --  
7 if this is an upgrade; correct?

8 MR. B. KING: Mr. Chairman, Members of the  
9 Commission, the grandfather clause only permits  
10 the use of the currently certified version of  
11 the system. No upgrade from them.

12 MS. P. MISHLER FISH: Okay.

13 VICE CHAIR A. LONG: Is that what you have  
14 currently, you don't have upgrades?

15 CHAIRMAN T. WHEELER: Well, they're -- you  
16 said it was being reconfigured right now?

17 MS. P. MISHLER FISH: Not -- well, I  
18 shouldn't say that right now. They have to  
19 program it for each election.

20 CHAIRMAN T. WHEELER: There's -- there's  
21 two way they program it. It's improper -- this  
22 is what MicroVote got in trouble with, they can  
23 set the ballot for you.

24 MS. P. MISHLER FISH: That's what I'm  
25 talking about. That's what I mean.

1           **CHAIRMAN T. WHEELER:** As long as they're  
2 not setting the ballot and installing new  
3 software. What happened is MicroVote came in,  
4 and it's a matter of public record at this point  
5 because they lost the appeal, MicroVote not only  
6 set the ballot, but they installed new software  
7 to correct the problem.

8           And so this is -- I know you're not here  
9 on -- you're here on Premier versus ES&S, but if  
10 ES&S sets that, okay, and it is not certified,  
11 you're going to be in the same boat that  
12 MicroVote was with sanctions and bans and  
13 everything else.

14           If they simply, and this is what you need  
15 to talk with them about, is my understanding, if  
16 they are simply setting the ballot on your old  
17 certified, you're fine.

18           **MS. P. MISHLER FISH:** Okay.

19           **CHAIRMAN T. WHEELER:** If they upgrade in  
20 any fashion without certification, then you've  
21 got a problem.

22           **MS. P. MISHLER FISH:** They are not.

23           **CHAIRMAN T. WHEELER:** I just -- make sure  
24 they don't.

25           **COMMISSIONER D. DUMEZICH:** Yeah.

1           **CHAIRMAN T. WHEELER:** The counties that  
2 MicroVote did did not know they had upgraded.

3           **MS. P. MISHLER FISH:** I will make sure they  
4 don't.

5           **COMMISSIONER D. DUMEZICH:** You know, have  
6 them state it to protect you. Also, for the  
7 record, in the MicroVote situation, when they  
8 changed that programming, it created a problem  
9 in the split precincts.

10          **CHAIRMAN T. WHEELER:** It did...

11          **COMMISSIONER D. DUMEZICH:** It's just not  
12 that we were looking at it, technically, that  
13 they failed to conform with the statute, they  
14 provided a system that had been flawed.

15          **CHAIRMAN T. WHEELER:** Because it hadn't  
16 been tested.

17          **MS. P. MISHLER FISH:** Okay. So as it  
18 stands right now, we are okay to use both --

19          **VICE CHAIR A. LONG:** It sounds like it.

20          **MS. P. MISHLER FISH:** -- machines, provided  
21 no upgrade, just...

22          **CHAIRMAN T. WHEELER:** I've heard from both  
23 legal counsel that you can use your currently  
24 existing equipment, previously certified  
25 equipment, that's correct?

1           **COMMISSIONER D. DUMEZICH:** With no  
2 reprogramming.

3           **MS. L. BARNES:** Correct, the grandfather  
4 provision permits them to use the currently  
5 certified system.

6           **VICE CHAIR A. LONG:** You get to go home and  
7 be a hero today because you came down here and  
8 solved that problem.

9           **COMMISSIONER S. RIORDAN:** It might be  
10 helpful to us if you in your -- when you write  
11 to them to, ask them to confirm this information  
12 and you copied, you know, maybe the legal staff  
13 on both sides.

14           **MS. P. MISHLER FISH:** Yes, I will do that.  
15 Thank you.

16           **VICE CHAIR A. LONG:** That we were  
17 documented on it.

18           **CHAIRMAN T. WHEELER:** All right. Any other  
19 counties want to comment on ES&S or any other  
20 interested parties that want to make a comment?

21           **MS. R. GLENN:** This doesn't have anything  
22 to do with certification.

23           **CHAIRMAN T. WHEELER:** Hold on. Not yet.  
24 I'll tell you when it's time for that.

25           **MS. A. NUSSMEYER:** Good morning, Mr.

1 Chairman, Members of the Commission, Members of  
2 the Election Division, my name is Angie  
3 Nussmeyer, and that's "N" like Nancy,  
4 U-S-S-M-E-Y-E-R, and I'm with the Marion County  
5 Election Board, and earlier, Commissioner  
6 Riordan had asked if anyone holding a referendum  
7 election this November was present, and Marion  
8 County is running a county-wide referendum this  
9 November, November 3rd, as well as three smaller  
10 school district referenda, and we currently use  
11 ES&S hardware and software in their current  
12 certified condition in the State of Indiana and  
13 I just wanted to submit that for the record  
14 since the Commission had asked.

15 **CHAIRMAN T. WHEELER:** Which county are you  
16 from again?

17 **MS. A. NUSSMEYER:** Marion County.

18 **VICE CHAIR A. LONG:** Marion.

19 **COMMISSIONER S. RIORDAN:** I think you're  
20 still using ES&S right now; is that right?

21 **MS. A. NUSSMEYER:** We are. We're using --

22 **CHAIRMAN T. WHEELER:** You switched -- you  
23 switched then; is that right?

24 **MS. A. NUSSMEYER:** We switched for our --  
25 for the service side. So RBM Consulting is



1 servicing our equipment, but we still use ES&S.

2 CHAIRMAN T. WHEELER: They're servicing  
3 ES&S equipment?

4 MS. A. NUSSMEYER: Right. Right.

5 CHAIRMAN T. WHEELER: So it still has the  
6 be the certified equipment from ES&S.

7 VICE CHAIR A. LONG: No upgrades?

8 MS. A. NUSSMEYER: No upgrades, right.

9 CHAIRMAN T. WHEELER: So you would follow  
10 the -- you would follow the same...

11 MS. A. NUSSMEYER: Yes, absolutely.

12 COMMISSIONER D. DUMEZICH: Please copy us  
13 the recommendation of that fact.

14 MS. A. NUSSMEYER: Okay.

15 VICE CHAIR A. LONG: Let us know if there's  
16 problem.

17 MS. A. NUSSMEYER: Will do. Thank you.

18 VICE CHAIR A. LONG: Tell the clerk I said  
19 hi.

20 MS. A. NUSSMEYER: I will do that.

21 CHAIRMAN T. WHEELER: You can tell her I  
22 said hi. I know she probably -- anybody else  
23 from the county standpoint on the ES&S  
24 recertification? You don't want to talk?  
25 Didn't you say you had a referendum on an ES&S

1 county or you...

2 **MS. R. GLENN:** My name is Rita Glenn and  
3 I'm a clerk from St. Joseph County, and yes, we  
4 do, but we're not using...

5 **CHAIRMAN T. WHEELER:** So what are you  
6 using, just out of curiosity; are you doing  
7 papers or...

8 **MS. R. GLENN:** Paper ballot, we're just  
9 going to count it by hand.

10 **CHAIRMAN T. WHEELER:** You're just going to  
11 count them by hand?

12 **MS. R. GLENN:** Yeah.

13 **CHAIRMAN T. WHEELER:** That will be relevant  
14 to Premier here in just a second. If St. Joe  
15 County can count it by hand, I'm impressed.

16 **VICE CHAIR A. LONG:** Well, that was a slam.

17 **CHAIRMAN T. WHEELER:** No, I didn't mean  
18 it -- that was not a slam. What I meant was  
19 just the volume of ballots compared to some of  
20 the other smaller counties.

21 **COMMISSIONER D. DUMEZICH:** Make your  
22 comment to him. I'm not going to say what I was  
23 thinking.

24 **CHAIRMAN T. WHEELER:** That was actually a  
25 compliment to St. Joe County.

1           **VICE CHAIR A. LONG:** You all consider  
2 yourselves duly complimented.

3           **MS. R. GLENN:** Thank you.

4           **CHAIRMAN T. WHEELER:** All of us have done  
5 elections and counted a lot of ballots. For you  
6 guys, a county that size to go to hand ballots  
7 is significant. All right, I will accept a  
8 motion.

9           **VICE CHAIR A. LONG:** I mean, without us  
10 adding other things, we wouldn't even be here.  
11 They're just telling us what they're doing. I  
12 think that's the report they're giving us.

13           **CHAIRMAN T. WHEELER:** All right. So that's  
14 just -- I will take that as a status report on  
15 those two applications, so they're pending?

16           **MR. R. SCHEELE:** Right.

17           **CHAIRMAN T. WHEELER:** Okay. And then we've  
18 got -- we've got the two Premier applications?

19           **MR. R. SCHEELE:** Correct.

20           **CHAIRMAN T. WHEELER:** Which I guess we'll  
21 treat as Premier applications right now -- Brad?

22           **MR. B. KING:** Mr. Chairman, Members of the  
23 Commission, this is Roman Numeral V, Premier  
24 Election Solutions, the direct record electronic  
25 voting system, which is currently certified in

1 Indiana. Premier's applying for recertification  
2 of that system by the October 1st, 2009,  
3 deadline.

4 This application has the feature, and I  
5 believe, the Commission discussed this in its  
6 March 16th, 2009, concerning the updated SSL  
7 certificates, which Premier submitted as part of  
8 its application for recertification of its  
9 voting system. Let me quickly address Roman  
10 Numeral VI?

11 **CHAIRMAN T. WHEELER:** Okay.

12 **MR. B. KING:** It's the new voting system  
13 from Premier. It's called the Assure 1.2. It's  
14 a combination of optical scan, direct record  
15 electronic systems that are listed on the  
16 agenda. Again, that would be a system  
17 recertification, although it also includes the  
18 AutoMARK function that was discussed earlier.

19 **CHAIRMAN T. WHEELER:** Okay. At this point  
20 I'm going to take just a quick five-minute break  
21 and you're on for discussing Premier.

22 **MR. R. SCHEELE:** Great.

23 *(A recess was taken.)*

24 **CHAIRMAN T. WHEELER:** All right. I'm going  
25 to go ahead and put us back on the record.

1           **VICE CHAIR A. LONG:** Mr. Chairman, could we  
2 readdress the previous applications, we didn't  
3 take any action on them yet?

4           **CHAIRMAN T. WHEELER:** Those would be the  
5 two ES&S applications?

6           **VICE CHAIR A. LONG:** Yes. I have a  
7 question: When were their applications filed?

8           **MR. R. SCHEELE:** Which one?

9           **CHAIRMAN T. WHEELER:** The two ES&S  
10 applications.

11          **VICE CHAIR A. LONG:** It says May 7th?

12          **MR. R. SCHEELE:** Right. That is when it  
13 was stamped here at the Election Division.

14          **CHAIRMAN T. WHEELER:** So I've got one May  
15 7th and one August 7th, according to your  
16 report?

17          **MR. R. SCHEELE:** Right.

18          **CHAIRMAN T. WHEELER:** I was looking at the  
19 two reports.

20          **VICE CHAIR A. LONG:** The reason I asked,  
21 the filing date is No. 1, to get it in the  
22 record, and to verify that these were accurate.  
23 And do I understand you all set up a review  
24 session to go through these with them and their  
25 response was it didn't meet their schedule?

1           **MR. R. SCHEELE:** Correct, that they could  
2 not get all of their equipment to campus during  
3 that week or prior to this meeting, actually,  
4 and we said well, we'll accommodate you after  
5 September 18th, and that's why it's now  
6 tentatively in October, but the other two were  
7 able to...

8           **CHAIRMAN T. WHEELER:** Right, the other two  
9 were able to get their stuff in?

10          **MR. R. SCHEELE:** Yeah, they've been tested.

11          **CHAIRMAN T. WHEELER:** The other two --  
12 MicroVote was June 8th and Hart InterCivic was  
13 July 13th, and they were able to get their stuff  
14 in?

15          **MR. R. SCHEELE:** Right.

16          **VICE CHAIR A. LONG:** My feeling is the  
17 Commission has experienced over the years, in my  
18 tenure, vendors who would file applications and  
19 they were paying and they were paying and they  
20 were paying, to the point almost that -- and  
21 have on occasion that they've gone through  
22 revisions of the application because it had  
23 software improvements in the interim, and I've  
24 always operated under the philosophy that file  
25 your application when you're ready, let's get it

1 in and get it passed and worked on and  
2 certified. I'd be inclined -- I'm not going  
3 to -- well, I'll make a motion on the floor that  
4 we deny both of these subject to the right to  
5 refile if they so choose when they get ready.

6 **COMMISSIONER D. DUMEZICH:** Second it.

7 **CHAIRMAN T. WHEELER:** Motion's made and  
8 seconded, any further discussion?

9 **COMMISSIONER S. RIORDAN:** I just want to  
10 ask one question. We are actually here on  
11 approval or denial of the applications; correct?

12 **CHAIRMAN T. WHEELER:** As I understand it,  
13 that is correct.

14 **COMMISSIONER S. RIORDAN:** And that's before  
15 us and all of the vendors and the parties have  
16 had proper notice that these issues were going  
17 to be on the table today; in other words, they  
18 won't simply -- they're not mistakenly believing  
19 that we are simply receiving a report today,  
20 this action is cued up and -- or this question  
21 is cued up and ready for a thumbs up or thumbs  
22 down?

23 **CHAIRMAN T. WHEELER:** They received full  
24 notice; correct?

25 **MR. B. KING:** Mr. Chairman and Members of

1 the Commission, they received full notice as to  
2 the agenda, not necessarily a discussion on what  
3 action the Commission might take.

4 **CHAIRMAN T. WHEELER:** And as I understand,  
5 the memorandum also went out to all of the  
6 county clerks advising them of the same, which  
7 is why, I assume, some of them are here to  
8 comment?

9 **MR. B. KING:** That is correct.

10 **CHAIRMAN T. WHEELER:** Motion's been made  
11 and seconded, any further comment?

12 *(No response.)*

13 **CHAIRMAN T. WHEELER:** All in favor, signify  
14 by saying aye?

15 **THE COMMISSIONERS:** Aye.

16 **CHAIRMAN T. WHEELER:** Those opposed, same  
17 sign?

18 *(No response.)*

19 **CHAIRMAN T. WHEELER:** Motion carries. ES&S  
20 applications dated May 7th and August 12th are  
21 denied. Premier application dated August 21st,  
22 and the second one doesn't have a date,  
23 actually.

24 **MR. R. SCHEELE:** Actually we can add a date  
25 on that.



1           **CHAIRMAN T. WHEELER:** We can add a date.

2           **MR. R. SCHEELE:** That was submitted on  
3 August 26th, but we have not been available to  
4 put it on our checklist yet. The first  
5 communication we had on that application was  
6 then on September 3rd via e-mail.

7           **CHAIRMAN T. WHEELER:** All right. So the  
8 two applications -- as I understand it, the two  
9 Premier systems are in the same situation as the  
10 ES&S systems, which is to say they have not --  
11 they have not come in for testing?

12           **MR. R. SCHEELE:** That's correct.

13           **CHAIRMAN T. WHEELER:** And your report here,  
14 and I'm pushing here a little bit because I'm  
15 trying to make some time.

16           **MR. R. SCHEELE:** I understand that.

17           **CHAIRMAN T. WHEELER:** My commissioner over  
18 here is going to accuse me of leading the  
19 witness, but with respect to that -- he did that  
20 very politely earlier.

21           **VICE CHAIR A. LONG:** For the right reason.

22           **CHAIRMAN T. WHEELER:** But as I understand  
23 it, your report on the August 21st application  
24 basically is kind of a reiteration of why the  
25 report on the SSL; correct?

1           **MR. R. SCHEELE:** Correct.

2           **CHAIRMAN T. WHEELER:** But the bottom  
3 conclusion is you haven't been able to test the  
4 equipment on either one of these two?

5           **MR. R. SCHEELE:** That's correct. The  
6 vendor -- as we understand it, the SSL, which is  
7 a communications device -- okay, the certificate  
8 is the communication device on this system, they  
9 tied on their application this voting system  
10 with the SSL certificate, and consequently, we  
11 have talked to other labs -- not just Wyle, but  
12 other labs that have tested the SSL certificate,  
13 and as I indicate here in our report to you,  
14 there was no adverse effect on the functioning  
15 of the voting systems, but it wasn't necessarily  
16 exactly the same system that they are applying  
17 for recertification on. So until we can see  
18 that operating ourselves, that's -- and we have  
19 had the scheduling problems.

20           **CHAIRMAN T. WHEELER:** And for the  
21 commissioners' edification, as I recall, this  
22 kind of -- kind of came up before, because we  
23 took the position, I think, under Indiana law  
24 that this was -- the entire system had to be  
25 tested working together; correct?

1           **MR. B. KING:** Yes.

2           **MR. D. SIMMONS:** Yes.

3           **CHAIRMAN T. WHEELER:** And I think we've  
4 consistently taken that position, and this --  
5 and that's why there is -- even though they are  
6 doing the SSL, it's our position that we want to  
7 make sure that everything works together, and as  
8 Commissioner Riordan said before, it's very  
9 important to make sure this works, and as I  
10 understand it, they have not been able to do  
11 that?

12           **MR. R. SCHEELE:** Correct.

13           **CHAIRMAN T. WHEELER:** So at this point  
14 you're not in a position to --

15           **MR. R. SCHEELE:** Correct.

16           **CHAIRMAN T. WHEELER:** -- report on the  
17 applications and tell us what happened with  
18 ES&S; correct?

19           **MR. R. SCHEELE:** Correct.

20           **CHAIRMAN T. WHEELER:** Any other questions  
21 from the commissioners?

22           **VICE CHAIR A. LONG:** After any...

23           **CHAIRMAN T. WHEELER:** Okay. I was going to  
24 invite -- in that case, I do believe we do have  
25 a gentleman who was formerly with ES&S who has

1 the opportunity to comment here.

2 **MR. I. PIPER:** Good morning, Mr. Chairman,  
3 Commissioners, my name is Ian Piper, I-A-N,  
4 P-I-P-E-R. I was a compliance officer formerly  
5 with Premier Election Solutions and now I'm  
6 employed with ES&S. In regards to the SSL  
7 certificate, it's something that we had notified  
8 the State about after July of last year and we  
9 had submitted an application for this back in  
10 March of this year and what we're looking to do  
11 here is to be able to put this digital  
12 certificate, which is just a key that has  
13 expired as of January of this year, and it's  
14 something that needs to be in the unit in order  
15 for it to be able to communicate and do uploads  
16 and downloads to the database and the memory  
17 cards.

18 So in essence, the old optical scan units  
19 didn't use SSL, but the DRE's, the touch  
20 screens, which are used for handicap accessible  
21 functions, those do use the SSL in connection  
22 with the election management system. So without  
23 the use of this SSL, it's something where the  
24 handicap accessible units will not be able to be  
25 used, period.

1           The SSL certificate is not something that  
2 needs to go onto a new system. It can just go  
3 onto the very same existing system that the  
4 counties are using today so the testing that's  
5 been done to date has been done by a variety of  
6 labs.

7           Merle King of Kinnesaw State University had  
8 independent tests done by Wyle labs in order to  
9 verify the functionality of it and that it had  
10 no detrimental effects and he came back with a  
11 recommendation from the State of Georgia with  
12 regards to them accepting this.

13           The State of Ohio has worked with us as  
14 well, too, and they have accepted the SSL  
15 certificate as being diminimous or not necessary  
16 for recertification. So there's been -- almost  
17 every state that we've basically gone to with  
18 the SSL certificate has come back and said this  
19 is fine for you to go ahead and implement and  
20 use.

21           So I would ask that when it comes to the,  
22 at least the SSL certificate, that that be  
23 something that be allowed to be used with the  
24 existing systems that are in the state today  
25 with no changes, no other changes to them, to

1 allow them to use their handicap accessible  
2 devices with the special elections this  
3 November.

4 **CHAIRMAN T. WHEELER:** Commissioner?

5 **COMMISSIONER S. RIORDAN:** How many counties  
6 use this equipment?

7 **MR. K. CONRAD:** We have 15.

8 **MR. I. PIPER:** Fifteen.

9 **COMMISSIONER S. RIORDAN:** Any counties that  
10 have a referendum in November, which counties?

11 *(Audience members raised hands.)*

12 **MR. K. CONRAD:** My name is Kyle Conrad.  
13 I'm with Government (Phonetic) Business Systems.  
14 We are the dealer for Premier in the State of  
15 Indiana. I, along with Larry Calvert, appeared  
16 before you in March when we discussed this issue  
17 in detail, and you were very cordial in finding  
18 a way to address this at that time, but  
19 unfortunately, because of the State statute, you  
20 said it had to be on an application before you  
21 can even approve it. You thanked us for coming  
22 to you and bringing it to your attention. We  
23 now have it on application and I understand that  
24 the process has changed since March when we were  
25 here.

1           **COMMISSIONER S. RIORDAN:** And your  
2 understanding of the process changing is now?

3           **MR. K. CONRAD:** The review process.

4           **COMMISSIONER S. RIORDAN:** And is there some  
5 reason why that hasn't happened?

6           **MR. K. CONRAD:** That -- as far as I know,  
7 it's -- it's a coordination scheduling.

8           **CHAIRMAN T. WHEELER:** You guys -- you guys  
9 were here in March, and I remember when we were  
10 here and talked about this, we took the position  
11 that, yes, the SSL was marked different from  
12 what I heard him say the Ohio standards, but we  
13 took a position that our statutes doesn't follow  
14 Ohio's.

15           So from March -- with all due respect, you  
16 guys have known about this for a long time. Now  
17 I understand there's been ES&S buying Premier or  
18 whatever, but the thing that I'm pretty hacked  
19 off about it is you guys have known about it,  
20 you didn't get in with Ball State and the  
21 deadline has passed and you're asking us to  
22 approve something that has not been reviewed --  
23 with all due respect, it has not been reviewed  
24 in our process.

25           And you're putting us in a bind with the

1 counties -- particularly, Franklin and Ripley  
2 Counties from using their handicapped  
3 accessible -- basically, you're saying to us  
4 we're the fall guy, we have to be the bad guy to  
5 tell Franklin and Ripley that none of the  
6 handicap accessible stuff can be used because  
7 you guys couldn't get in.

8 **MR. K. CONRAD:** In March, when we were  
9 here, we had no special elections.

10 **CHAIRMAN T. WHEELER:** Right.

11 **MR. K. CONRAD:** We knew we were going to  
12 have applications filed for recertification, and  
13 instead of -- and I'm not speaking on behalf of  
14 Premier, but I understood it to be the \$1,500  
15 filing fee, let's wrap it all up into one, get  
16 it in together, and get it addressed, while we  
17 were waiting for certification at the federal  
18 level.

19 And as I understand it, I think that the  
20 conflict with Premier has been just several  
21 states, that they're in the process of  
22 recertification, unlike some of the other  
23 vendors, that they're confined to just a handful  
24 of states, we're looking at a several more  
25 states, and I think it's scheduling issue. I'm



1 sitting here. I...

2 **CHAIRMAN T. WHEELER:** With all due respect,  
3 what you're telling me is they were too busy to  
4 come and talk to us?

5 **MR. K. CONRAD:** No, I don't think that at  
6 all.

7 **CHAIRMAN T. WHEELER:** That's what it sounds  
8 like.

9 **MR. K. CONRAD:** I mean, we were waiting on  
10 August -- our equipment wasn't approved until  
11 August, and I'm sure that had a lot to do with  
12 it, too, but I'm sitting here worried about  
13 these two counties that we have.

14 When we came to you in March, we addressed  
15 this issue, you guys looked through the  
16 statutes, you looked for a way that we could  
17 address this, and unfortunately, we couldn't  
18 address it until it was on application. It's on  
19 application. We're trying to get it addressed  
20 again.

21 **VICE CHAIR A. LONG:** What took from March  
22 to August to get an application?

23 **MR. I. PIPER:** Well, my understanding was  
24 the application was made back in March.

25 **MR. K. CONRAD:** No, there was no

1 application.

2 **CHAIRMAN T. WHEELER:** There was no  
3 application.

4 **MR. I. PIPER:** That's why it wasn't  
5 approved in March because we didn't have an  
6 application.

7 **CHAIRMAN T. WHEELER:** And you're correct,  
8 in that you needed to make an application  
9 because you didn't think the SSL change was...

10 **MR. I. PIPER:** Right.

11 **CHAIRMAN T. WHEELER:** That was then  
12 clarified, but for whatever reason -- and that's  
13 clarified, and I think this is what Commissioner  
14 Long is asking, after that's clarified in March,  
15 no application was filed until August 21st?

16 **MR. K. CONRAD:** Right, and it was decided  
17 at that time to...

18 **MR. I. PIPER:** With the new federally  
19 certified system, right.

20 **COMMISSIONER D. DUMEZICH:** Well, I think  
21 right now the motion that Tony made and was  
22 seconded and voted on; right, that we deny it  
23 for today and we move forward with the...

24 **CHAIRMAN T. WHEELER:** That was with ES&S.

25 **MR. K. CONRAD:** And one question I had of

1 Mr. Simmons was can the Commission partially  
2 approve an application, can you approve just the  
3 SSL part of that application, and that's all, as  
4 the vendor for these two counties that I am  
5 concerned with.

6 I understand the whole -- their concerns  
7 regarding everything else. My concern is -- as  
8 you realize, is that I have a special election  
9 on November 3rd with these two counties and we  
10 are in the same bind as you are.

11 **VICE CHAIR A. LONG:** Why didn't you take  
12 the equipment up there and let Ball State look  
13 at it -- I mean, you had it scheduled in  
14 October, you scheduled it in October with them,  
15 they set aside apparently a week or so to run  
16 this equipment. If you're so concerned, why  
17 didn't you just load it up in your car and take  
18 it up there and said here it is.

19 **MR. K. CONRAD:** I'm not the manufacturer.

20 **VICE CHAIR A. LONG:** Do you have a  
21 sample -- I mean, can't you get a prototype  
22 or...

23 **COMMISSIONER D. DUMEZICH:** Can you get  
24 there in October to do this?

25 **MR. I. PIPER:** Yes, I mean, Premier and

1 ES&S is committed to bringing our systems in for  
2 this recertification.

3 **VICE CHAIR A. LONG:** Well, why didn't you  
4 do it when they were doing it, if this was so  
5 important?

6 **MR. I. PIPER:** Sir, I apologize. I'm not  
7 aware of the reasons why it was not brought in  
8 before that.

9 **VICE CHAIR A. LONG:** What we did with the  
10 first one was deny it, let them start over  
11 again, and you know, this idea of -- you know,  
12 we finally got a professional team to do this  
13 professional work for us, which we struggled for  
14 years without it, and now our problem is we  
15 can't get the vendors to take their equipment  
16 over to see them. You know, I take a hard line  
17 on this. It's pure money to you all, and I'm  
18 sorry, Sarah, you started to say something?

19 **COMMISSIONER S. RIORDAN:** I'm sorry. Is  
20 there a path that we can outline that may  
21 involve some hustling on your part to get this  
22 done in time so the people in those two  
23 counties...

24 **MR. K. CONRAD:** Unfortunately, from our  
25 standpoint this would have to be done before the

1 public test and the public test is scheduled the  
2 week off or possibly prior to the date that Mr.  
3 Scheele is talking about at Ball State. It's  
4 not meeting the November 3rd deadline. We have  
5 to have it ready for the public test.

6 **COMMISSIONER S. RIORDAN:** And what is --  
7 what determines the date of the public test?

8 **MS. L. BARNES:** Fourteen days.

9 **MR. K. CONRAD:** There's a deadline by  
10 statute and it's basically scheduling with the  
11 counties.

12 **COMMISSIONER S. RIORDAN:** So 14 days before  
13 November 3rd is?

14 **MR. K. CONRAD:** Actually, we have it  
15 scheduled for October 6th or 7th because of  
16 scheduling quirks.

17 **COMMISSIONER D. DUMEZICH:** And you're  
18 scheduled for Ball State on October 7th through  
19 the 9th?

20 **CHAIRMAN T. WHEELER:** I heard...

21 **COMMISSIONER D. DUMEZICH:** That same week.

22 **COMMISSIONER S. RIORDAN:** That same week.

23 **VICE CHAIR A. LONG:** How can you test  
24 something that's not been approved?

25 **MR. K. CONRAD:** Well, we still have the

1 grant funding. We still have...

2 VICE CHAIR A. LONG: You've got the SSL?

3 MR. K. CONRAD: Right.

4 VICE CHAIR A. LONG: You're going to test  
5 that?

6 MR. K. CONRAD: We won't be able to and  
7 they will not be able to use those machines in  
8 the election.

9 VICE CHAIR A. LONG: That's a shame, a real  
10 shame.

11 COMMISSIONER S. RIORDAN: Well, I guess I  
12 have to say that I respect you for being here,  
13 whereas some of your competitors did not show up  
14 today.

15 MR. K. CONRAD: Thank you.

16 COMMISSIONER S. RIORDAN: Is there a  
17 way that -- is there any -- can Ball State, can  
18 you folks sit down and look at calendars and get  
19 this done?

20 MR. I. PIPER: Will there need to be  
21 another Commission meeting before this is...

22 COMMISSIONER D. DUMEZICH: Yeah, you're  
23 going to have to talk to them and we'll approve  
24 their findings.

25 MR. I. PIPER: And would that be feasible

1 to have something like that within this time  
2 frame with regards to...

3 **COMMISSIONER S. RIORDAN:** Well, to make  
4 sure that people in those two counties have  
5 stuff that works, I'll make myself available.

6 **VICE CHAIR A. LONG:** We'll come in for the  
7 counties. We're not coming for you guys.

8 **CHAIRMAN T. WHEELER:** And that's  
9 significant because these two commissioners --

10 **MR. I. PIPER:** I appreciate that.

11 **COMMISSIONER D. DUMEZICH:** I like him but  
12 not that much.

13 **CHAIRMAN T. WHEELER:** These two  
14 commissioners are driving down from Chicago and  
15 up from Evansville. It's not a big deal for me  
16 because I'm across the street, as is  
17 Commissioner Riordan. The people being put out  
18 for this are my two co-commissioners. If they  
19 are willing to come back down --

20 **COMMISSIONER D. DUMEZICH:** I am.

21 **CHAIRMAN T. WHEELER:** -- because of this,  
22 and frankly, again, not for the vendors but for  
23 the people of Franklin and Ripley County, I'm  
24 certainly willing to accommodate calling a  
25 meeting.

1           **MR. K. CONRAD:** And that's certainly why  
2 we're here.

3           **CHAIRMAN T. WHEELER:** And I do appreciate  
4 the fact that you guys were here and stood up  
5 and said -- and tried to explain, but I do  
6 appreciate the fact that you are here. Is there  
7 anybody from Franklin or Ripley County here?

8           *(No response.)*

9           **CHAIRMAN T. WHEELER:** Anybody who wishes to  
10 speak on Premier applications, any other public  
11 comment?

12           *(No response.)*

13           **CHAIRMAN T. WHEELER:** Going once, going  
14 twice.

15           **VICE CHAIR A. LONG:** And I move we table it  
16 until the two of them work it out.

17           **CHAIRMAN T. WHEELER:** I have a motion to  
18 table the two Premier applications, the August  
19 21st and the August 26th applications.

20           **COMMISSIONER D. DUMEZICH:** Second it.

21           **CHAIRMAN T. WHEELER:** The motion's made and  
22 seconded, any further discussion?

23           *(No response.)*

24           **CHAIRMAN T. WHEELER:** Hearing none, all in  
25 favor, signify by saying aye?



1           **THE COMMISSIONERS:** Aye.

2           **CHAIRMAN T. WHEELER:** Those opposed, same  
3 sign?

4           *(No response.)*

5           **CHAIRMAN T. WHEELER:** Again, I will commit  
6 to try to getting a meeting set conditionally,  
7 but that means you guys need to get your tail  
8 ends in with Ball State.

9           **MR. I. PIPER:** We'll sit down -- if we can  
10 meet after this meeting here.

11           **MR. R. SCHEELE:** I was going to say we'll  
12 do everything we can to accommodate our  
13 schedules. And one other quick statement I'd  
14 like to make is I'd like to applaud the county  
15 clerks, which they've been very cooperative with  
16 this project.

17           The clerks out there understand, and I  
18 think -- and we've been in some of their places  
19 to see their systems demonstrated through  
20 self-tests before we even went into the vendor's  
21 test. So the county clerks are well aware of  
22 what's -- what we're trying to accomplish here  
23 and I just want to give them an accolade.

24           **CHAIRMAN T. WHEELER:** And I appreciate all  
25 the county clerks because there's a degree --

1 with all due respect, in having served on the  
2 county council for a significant period of time,  
3 I know on the county council level, the clerks  
4 would just come up to us and we would just vote  
5 whatever -- I mean, I didn't know anything about  
6 election equipment. We changed vendors three  
7 times when I was in Boone County, one of which  
8 is out of business.

9 But I think the expertise you guys bring to  
10 the table, particularly, at the front end, and I  
11 hope the clerks will utilize that in making  
12 purchasing decisions as we go down the road,  
13 because I think that's the other useful part of  
14 this process which you guys bring to the table.

15 **MR. R. SCHEELE:** Exactly.

16 **VICE CHAIR A. LONG:** I agree. Welcome  
17 aboard, guys.

18 **MR. R. SCHEELE:** Okay. Thank you.

19 **CHAIRMAN T. WHEELER:** Thanks for coming  
20 down. You guys, thanks for coming down. Next  
21 on my agenda, I've got, and I note I'm going to  
22 take public comment on ES&S, and I'd like you  
23 guys to stay for this, one issue on ES&S, but  
24 right now the Monroe County Voting Systems  
25 Advisory Council, Kate Cruikshank.

1           **MS. K. CRUIKSHANK:** Hi, my name is Kate  
2 Cruikshank, and that's C-R-U-I-K-S-H-A-N-K.  
3 I've been chairing the Monroe County Voting  
4 Systems Advisory Council, since it was  
5 established this spring, and I believe that our  
6 commissioners in setting it up assumed that we  
7 would be able to come up with a recommendation  
8 for a new voting system in time to feed into  
9 their budget cycle and have that in place for  
10 the 2010 election.

11           My only reason for being here today is just  
12 to share with you our concern that that's  
13 extremely difficult to do with the certification  
14 and the time line the way it is, and of course,  
15 this has all gotten extremely messy and  
16 difficult this year, but we were in the  
17 position, as you know, of not being able to talk  
18 to vendors about the various machines we were  
19 considering because they weren't certified in  
20 the State of Indiana.

21           **CHAIRMAN T. WHEELER:** Who is your current  
22 vendor?

23           **MS. K. CRUIKSHANK:** MicroVote. We've got  
24 MicroVote Infinities that were bought in 2005  
25 for HAVA accessibility and then we've got the

1 old M-64 (Phonetic) blue machines?

2 **CHAIRMAN T. WHEELER:** I suspect you  
3 couldn't talk to MicroVote about their machines  
4 for...

5 **MS. K. CRUIKSHANK:** We're okay.

6 **VICE CHAIR A. LONG:** Not because of  
7 certification.

8 **CHAIRMAN T. WHEELER:** Not because of  
9 certification.

10 **COMMISSIONER D. DUMEZICH:** Because we...

11 **CHAIRMAN T. WHEELER:** They are banned from  
12 selling.

13 **MS. K. CRUIKSHANK:** No, we're not -- I'm  
14 sorry, I left out one crucial piece.

15 **CHAIRMAN T. WHEELER:** Okay.

16 **MS. K. CRUIKSHANK:** We are committed to a  
17 voter verifiable paper trail scan system, so  
18 that's what we're looking at.

19 **COMMISSIONER S. RIORDAN:** Which MicroVote  
20 does not do; right?

21 **MS. K. CRUIKSHANK:** Absolutely. So we've  
22 been hoping at -- we're hoping to look at the  
23 Premier OSX, the DS-200 and we've been looking  
24 at the Hart InterCivic scanner, although it  
25 doesn't provide a digital image of the ballot,

1 but those are the things that we've been looking  
2 at.

3 All three vendors came in and demonstrated  
4 what they could demonstrate, but of course, we  
5 couldn't see the ones we wanted to see. And my  
6 only -- I just want to raise the issues because,  
7 obviously, you all have a lot of things in the  
8 process that you're dealing with, but that shows  
9 the importance of the Commission and how  
10 important it is to coordinate with the counties,  
11 and I just want to suggest that perhaps you can  
12 be cognizant of county budget processes and how  
13 your time lines impact ours, and that's really  
14 the only reason I'm here.

15 **CHAIRMAN T. WHEELER:** Here's the problems,  
16 our time lines -- as an example, you saw the  
17 Premier application -- having gone through the  
18 county council budgeting process way too many  
19 times and being very grateful that I don't have  
20 to do it anymore, I will say that the  
21 application process is driven by when the  
22 vendors come to us with the applications.

23 I mean, as you see here, for example, we  
24 didn't get -- from Premier, we didn't get these  
25 applications in March. I mean, these

1 applications we're getting in August, and I  
2 think the vendors will say that's because, for  
3 example, they're waiting on information from the  
4 EAC and federal certifications, okay.

5 So I appreciate your concerns, but in terms  
6 of our application process, we are driven very  
7 much by when the applications come in from the  
8 vendors, and they can come in whenever. The  
9 recertification process is, obviously, driven by  
10 statute, but in terms of trying to get the  
11 vendors in -- I'd love to see the vendors, and  
12 that's what we're hearing from the  
13 commissioners, we'd rather see them in early  
14 than late because that puts pressure on Ball  
15 State.

16 So I think I'm in agreement. Your budget  
17 process, I assume, is August, which is typical  
18 for other states, so you would like to see a  
19 March application approval prior to that?

20 **MS. K. CRUIKSHANK:** Yeah.

21 **CHAIRMAN T. WHEELER:** I'm very sympathetic.

22 **MS. K. CRUIKSHANK:** Yeah, I know it's  
23 statutory, but thing is if you all aren't  
24 thinking about it, it becomes really hard to get  
25 the legislature to think about it, and that's

1 the only reason that...

2 **VICE CHAIR A. LONG:** One thing, this new  
3 system that we're in here now -- I mean, we've  
4 got a little bit of a bug or two to work out,  
5 and that can be done quickly, but we were  
6 prepared today -- I mean, this application for  
7 Hart was filed July the 13th and it went through  
8 the full process and it was ready to be voted  
9 on, but -- and there wasn't an emergency on it  
10 today, but we wanted to work out our system a  
11 little bit better, but that would be about two  
12 months from the time it's filed, and they can  
13 shorten them up from that, and when the counties  
14 are involved, we come in for special meetings  
15 just like we did on Premier here, that when they  
16 get their ducks in a roll, we'll come to  
17 Indianapolis because the two counties out there  
18 need this.

19 **CHAIRMAN T. WHEELER:** We've done it for  
20 several times.

21 **MS. K. CRUIKSHANK:** Please don't  
22 misunderstand me. I'm not suggesting that the  
23 way the process is going is problematic, the  
24 statutory deadline is the issue; in other words,  
25 I mean, that -- you all have no control over

1           that.

2           **VICE CHAIR A. LONG:** Now it will be faster  
3 than it's ever been --

4           **MS. K. CRUIKSHANK:** That's great.

5           **VICE CHAIR A. LONG:** -- because we've got  
6 professional expertise advising us. I've been  
7 on here for way too long, probably 12 or 13 or  
8 14 years, and this is the first time that I've  
9 felt comfortable being able to vote to approve  
10 these things because we've got somebody that's  
11 looking over their expert shoulders that are  
12 equally qualified or better qualified.

13           **MS. K. CRUIKSHANK:** And I'm sure that those  
14 of us in the counties feel the same way.

15           **VICE CHAIR A. LONG:** Well, you all are from  
16 Monroe County.

17           **MS. K. CRUIKSHANK:** Well, we're ready to  
18 vote. We've got the money put back. We've just  
19 got to get the right machines identified and do  
20 it.

21           **VICE CHAIR A. LONG:** Let me ask you a  
22 question. You raised an issue that they can't  
23 show us something, can they not --

24           **MS. K. CRUIKSHANK:** By statute --

25           **VICE CHAIR A. LONG:** -- demonstrate the



1 machine that's not certified saying that we've  
2 got an application pending but we can't sell it  
3 to you?

4 **MS. K. CRUIKSHANK:** No, it's statutory.  
5 The statute...

6 **MS. L. BARNES:** The statute says they  
7 cannot market.

8 **MS. K. CRUIKSHANK:** They cannot market.

9 **VICE CHAIR A. LONG:** Market, and I don't  
10 know what that means. Maybe that ought to be  
11 legislatively dealt with. I mean, as long as  
12 they're candid and say this is what we've got,  
13 we hope to get it certified, to help you all  
14 make the budget decisions, it would seem to me  
15 that would not be a -- that would be a  
16 reasonable approach.

17 **MS. K. CRUIKSHANK:** Well, I thank you  
18 anyway for the approach.

19 **VICE CHAIR A. LONG:** It's like walking  
20 through a liquor store on Sunday.

21 **CHAIRMAN T. WHEELER:** All right. Anything  
22 else on that particular issue, with respect to  
23 timing and scheduling and physical impact?

24 *(No response.)*

25 **CHAIRMAN T. WHEELER:** Hearing none, I will

1 take some public comment -- I know that there  
2 are people here to speak on ES&S, whoever is  
3 here on ES&S. Come on up.

4 **MS. S. KIRK:** I'm Susan Kirk, I'm the clerk  
5 in Vanderburgh County, and that's K-I-R-K. I  
6 want to thank the Board for letting us come  
7 before you. It's not just me, but there's some  
8 other clerks in the audience, too, that may want  
9 to say something. I'll make this reasonably  
10 brief. I sent you a packet, Brad.

11 **MR. B. KING:** It's in the Division.

12 **MS. S. KIRK:** Is it?

13 **MR. B. KING:** Yes.

14 **MS. S. KIRK:** Which you're going to see  
15 about some of our concerns with election system  
16 and software. The easiest one is the one that  
17 says old problems with the original ES&S  
18 contract at the top, and it kind of goes through  
19 and describes -- the packet is this thick for  
20 each one.

21 **MR. B. KING:** We haven't gotten one.

22 **CHAIRMAN T. WHEELER:** We haven't got it. I  
23 think I have an idea what your concerns are  
24 because I think we've communicated with them.

25 **MS. S. KIRK:** I'm going to give you an idea

1           what I think happened, when Florida had the  
2           chance, federal government mandated new  
3           machines, I think the election vendors saw more  
4           money, and that's good, that's fine, but they  
5           took advantage of several counties by buying  
6           products that they sold, you know, for clerks or  
7           maybe commissioners that really weren't that  
8           astute in running elections and what it takes,  
9           and I think that -- I know at least in  
10          Vanderburgh County they charged, overcharged for  
11          things that we would never use for Vanderburgh  
12          through HAVA money to pay for that, so they got  
13          way more than their share. During the time when  
14          I took over as clerk I questioned them on two  
15          items that I realized immediately.

16                 **CHAIRMAN T. WHEELER:** That at this point is  
17                 ES&S?

18                 **MS. S. KIRK:** ES&S, period.

19                 **CHAIRMAN T. WHEELER:** All right, we're  
20                 dealing with ES&S.

21                 **MS. S. KIRK:** Things like precinct kits --  
22                 you know, cardboard boxes, they were like 102  
23                 something odd dollars that they sold, and like I  
24                 said, our commissioners didn't know, the clerk  
25                 didn't know, and they bought it.

1           I did question them on that, and I didn't  
2 get the money back in my hands, but I put it  
3 over to the side that I could use it for  
4 something else.

5           They overcharged for numerous things.  
6 Hopefully, you will get your packets, they're  
7 two great big envelopes that say Attention Brad,  
8 but as you read through that, you will see.

9           Their billing system -- all of the clerks,  
10 as far as I know, we've experienced the same  
11 thing, many of the things that were in our  
12 contract -- I mean, they threw everything in  
13 there, including the kitchen sink, then we would  
14 send bills every month, and you would question  
15 them what are these bills for? They couldn't  
16 even identify what their invoices were for.

17           I in Vanderburgh County chose not to pay  
18 them, because I bought everything from you in  
19 the contract, so I didn't pay them, I just put  
20 them in a file and that was it. But I think I'm  
21 one of the few counties that probably did.

22           Anyway we went through that, to make it  
23 short, ES&S owes Vanderburgh County \$111,000,  
24 which I hope we'll be able to get back to go  
25 towards new licensing.

1           The original contracts that all of us have  
2           have a stipulation in there, and this will be in  
3           your packet, too, that at the end of  
4           December 2008, the contract expired, except for  
5           the software. We can continue using their  
6           software at only -- and they can only increase  
7           the cost by 5 percent.

8           There is a third-party stipulation in the  
9           contract, obviously, where they don't want you  
10          to sell their equipment, copy it, and so forth  
11          and so on, which we would not do.

12          ES&S, I've been working with them since  
13          February trying to come up with a new contract.  
14          I've had four attorneys say that their contracts  
15          are the most confusing that they have ever read.  
16          They have items in there, just like they did in  
17          the first one, where they can charge you things  
18          that make no sense and they can't even explain  
19          it.

20          To make a long story short, what ES&S has  
21          done, because now they have competition, it's  
22          the American way, it should be that way -- they  
23          have competition from especially one company,  
24          and there are a couple other ones out there,  
25          too, that now their contract, the third-party

1 stipulation is so stringent that they even want  
2 to approve the employees that I hire to work in  
3 the election office if they're going to be  
4 working on any kind of software trying to  
5 program it or anything like that. I think  
6 that's unfortunate.

7 What I'm asking this Commission, if they  
8 will support the clerks, help support the clerks  
9 that ES&S should not be able to have language in  
10 their contracts that stringent telling us that  
11 they are the only ones that can perform what  
12 they call support services with their equipment.

13 I even asked ES&S, all I want is a software  
14 license agreement, that's it. That's all I  
15 want. Even in their supposedly only software  
16 license agreement, the third-party stipulation  
17 is in there, and you will get that, saying that  
18 they're the only ones that can perform the  
19 support services.

20 If we have to, we will go to court and file  
21 suit against them. Our board, election board  
22 sent a letter to them saying that all we want is  
23 software, nothing else. We will see what the  
24 response is. Marion County already did, and  
25 their response back from ES&S was no. So --

1           **CHAIRMAN T. WHEELER:** How many counties --  
2 how many counties are in your similar boat -- I  
3 see Miss Ping (Phonetic) over here nodding her  
4 head? I know we have Marion.

5           **MS. S. KIRK:** In St. Joe, she had to --  
6 Rita had to leave. She had a meeting.

7           **VICE CHAIR A. LONG:** The one counting the  
8 ballots.

9           **CHAIRMAN T. WHEELER:** So you've got St.  
10 Joe, Vanderburgh, Marion...

11          **MS. A. NUSSMEYER:** Posey and Porter. There  
12 are five counties.

13          **CHAIRMAN T. WHEELER:** So we've got five  
14 counties. From my standpoint -- here's the  
15 concern that I have, and part of this is  
16 reflected on what we saw from ES&S today, which  
17 is they didn't show up. They didn't support  
18 their application.

19           I have a real problem, now that I've heard  
20 that ES&S has -- I don't know if it's concluded  
21 with Premier, they've taken over Diebold with  
22 those counties, they have accomplished a  
23 relationship with MicroVote, or are in the  
24 process of accomplishing a relationship with  
25 MicroVote, but I have a concern with ES&S as a

1 vendor that looks like they're picking up  
2 something close to the -- they've got 90 of the  
3 92 Indiana counties and having this kind of  
4 service issue, these kinds of problems with  
5 ES&S.

6 What I would suggest to my fellow  
7 commissioners, I would be very interested in --  
8 and I don't know -- I know from other litigation  
9 that the Division or the Commission has the  
10 ability to investigate certain issues. This  
11 is -- we're getting awfully close to a monopoly  
12 on the election systems, and what I'm hearing  
13 is, like a lot of monopolistic operations, there  
14 tends to be poor customer support, and when that  
15 customer support is reflected on the voting in  
16 the State of Indiana, I have a real problem with  
17 that.

18 As a consequence, I would -- first of all,  
19 I guess I would ask my counsel over here whether  
20 we have the power to initiate an investigation  
21 of ES&S's practices, their business practices  
22 here in the State of Indiana, particularly, as  
23 they relate to election equipment as indicated  
24 by Susan here today; do we have that power to do  
25 that?



1           **MR. D. SIMMONS:** The section where we have  
2 expressed issues like this before, it's  
3 3-6-7-4.1, think it's 19.

4           **MS. L. BARNES:** 19, the subpoena power, is  
5 that it?

6           **MR. D. SIMMONS:** No, it's 21. And  
7 typically, we've used it to investigate  
8 allegations of violations of this type, Title 3.  
9 We were talking about -- I don't know what --  
10 what these are, in terms of unfair trade  
11 practices, monopoly practices.

12           **CHAIRMAN T. WHEELER:** At least what I'm  
13 hearing right now is you believe that the  
14 contract is -- give specifics?

15           **MS. S. KIRK:** Unenforceable.

16           **CHAIRMAN T. WHEELER:** I want to know if we  
17 ought to initiate an investigation into ES&S in  
18 a manner in which they're selling and  
19 contracting for election equipment in the State  
20 of -- services for election equipment in the  
21 State of Indiana -- I think we do have the power  
22 to do that, am I phrasing it that way?

23           **MR. D. SIMMONS:** I think that needs to be  
24 something entitled that. I don't know what that  
25 is.

1           **CHAIRMAN T. WHEELER:** We have the power  
2 over marketing sales, at least for the  
3 certification process?

4           **MR. D. SIMMONS:** Certification.

5           **CHAIRMAN T. WHEELER:** And we certainly have  
6 at least four pending applications either for  
7 ES&S or Premier; correct, so I think that gives  
8 us the ability to initiate an investigation into  
9 that; correct?

10          **MR. D. SIMMONS:** Yes.

11          **CHAIRMAN T. WHEELER:** Leslie?

12          **MS. L. BARNES:** When I'm looking at Section  
13 21 that Dale referred to, it does say if the  
14 Commission determines there's a reason to  
15 believe an election law violation has occurred,  
16 the Commission shall expeditiously make an  
17 investigation.

18                 But Section 19 seems to maybe be a little  
19 broader power, the subpoena power, it says the  
20 Commission has the power to subpoena members to  
21 appear before the Commission or members to  
22 appear in the Division's office and be examined  
23 by the co-directors. Perhaps -- not calling it  
24 an investigation but perhaps you could direct  
25 the co-directors to --

1           **VICE CHAIR A. LONG:** Inquire.

2           **MS. L. BARNES:** -- inquire or conduct...

3           **CHAIRMAN T. WHEELER:** How about this, what  
4 if we -- we are clearly going to have a second  
5 meeting, a meeting before the election on Hart  
6 InterCivic, as well as perhaps Premier, if they  
7 get their stuff together, what if we ask for the  
8 counsel to provide us some direction as to our  
9 ability to initiate this investigation?

10           **VICE CHAIR A. LONG:** I think we've got a  
11 packet coming from Mrs. Kirk, that if they take  
12 the packet -- I mean, I'd like to see a copy  
13 myself, as I'm sure everyone else would, but if  
14 counsel would review the packet to discern,  
15 maybe with some input from us, what might be  
16 perceived as actual Title 3 violations --

17           **CHAIRMAN T. WHEELER:** Get the report back  
18 to us at the next Commission meeting and we can  
19 initiate a formal investigation.

20           **VICE CHAIR A. LONG:** Get the report back  
21 and decide what parameters of we want to  
22 investigate and what we want to ask them to  
23 bring before -- but I'm most anxious to see -- I  
24 would suggest that if we don't get that in the  
25 next -- I guess we can address it to Brad, but

1 if we don't get that in the next couple of days,  
2 let's follow up.

3 **MS. S. KIRK:** I sent it. I would have  
4 sworn -- it was two big manila envelopes, and I  
5 had three.

6 **MR. B. KING:** May I ask a question, Mr.  
7 Chairman?

8 **CHAIRMAN T. WHEELER:** Yes.

9 **MR. B. KING:** Susie, did you send that  
10 certified?

11 **MS. S. KIRK:** No.

12 **MR. B. KING:** I see. Sometimes things need  
13 to be sent certified and sometimes that...

14 **MS. S. KIRK:** Like I said, it was two big  
15 envelopes.

16 **CHAIRMAN T. WHEELER:** We'd like to get it,  
17 and if you want to make copies now of what you  
18 got there so Brad has it, because I do want to  
19 see it. I think this commission is receptive to  
20 what you're saying -- clearly, the commission  
21 members are, and we're interested in seeing what  
22 you've got and working with the Division within  
23 the parameters of what our legal authority is as  
24 far as our ability to investigate things because  
25 I share your concerns.

1           **MS. S. KIRK:** We had to purchase this  
2 equipment to begin with. It's our tax dollars  
3 that pays for all of this. And I think that we  
4 should be able -- as clerks all we want to do is  
5 run a cost effective, fair, and accurate  
6 election, and as we all agreed, yes, I'm paid by  
7 the government, but I pay taxes, too, and I  
8 think when the money is misused, when they're  
9 taking advantage, I think they certainly need to  
10 be...

11           **CHAIRMAN T. WHEELER:** As Commissioner Long  
12 mentioned, maybe we'll involve the AG's office  
13 in this, because obviously, they are involved in  
14 consumer protection as well as -- and I trust  
15 there are issues in that regard related to that.

16           Our focus would really be on the election  
17 equipment, and the fact that if the agreement  
18 impairs your ability to run an election for --  
19 for example, if ES&S is saying sorry, it's our  
20 people or nothing and that impairs our ability  
21 to run an election, I think we would need to  
22 take a look at it.

23           **VICE CHAIR A. LONG:** And enforce the law.

24           **CHAIRMAN T. WHEELER:** And enforce it,  
25 absolutely.

1           **VICE CHAIR A. LONG:** I think our mandate  
2 under the statute is broader rather than  
3 narrower -- I mean, it's not limited, it's to  
4 enforce the election laws in the State of  
5 Indiana. That's pretty broad.

6           **CHAIRMAN T. WHEELER:** That sounds pretty  
7 broad to me. All right, I think the Division  
8 knows what the commissioners are looking for.  
9 We're committed to having another meeting. Any  
10 other comment from the commissioners?

11           **COMMISSIONER S. RIORDAN:** Thank you for  
12 coming.

13           **MS. S. KIRK:** Thank you.

14           **VICE CHAIR A. LONG:** Yeah, I appreciate you  
15 bringing it to our attention.

16           **CHAIRMAN T. WHEELER:** I'll accept a motion  
17 to adjourn?

18           **COMMISSIONER S. RIORDAN:** So moved.

19           **MS. S. KIRK:** Thank you very much.

20           **CHAIRMAN T. WHEELER:** Thank you. Motion's  
21 been made, anybody second it?

22           **COMMISSIONER D. DUMEZICH:** Second it.

23           **CHAIRMAN T. WHEELER:** Motion's been made  
24 and seconded, all in favor, signify by saying  
25 aye?

1           **THE COMMISSIONERS:** Aye.

2           **VICE CHAIR A. LONG:** Do you all want to say  
3 anything else?

4           **CHAIRMAN T. WHEELER:** I'm sorry.

5           **MS. D. BUTLER:** I'm Donna Butler, Posey  
6 County Clerk, and again, I'm on board with  
7 Susie, we have ES&S, and like this past few  
8 months ago, I received a bill from ES&S, they  
9 cannot explain it. I've sent them e-mails  
10 asking. They're billing from 2007 again, and  
11 they've already been paid. They're asking us to  
12 pay for service -- we don't have elections this  
13 year. They just keep billing and keep billing.

14           Luckily, I keep the claims, they've all  
15 been turned in, the auditor has it. I've been  
16 the clerk for three years, and ES&S has never  
17 come in and checked our machines, serviced or  
18 done anything to any of our voting machines.

19           They called me for the first time in three  
20 years on Wednesday, and asked, you know, why  
21 have I not paid my bill? I said we don't have  
22 an election this year. They're contract has run  
23 out with Posey, and we're still waiting to see  
24 what we do -- yes, we have to buy the software  
25 and the license, but I'm here 100 percent.

1           **CHAIRMAN T. WHEELER:** Will you provide that  
2 information -- I assume somebody from the  
3 Division will be contacting you.

4           **MS. D. BUTLER:** Yes, we'll get it, Mr.  
5 Chairman.

6           **CHAIRMAN T. WHEELER:** Get that through and  
7 I think we're inclined to take a look at that.

8           **MS. D. BUTLER:** I have it all with me.

9           **VICE CHAIR A. LONG:** Any of the counties  
10 that are here -- we've got one from Vanderburgh,  
11 one from Posey, wherever else we're, St. Joe's  
12 perhaps is one of them and this is...

13           **CHAIRMAN T. WHEELER:** It's a concern.

14           **MS. D. BUTLER:** I sent them an e-mail just  
15 the other day asking them to break down line  
16 item of -- you know, they sent me a bill that I  
17 owed, you know, 30 something thousand dollars  
18 and they listed everything and I said I need it  
19 broke down as to what this is for, and they  
20 called me and said well, we don't understand  
21 what you're asking. So this is where we're at.  
22 I'll get you that information.

23           **CHAIRMAN T. WHEELER:** Thank you very much.

24           **COMMISSIONER S. RIORDAN:** Thank you.

25           **VICE CHAIR A. LONG:** Thank you for coming



1 in.

2 **CHAIRMAN T. WHEELER:** Motion's been made  
3 and seconded, all those in favor, signify by  
4 saying aye?

5 **THE COMMISSIONERS:** Aye.

6 **CHAIRMAN T. WHEELER:** Those opposed, same  
7 sign?

8 *(No response.)*

9 **CHAIRMAN T. WHEELER:** Thank you very much.  
10 Thanks everybody for coming.

11 *(At this time the proceedings were*  
12 *adjourned.)*

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1 STATE OF INDIANA )  
2 COUNTY OF HENDRICKS ) SS:

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I, Rhonda J. Hobbs, RPR, and a Notary Public and Stenographic Reporter within and for the County of Hendricks, State of Indiana at large, do hereby certify that the transcript is a full, true and correct transcript made from my stenograph notes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 6<sup>th</sup> day of October, 2009.

*Rhonda J. Hobbs*  
NOTARY PUBLIC

My Commission Expires:  
August 24, 2017  
County of Residence:  
Hendricks County