Indiana Election Commission
Minutes
November 16, 2009

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

Members Absent: S. Anthony Long, Vice-Chairman of the Commission

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.

Also Attending: Mr. Eric Miller (Hoosiers for Eric Miller); 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. Kyle D. Conrad, Governmental Business Systems; Mr. Steve Shamo, MicroVote General Corporation; Mr. Jim Ries, Jr., MicroVote General Corporation; Mr. Robb McGinnis, Election Systems & Software.

1. Call to Order

The Chair called the November 16, 2009 meeting of the Commission to order at 10:00 a.m. in the Indiana Government Center South Conference Center, Conference Room 22, at 402 West Washington Street, Indianapolis, Indiana.

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

2. Transaction of Business

The Commission transacted the business set forth in the Transcript of Proceedings prepared by Ms. Rhonda J. Hobbs, RPR, of Connor 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 3, 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 10, replace “?” with “.”.

Page 16, line 25, replace “?” with “.”.

Page 27, line 22, replace “precedence” with “precedent”.

Page 32, line 21, replace “Wiley” with “Wyle”.

Page 32, line 22, replace “Wiley” with “Wyle”.

Page 42, line 14, after “I do” insert “at the conclusion of the oath”

Page 45, line 1, replace “200d” with “2002”.

Page 46, line 23, replace “been” with “be”.

Page 51, line 22, replace “systems” with “assistance”.

Page 54, line 6, replace “CYBER” with “CIBER”.

Page 55, line 18, replace “A-16” with “(a)(16)”.

Page 56, line 14, replace “Wiley” with “Wyle”.

Page 59, line 13, replace “Wiley” with “Wyle”.

Page 60, line 17, replace “Wiley” with “Wyle”.

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

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. Benson, 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
INDIANA ELECTION COMMISSION
PUBLIC MEETING AGENDA

Date: Monday, November 16, 2009

At: Indiana Government Center South
Conference Room 22
402 West Washington Street
Indianapolis, Indiana 46204

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

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

Mr. Thomas E. Wheeler, II (Chairman)
Mr. Jason Benson (Proxy) for 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
CHAIRMAN T. WHEELER: All right. In the absence of my gavel, I will call this meeting to order. It's a long running joke. Some day I hope to have it down -- I did have it down at some point.

COMMISSIONER D. DUMEZICH: When?

CHAIRMAN T. WHEELER: I have no idea, but I do have it down. The Indiana Election Commission is meeting by notice. This is an emergency meeting of the Indiana Election Commission called under I.C. 5-14-1.5.5 Section D, which permits us to have an emergency meeting for the purposes of dealing with items that we believe fall within the constraints of that provision.

Looking before me, I notice that we have three of the commission members. Anthony Long is here by proxy, and I have his appointment of proxy, which this looks like the original, and who am I giving this to?

MR. B. KING: You'll give it to me for the minutes. Thank you.

CHAIRMAN T. WHEELER: And can you introduce yourself?

MR. J. BENSON: Jason Benson.
CHAIRMAN T. WHEELER: And Jason is filling in for, somewhat large shoes, of Tony Long. The first item on the agenda is an approval of forms, and who is...

MR. B. KING: Mr. Chairman.

CHAIRMAN T. WHEELER: Brad, go ahead.

MR. B. KING: Mr. Chairman, Members of the Commission, before you is a very large packet with a binder clip captioned Order No. 209-313. This order contains most but not quite all of the forms that will be necessary for use in the 2010 Primary and 2010 General Elections.

Let me begin by just generally describing the changes involved. Most are simply changes of dates, from 2008, or in some cases, 2009 to 2010. They're also the usual typographical errors that are corrected, changes to other laws, such as the elimination of county courts, have been the basis for changes in some forms.

I'd like to call your particular attention to Page 4 of the order, which references the VRG 7 and VRG 11. No changes are made to those forms of any substance. These are the voter registration by mail forms, except for the removal of an obsolete e-mail address for the
Indiana Election Division, which if you try to contact us using that e-mail, it will bounce it back to you at this point.

The former that are listed there for the VRG 7, English and Spanish, and the voter registration application customized for each county are grandfathered, they will continue to be used, since there are no substantive changes to the form.

In addition to that, Mr. Chairman, you should have a copy of a single document, a single page document, the Absentee Voter's Bill of Rights. This has been updated for use in 2010, and also would call the Commission's attention to the third bullet which adds warning for the voter who receives an absentee ballot to be certain to check for the two sets of initials which to be counted must included on the back of the ballot and advises the absentee voter to contact the County Election Board to ask for a replacement ballot.

So if those sets of initials happen to be absent, if it's the pleasure of the Commission, this absentee Voter's Bill of Rights can be incorporated as Amendment Order 2009-313. I'll
be happy to answer any questions.

CHAIRMAN T. WHEELER: Questions from the commission members?

(No response.)

CHAIRMAN T. WHEELER: The Absentee Voter's Bill of Rights is intended to go out, actually it goes out over the name plate of the individual county election boards?

MR. B. KING: That's correct Mr. Chairman.

CHAIRMAN T. WHEELER: Do they have the right to modify this?

MR. B. KING: Mr. Chairman, the form is prescribed by the Election Commission. The only modifications that would be permitted would be obvious ones, such as the name of the county at the end.

CHAIRMAN T. WHEELER: Any other questions from the commission members?

(No response.)

CHAIRMAN T. WHEELER: I'll accept an motion of Order No. 2009-313 as amended to include the Absentee Voter Bill of Rights.

COMMISSIONER S. RIORDAN: Just for purposes of clarification, are you talking -- voting on the entire motion or...
CHAIRMAN T. WHEELER: I was going to or do you want to go in pieces?

COMMISSIONER S. RIORDAN: My understanding of what you just called for is a motion just to accept the Voter Bill of Rights.

COMMISSIONER D. DUMEZICH: That's an amendment.

CHAIRMAN T. WHEELER: I think I said Order No. 2009-313, and then with this as the amended.

COMMISSIONER S. RIORDAN: So moved.

CHAIRMAN T. WHEELER: Do I have a second?

COMMISSIONER D. DUMEZICH: Second.

CHAIRMAN T. WHEELER: Any further discussion?

(No response.)

CHAIRMAN T. WHEELER: Hearing none, all in favor of approving Order No. 2009-313 as amended to include the Absentee Voter's Bill of Rights as well, signify by saying aye?

THE COMMISSIONERS: Aye.

CHAIRMAN T. WHEELER: Those opposed, same sign?

(No response.)

CHAIRMAN T. WHEELER: Motion carries. I'm going to go a little bit -- we have an
additional item on the agenda which I'm going to jump to at this point involving a -- we have an additional item which I'm going to add to the amendment at this point involving a campaign finance issue or candidacy issue, and Pam, are you presenting on this one?

**MS. P. POTESTA:** Yes, Mr. Chairman.

**CHAIRMAN T. WHEELER:** Thank you. The first thing, I think we need to do, since we're going to be taking testimony here as well, is somebody administer an oath to everybody who's going to be providing testimony, that includes on the election systems as well.

**MR. B. KING:** If you plan to be testifying only on the matters before the Commission today, please stand?

*(The witnesses complied.)*

**MR. B. KING:** Raise your right hand?

*(The witnesses complied.)*

**MR. B. KING:** And say I do at the conclusion of the oath. I do solemnly swear that the testimony that I will give before the Commission today will be the truth, the whole truth, and nothing but the truth, so help me, God?
THE WITNESSES: I do.

MR. B. KING: Thank you.

CHAIRMAN T. WHEELER: All right, Pam.

MS. P. POTESTA: Mr. Chairman, this is in regards to Mr. Eric Miller's campaign reports. Our Division sent Mr. Miller the standard memo on March 19th, 2008. In the third paragraph we say the candidates that are on the ballot this election year must file a quarterly report from January 1st, 2008 through March 31st, 2008, due in this office by noon Indianapolis time, April 15th, 2008.

What we should have said in the language we use now, Mr. Miller was not on the ballot at that time, but yet the Office of Governor was. Now it is worded candidates whose office is on the ballot, etc., etc.

So it was our error in sending out that memo and it has since been corrected, but as a result, Mr. Miller was fined for being one day late in filing.

MR. B. KING: And Mr. Chairman, it would be the recommendation of the co-directors to dismiss the cause in this matter for that reason.
CHAIRMAN T. WHEELER: Mr. Miller, I know you're here, do you want to make any comments on...

MR. E. MILLER: I concur with their recommendation.

CHAIRMAN T. WHEELER: A man of few words. I like it. Are you sure you're a politician? Okay, any discussion, questions from the commissioners for Mr. Miller or the staff?

(No response.)

CHAIRMAN T. WHEELER: Hearing none, I'll accept a motion.

COMMISSIONER D. DUMEZICH: Make a motion to remove the penalties associated with the noncompliance or alleged noncompliance involving Mr. Miller.

CHAIRMAN T. WHEELER: All right, there's a motion, is there a second?

COMMISSIONER S. RIORDAN: I'll second it.

CHAIRMAN T. WHEELER: All right. Motion's been made and seconded, any further discussion?

COMMISSIONER S. RIORDAN: Just to be clear about exactly what happened, we sent out a letter with instructions, which the instructions were in error?
MS. P. POTESTA: Correct.

COMMISSIONER S. RIORDAN: And so the filing was a day late?

MS. P. POTESTA: Yes.

COMMISSIONER S. RIORDAN: But it wasn't really due after all; is that the case?

MS. P. POTESTA: That's correct.

CHAIRMAN T. WHEELER: It wasn't due at all, in fact.

MS. P. POTESTA: Correct.

CHAIRMAN T. WHEELER: Point of clarification, the motion, I believe, says to remove the penalty, that would still -- that would indicate that he still has a violation against him; right -- do you want to amend the motion for penalty and violation?

COMMISSIONER D. DUMEZICH: Amend the motion for penalty and violation.

CHAIRMAN T. WHEELER: And dismiss the violation?

COMMISSIONER D. DUMEZICH: Yes, dismiss the violation.

CHAIRMAN T. WHEELER: Motion's been made and amended, do I have a second on the amended motion?
COMMISSIONER S. RIORDAN: Second.

CHAIRMAN T. WHEELER: Any further discussion?

(No response.)

CHAIRMAN T. WHEELER: All in favor of the motion to dismiss the charge, I guess?

MR. B. KING: Enforcement action.

CHAIRMAN T. WHEELER: The enforcement action against Mr. Miller, signify by saying aye?

THE COMMISSIONERS: Aye.

CHAIRMAN T. WHEELER: Those opposed, same sign?

(No response.)

CHAIRMAN T. WHEELER: Motion carries. The enforcement action has been dismissed. I apologize for the mistake but at least we cleaned up our forms as well.

MR. E. MILLER: Thank you very much. I appreciate it.

CHAIRMAN T. WHEELER: All right. Next up on the agenda is voting system certification. I notice we have our friends from Ball State here. We didn't break these out, Brad, what order do you guys want to go in and how are we going to
MR. B. KING: Mr. Chairman and Members of the Commission, I believe the red folder has the summary report from Ball State University in the order that the voting systems were on the agenda at the September 18th meeting, but of course, that's at the pleasure of the Commission, whatever order you wish to make them.

CHAIRMAN T. WHEELER: Let me reverse because I think some of them are easier and some of them are harder. As I recall, Hart InterCivic was ready to go at the last meeting.

MR. B. KING: That's correct.

CHAIRMAN T. WHEELER: And I believe we tabled the Premier; is that correct?

MR. B. KING: That is correct.

CHAIRMAN T. WHEELER: And then ES&S and MicroVote both had theirs denied at the last meeting?

MR. B. KING: That is correct, Mr. Chairman.

CHAIRMAN T. WHEELER: Exercise the discretion of the Chair and work our way down. Let's start with Hart InterCivic.

MR. R. SCEELE: Sure. Again, I'm Ray
Scheele from the Bowen Center, co-director of the Bowen Center, and co-director of the Voting System Technical Oversight Program, along with Dr. Jay Bagga, who's Professor of Computer Science and co-director of the program with me, and us again today is Dr. Joe Losco associated with the project and is chair of the Political Science Department at Ball State University.

We'll pick up first with Hart InterCivic. This was an application -- well, all of these applications today are recertification applications. Just for a quick background, there are two applications for new certifications of voting systems that we are close to -- we've already tested those as well, and sometime after the Thanksgiving holiday probably at the -- really whenever the Commission decides, we'll be able to report on the new certifications as well.

Hart InterCivic, we reported on this on the September 18th meeting of the Commission. We reviewed the documents and we've tested the machines and we find that System 6.2.1 of Hart InterCivic with the type of voting systems specified here on the document meets all of the
requirements of the Indiana Code for use in the
State of Indiana, and this includes the meeting
of all legal certified requirements with voters
with disabilities. We'll be glad to respond to
any questions.

CHAIRMAN T. WHEELER: Any questions from
the Commission Members with respect to Hart
InterCivic?

COMMISSIONER S. RIORDAN: Do you know how
many counties this vendor services?

MR. R. SCHEELE: Currently, only one --
Cass County, I believe, it is Logansport, uses
Hart InterCivic.

COMMISSIONER S. RIORDAN: Thank you.

MR. R. SCHEELE: But they are used
throughout the country.

COMMISSIONER S. RIORDAN: Right.

CHAIRMAN T. WHEELER: Is there anybody from
Hart InterCivic here?

(No response.)

CHAIRMAN T. WHEELER: As I recall, we were
ready to approve the Hart InterCivic at the last
meeting and there was a concern about the Ball
State review process so I'd like -- it's been
vetted. I do want to ask one additional
question and some clarification, if needed, as we look to the approval of this. Is Robb McGinnis here?

MR. R. McGINNIS: Yes.

CHAIRMAN T. WHEELER: Rob, would you stand up and take the oath please because I have a question for you?

MR. R. McGINNIS: Sure.

MR. B. KING: Please respond I do at the conclusion of the oath? I do solemnly swear that the testimony that I will give the Commission today will be the truth, the whole truth, and nothing but the truth, so help me, God?

MR. R. McGINNIS: I do.

CHAIRMAN T. WHEELER: Rob, it's my understanding you sent an e-mail to the Division questioning the fact that Hart InterCivic was involved in Harrison County?

MR. R. McGINNIS: I did.

CHAIRMAN T. WHEELER: All right. What is your -- what is the allegation or what is your concern that you were raising?

MR. R. McGINNIS: I just had a question for Brad asking certification status? I was not
allowed to give a demonstration because we were not certified, and I just simply asked the question, if they were able to do the same?

CHAIRMAN T. WHEELER: Okay. And as I read an e-mail from you, you state -- this involves Harrison County?

MR. R. McGINNIS: Correct.

CHAIRMAN T. WHEELER: You state I read that Harrison County just voted to buy used equipment from Hart at their October commissioners' meeting?

MR. R. McGINNIS: That is correct.

CHAIRMAN T. WHEELER: On the other hand, you said that I had told the county that I'm unable to give them pricing on any of our equipment until our certification is complete?

MR. R. McGINNIS: That is correct.

CHAIRMAN T. WHEELER: So I take it you felt that it was unfair for them to be selling their equipment after October 1st?

MR. R. McGINNIS: Absolutely.

CHAIRMAN T. WHEELER: And you asked the Division to look into that?

MR. R. McGINNIS: I did.

CHAIRMAN T. WHEELER: And has the Division
looked into that?

MR. B. KING: Mr. Chairman, on October 23rd, I responded to Mr. McGinnis and Pam Potesta, along with Sherry Brown, who serves as the circuit clerk court of Harrison County requesting further information regarding the information that Mr. McGinnis has provided.

As of this time I have not received any information either from Harrison County or from Hart InterCivic. I did receive an e-mail, rather a voice mail on Friday from Mr. Eddie Perez of Hart InterCivic -- he did not mention Harrison County, specifically, but stated that he is aware of concern regarding some activities that he characterized as completed prior to October 1st but did not provide any detail or specific information.

CHAIRMAN T. WHEELER: All right. And as I understand it, with respect to Hart InterCivic, Hart InterCivic, according to Ball State, had completed their entire process as of our September 18th meeting; correct?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: But for the Division raising a question about Ball State's
involvement in the process, the approval process, they were completely done basically; correct?

MR. B. KING: Correct.

CHAIRMAN T. WHEELER: And I think that question's now been resolved and we're prepared to act on that. At this point the Division has not heard back from Harrison County and is not in a position to discuss that issue with us; correct?

MR. B. KING: That's correct, Mr. Chairman, other than what I've already stated.

CHAIRMAN T. WHEELER: All right. But the -- as I understand it, based upon the fact that the certifications did not take place before October 1st, nobody -- none of the four should have been marketing or selling their equipment; is that correct?

MR. B. KING: That is correct.

CHAIRMAN T. WHEELER: Do we have reports of anybody else who's done that?

MR. B. KING: Not that I'm aware of, Mr. Chairman.

CHAIRMAN T. WHEELER: Any other questions from the Commissioners?
COMMISSIONER S. RIORDAN: Only if there's discussion.

CHAIRMAN T. WHEELER: All right. I wanted you guys to know that that was out there before we voted or made a motion on Hart InterCivic's application. The Ball State's report is in front of us on System 6.2.1; do I have a motion?

(No response.)

CHAIRMAN T. WHEELER: All right. I'll take the discretion of the Chair to make a motion to approve Hart InterCivic's 6.2.1, including DRE Optical Scan Ballot Card and Digital Scan Central Count pursuant to the report dated November 16th, 2009 from Ball State University. Do I have a second on the motion?

COMMISSIONER D. DUMEZICH: Second it.

CHAIRMAN T. WHEELER: All right, the motion's been made and seconded, discussion on the motion?

COMMISSIONER S. RIORDAN: Yes, Mr. Chairman. In the past went we have had allegations of impermissible marketing brought before us, and we've taken a pretty hard stance on that. We don't have much substantiation of this right now, but I am still reluctant to
approve and certify a vendor that's acting
contrary to law.

On the other hand, there's also the
countervailing concern that there will be voters
who will be disenfranchised or clerks who will
be put behind the eight ball if we hold these
processes up as we have in the past. I'm
interested in what staff or other Members of the
Commission might think about those concerns?

CHAIRMAN T. WHEELER: Pam, Leslie, anybody?

MR. B. KING: Mr. Chairman, speaking for
myself as co-director and not for my colleague,
I think the concerns voiced by Commissioner
Riordan are exactly correct, in that any
allegation that a voting system vendor has
violated a statutory prohibition against
marketing, selling, leasing or installing or
permitting the use of uncertified equipment are
to be taken very seriously, but I would
distinguish between the enforcement action
taken, if an apparent violation of that law has
occurred, versus the statute on the
certification of a particular voting system
that's before the Commission.

Ball State has taken the role formerly
assigned to the co-directors, in terms of making
a formal recommendation regarding compliance
with 2002 or 2005 Federal Standards and Indiana
law, and so we defer to Ball State in that
regard.

I would point out as a final note that if
the Commission were to vote to approve the
application of Hart InterCivic and were
subsequently to discover a reason to determine
that there had been a violation, the Commission
could proceed at that point with any enforcement
action necessary against Hart InterCivic,
including the penalty of decertifying equipment.

CHAIRMAN T. WHEELER: So as I understand
what you're saying, it's essentially a two-prong
process. The first prong is certification, and
then if there's a violation, that's a separate
penalty prong, that should, in fact, affect
certification?

MR. B. KING: Yes, that's correct, Mr.
Chairman.

CHAIRMAN T. WHEELER: Statutorily -- can
you give me the statutory site -- if they meet
the statutory requirements, are we bound to
approve the certification -- does it say there's
six -- six things, all six of these?

MR. B. KING: Mr. Chairman, I'll defer to my co-counsel, Mr. Dale Simmons, who could provide the statute site.

MR. D. SIMMONS: Well, the statute addresses -- the statutory elements is 3-11-15-7, and it states in Subsection B that if all the requirements are met listed in that section, which details the submissions that the voting system vendors have to make, that the Commission can consider.

I don't think there's anything in the code that says that you're bound at any particular point, if you're not satisfied those elements have not been met, but that certainly says once the elements of that section have been met, those submissions have been made, the review by and recommendation by Ball State at this point, that's an additional part of the process, then the Commission can consider voting system vendor for approval.

COMMISSIONER S. RIORDAN: I have another question which kind of goes to my second concern. If we were to hold this up, what is the consequence for clerks and voters in the
election cycle?

CHAIRMAN T. WHEELER: Particularly, Harrison and Cass County?

COMMISSIONER S. RIORDAN: Yeah. Anybody?

MR. B. KING: Mr. Chairman, Members of the Commission, Commissioner Riordan asked with regard to specific counties, they have different situations. With regard to Cass County, as a current user of the formally certified system, they are able to continue using the system under the so-called grandfather clause in 3-11-15-13.3 as that legislation was amended in 2009.

With regard to Harrison County, Harrison County, to my knowledge, has not qualified under the grandfathering clause. If they did, then they would be permitted to continue to use it. If they did not qualify under the grandfather clause, then they would not be using a certified voting system, and therefore, would be subject to the various liabilities that can result when a county does that, including recounts and contests of elections conducted using uncertified equipment.

COMMISSIONER S. RIORDAN: And we're six months from the Primary, almost six months from
the Primary; right, and so if they -- if we held
this up until our next meeting -- recognizing
that our folks from Ball State have said that
technically everything is the way it's supposed
to be, if we held this up to do a little bit
more fact finding about either conduct in
Harrison County, is that something that would
make trouble for the May election -- it doesn't
seem like it, but again, I mean, I -- I don't
know the role of the Commission, but my sense is
that if there's an allegation of improper
marketing with uncertified materials, we can't
let that happen.

CHAIRMAN T. WHEELER: I agree with you a
hundred percent, Sarah. I guess my suggestion
would be that we go ahead and -- I mean, I'm
certainly not waiving my right to look at
certification -- looking at other issues
relating to certification in this particular
case, particularly, since -- but for what
happened in the last meeting.

We certified it on September 18th, I'm
inclined to vote in favor of the motion, certify
the equipment, and make sure we have a response
from the Harrison County clerk as to what
happened, and if -- in fact, if they have violated the statute regarding marketing, ensure that we take action at that point in time, and that way we're not punishing the county, we're only punishing the vendor.

COMMISSIONER S. RIORDAN: I mean, I wonder was the vendor here in September; was Hart InterCivic here, because we did sort of hold up the process for our own edification; right, and if we hadn't done that, then they may -- they wouldn't have been certified?

COMMISSIONER D. DUMEZICH: They wouldn't have been certified, right -- there would have been no violation.

MR. R. SCHEELE: The report we provided the Commission is identical to the report, except for the dates.

COMMISSIONER D. DUMEZICH: And if we would have done that, there would have been no marketing violation as well.

COMMISSIONER S. RIORDAN: I'm sorry?

COMMISSIONER D. DUMEZICH: And if we would have certified them at that point in time, there would have been no marketing violation.

COMMISSIONER S. RIORDAN: That's my point.
CHAIRMAN T. WHEELER: Nevertheless --

COMMISSIONER S. RIORDAN: It's still

important.

COMMISSIONER D. DUMEZICH: No, I agree.

CHAIRMAN T. WHEELER: It is important, No. 1, and No. 2, if for example, competitors have been holding off marketing and have continued to market, that is a problem. I would note that I have the same concerns with everybody else who's out in there the marketplace and I would hope that we don't get reports that other vendors were marketing between September 18th and the present -- I assume the systems were certified, because I think, clearly, as you've heard from Commissioner Riordan, that's an expectation we expect upheld; particularly, if you guys are at a point with one another about doing anything, make sure your house isn't made of glass as well.

COMMISSIONER D. DUMEZICH: Which brings my problem up, if we do find out about that and set a precedence and not certifying them at this point, we could end up disenfranchising them in May, so that's why the proper thing to do is certify them and look into the allegations of
the misconducts and dispose of those at a
different -- at a time when we may not have the
press of time pushing us to make some decisions
we'd rather not make.

CHAIRMAN T. WHEELER: And there's other
options, less stringent certifications we've
received from the other vendors. So any further
discussion?

COMMISSIONER S. RIORDAN: No.

CHAIRMAN T. WHEELER: Motion has been made
to approve Hart InterCivic Platform System
6.2.1 --

COMMISSIONER D. DUMEZICH: Second it.

CHAIRMAN T. WHEELER: -- from Ball State?

COMMISSIONER D. DUMEZICH: Second it.

CHAIRMAN T. WHEELER: Hearing no further
discussion, all in favor, signify by saying aye?

THE COMMISSIONERS: Aye.

CHAIRMAN T. WHEELER: Those opposed, same
sign?

(No response.)

CHAIRMAN T. WHEELER: But I think the one
thing we did hear -- although we've approved the
system now, that's not a retroactive approval;
am I correct?
MR. D. SIMMONS: That's as of today, correct.

MR. B. KING: Yes, Mr. Chair.

CHAIRMAN T. WHEELER: So the violation has still been alleged, and my understanding is the Division in is in the process of investigating?

MR. B. KING: Yes, Mr. Chairman, that's correct. Statutorily, counties are required to file copies of the voting system contracts they enter into with the Election Division, so we anticipate receiving that document and further information from Harrison County.

CHAIRMAN T. WHEELER: In November?

MR. B. KING: In November.

CHAIRMAN T. WHEELER: All right. Next, do I have the Premier certification, formerly Premier?

MR. R. SCHEELE: Formerly Premier.

CHAIRMAN T. WHEELER: It says that. If I read the top of the paper, that would be helpful. Ray, are you have the Premier application as well?

MR. R. SCHEELE: Yes. This system again was tested on the campus of Ball State by our team. This is a recertification request
application for, as you can see here, the model
number were Model Nos. A, B, C and D. The only
model we tested was Model D. We have been
informed by the representatives of the vendor
that only Model D is in service in Indiana, and
that is the model we tested.

The SSL certificate which is -- had expired
and a new certificate was tested by us, by our
team on the Model D. The last paragraph on Page
2 of this report, that on the basis of or
evaluation, we find that the voting systems
referenced herein (the two Model D systems, with
the SSL Certificate) meet all of the
requirements of the Indiana Code for use in
Indiana, and this includes compliance with the
requirements for voters with disabilities.

We have more information on the SSL
certificate, if you want any explanation on
that. It's basically, as I indicated in
September, a communication software tool.

CHAIRMAN T. WHEELER: Can someone educate
me -- I just don't recall why we didn't -- well,
this had not been -- what was the status of this
on September 18th meeting; had you completed...

MR. R. SCHEELE: No.
CHAIRMAN T. WHEELER: And what was -- I see they filed a revised application on October 2nd, so they were not -- they had not completed the certification process at Ball State on September 18th; right?

MR. R. SCHEELE: Correct, that's why we have no -- we haven't tested it so we have no recommendation.

CHAIRMAN T. WHEELER: All right. So this is a new report?

MR. R. SCHEELE: Right.

CHAIRMAN T. WHEELER: Although -- as opposed to Hart, that was the same report, this is a new report?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: And in this report -- when did you actually -- when did they get their stuff to you?

MR. R. SCHEELE: We tested it on September 23rd and the 25th. I think that's a Wednesday and a Friday.

CHAIRMAN T. WHEELER: This is the one that said we're ready to go and we're rescheduling for next week?

MR. R. SCHEELE: Correct.
CHAIRMAN T. WHEELER: I think this is the one that said we're rescheduling for next week. And then you said this report -- there's a revised application on October 22nd, do you know what changed on the application?

MR. R. SCHEELE: We have the application here and Jay can speak to that.

CHAIRMAN T. WHEELER: The application was actually revised after you did the testing?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: What's the change in the application?

MR. B. KING: I'm not aware of any change in the application Mr. Chairman.

MR. J. LOSCO: Not all of the boxes were filled out in the original application. The second application had the boxes filled out, a check had been sent to the Election Division.

The SSL, we had not tested ourselves by the time of the September 18th meeting, but we did have a report that Wiley Labs did test it and Wiley Labs said it was fine, we then tested it on our meetings on September 23rd and 25th to confirm, so we submitted it to additional tests on those days.
The -- and again, the difference in the applications was that the first application was not fully filled out with all the check boxes appropriately taken care of.

CHAIRMAN T. WHEELER: Questions from the commissioners?

(No response.)

CHAIRMAN T. WHEELER: Anything else from Ball State?

(No response.)

CHAIRMAN T. WHEELER: Anything from the Division?

MR. B. KING: No, Mr. Chairman.

CHAIRMAN T. WHEELER: Pam?

MS. P. POTESTA: No.

MR. R. SCHEELE: Just to reiterate, we're speaking only to Model D, the two Model Ds.

COMMISSIONER S. RIORDAN: I guess I do have one question. How many counties in Indiana are serviced by this vendor?

MR. J. LOSCO: By Premier, approximately, 15.

CHAIRMAN T. WHEELER: What's the application, is the application for A, B, C and D?
MR. J. LOSCO: Yes, it is.

CHAIRMAN T. WHEELER: And you haven't done any tests on A, B and C?

MR. J. LOSCO: No.

CHAIRMAN T. WHEELER: All right. I certainly want to approve an application for A, B and C, since nothing's been done.

MR. J. LOSCO: Correct.

CHAIRMAN T. WHEELER: And you did that based upon the indication of the vendor, that they're only using D in Indiana; is that correct?

MR. J. LOSCO: Yes. Those are the only machines they brought for us to inspect.

CHAIRMAN T. WHEELER: Do I have a motion? Any other questions? Do I have a motion?

COMMISSIONER S. RIORDAN: Well, I think that it certainly be limited to Model D, so I move that we certify Election Systems and Software (Formerly Premier Election Solutions) application for renewal of a previously approved system and re-evaluation and modification to a certified system for AccuVote-TSX DRE Touch Model D only and AccuVote-OS Optical Scan Model D only.
CHAIRMAN T. WHEELER: Do I have a second on the motion?

COMMISSIONER D. DUMEZICH: Second it.

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

(No response.)

CHAIRMAN T. WHEELER: Let me ask one question. Robb, is this yours, too, at this point?

MR. R. McGINNIS: Yes, Kyle or myself.

CHAIRMAN T. WHEELER: Okay. Who wants to -- and you guys only are using D in Indiana?

MR. R. McGINNIS: Correct.

CHAIRMAN T. WHEELER: And it's not been a problem with anybody -- why didn't you apply for any of these?

MR. K. CONRAD: To be honest with you, the application was completed the same as it was last time. It's -- all the same information from the previous application was resubmitted. I believe the amended application on October 2nd, took some things off that was not in use in Indiana so we could expedite the process and not have to test...

CHAIRMAN T. WHEELER: All right. So as I
understand it, it's not going to be any problem
for anybody that wants to...

MR. K. CONRAD: Right.

CHAIRMAN T. WHEELER: All right. Any
questions or further discussion?

(No response.)

CHAIRMAN T. WHEELER: All in favor of the
motion, signify by saying aye?

THE COMMISSIONERS: Aye.

CHAIRMAN T. WHEELER: Those opposed, same
sign?

(No response.)

CHAIRMAN T. WHEELER: Motion carries. Next
up is ES&S renewal of previously approved
system, application made May 7th, 2009.

MR. R. SCHEELE: Yes this is for the Model
No. 3.0.1.0.

CHAIRMAN T. WHEELER: Let me ask two
preliminary questions.

MR. R. SCHEELE: Sure.

CHAIRMAN T. WHEELER: One, what did we do
with this application at the September
18th meeting?

MR. B. KING: Mr. Chairman, Members of the
Commission, this application was denied by vote
of the commission at the September 18th meeting.

CHAIRMAN T. WHEELER: All right. What's
the implication of a denial of the application?

MR. B. KING: Mr. Chairman, I'll defer to
cO-general counsel, Dale Simmons, to quote the
statute, but I can paraphrase it as -- for the
Commission to consider certification of a voting
system, a complete application must be pending
before the Commission.

CHAIRMAN T. WHEELER: Is there a complete
application pending at this point?

MR. B. KING: In my opinion, no.

CHAIRMAN T. WHEELER: Why not?

MR. B. KING: Because no further
application has been submitted following the
denial of the previous application on September
the 18th.

CHAIRMAN T. WHEELER: So as an example,
they haven't refiled their application?

MR. B. KING: This is correct, Mr.
Chairman.

CHAIRMAN T. WHEELER: They haven't paid the
application fee?

MR. B. KING: They haven't.

CHAIRMAN T. WHEELER: And as I understand
it, that's a statutory mandate in and of itself; correct?

MR. D. SIMMONS: Yes, Mr. Chairman. In 3-11-15-4, each application for certification of a voting system shall be accompanied by a fee of $1,500.

CHAIRMAN T. WHEELER: And as I understand 3-11-15-6, it says the Commission shall not approve any system until the fee and expenses incurred by the Election Division have been paid?

MR. D. SIMMONS: Correct.

CHAIRMAN T. WHEELER: So we can't even consider this unless an application has been considered and a fee has been paid; correct?

MR. D. SIMMONS: Correct.

COMMISSIONER D. DUMEZICH: I think we can consider it, we just have to deny it.

CHAIRMAN T. WHEELER: Well, it's already been denied. I don't think there's anything for us to consider -- I mean, I don't see how you can call it an application if there is no application -- Leslie?

MS. L. BARNES: I don't know that I'm comfortable speaking on this issue because I
just became aware of it this morning. Let me defer to...

CHAIRMAN T. WHEELER: That's my gut. My gut is we denied it at the last -- they received notice of the denial; correct?

MR. B. KING: Yes, Mr. Chairman. On September the 25th, Pam Potesta and I sent a letter to Mark Manganaro of ES&S informing them of -- informing ES&S of denial of the application.

CHAIRMAN T. WHEELER: We've got -- Robb, I can't see how you can do anything without an application.

MR. R. McGINNIS: Well, from my understanding -- again, we sent in the original application. Unfortunately, your meeting was a week prior to us meeting with Ball State so I think it was a timing issue, and Steve just called me late Friday, Brad, to ask if I could come here, so to be honest, I'm looking for direction from you. I don't have all the details.

CHAIRMAN T. WHEELER: The way I take it, we need -- you need -- you need to refile your application. As I take -- let me summarize,
Ray, you guys are now done; right?

MR. R. SCHEELE: Correct, we tested this on October 8th.

CHAIRMAN T. WHEELER: And it's good to go?

MR. R. SCHEELE: Right.

CHAIRMAN T. WHEELER: So basically, from that standpoint, you're okay, which is what we didn't have before, since we denied it. As I understand it, you've got to refile the application, pay the fee -- if it's the same application, pay the fee, and we just take it up again.

MR. R. McGINNIS: Okay.

CHAIRMAN T. WHEELER: I had hoped that we would have done that from September 18th and now.

MS. P. POTESTA: Yes, Mr. Chairman. They were given a letter stating what you just said. They had opportunity to resubmit it.

CHAIRMAN T. WHEELER: Okay. So I guess the way to go is you need to resubmit at this point. Did you get the letter from the Division?

MR. R. McGINNIS: I'm assuming that we did.

CHAIRMAN T. WHEELER: I will have -- if you'll wait, I'll have them make a copy so
you've got it, and Brad, if you'll make sure
they understand what they're supposed to do so
this gets taken care of. The way I look at it,
I don't have anything to take up at this point
with regard to ES&S; correct?

MR. B. KING: That's correct, Mr. Chairman.

CHAIRMAN T. WHEELER: And I took that from
Pam and Leslie, as well, that they've been
notified. So ES&S, I don't even have to table
it because there's really nothing to take up;
correct?

MR. B. KING: That's correct, Mr. Chairman.

CHAIRMAN T. WHEELER: Is there anybody here
from MicroVote?

MR. S. SHAMO: Yes.

CHAIRMAN T. WHEELER: Could you state your
names?

MR. J. RIES: Jim Ries.

MR. S. SHAMO: Steve Shamo.

CHAIRMAN T. WHEELER: Okay. And then with
respect to MicroVote...

MR. B. KING: Mr. Chairman, Members of the
Commission, with respect to MicroVote its
application was also denied by the Commission on
September the 18th. There is a report from Ball
State concerning the system that was the subject of that application.

CHAIRMAN T. WHEELER: Okay. First question, did we send a letter out as well -- I don't -- you guys weren't here at the last September 18th meeting, were you?

MR. S. SHAMO: We received it.

CHAIRMAN T. WHEELER: But you got the letter, okay. And you refiled -- actually, I'll tell you what, since we're testifying, why don't you guys stand up?

(Witnesses complied.)

CHAIRMAN T. WHEELER: Go ahead, Brad.

MR. B. KING: Please respond I do. I do solemnly swear that the testimony that I will give to the Commission today will be the truth, the whole truth, and nothing but the truth, so help you, God?

MR. S. SHAMO: I do.

MR. J. RIES: I do.

CHAIRMAN T. WHEELER: So you got the letter from the Division?

MR. J. RIES: Yes.

MR. S. SHAMO: Yes.

CHAIRMAN T. WHEELER: Have you refiled the
application?

MR. S. SHAMO: No.

CHAIRMAN T. WHEELER: So you're in the same boat as ES&S?

MR. S. SHAMO: We weren't certain why it would make sense to refile an application that was previously denied with the same materials.

MR. R. McGINNIS: And -- and I -- I think that was our issue as well.

CHAIRMAN T. WHEELER: The easy answer is it could have been dismissed. The Commission voted to dismiss it, so the answer is refile and go from there, and what I could do is have the minutes from the last meeting, on why it was dismissed, and we'll have the minutes circulated to you guys so you can see that.

With respect to MicroVote, as I understand it, you guys are in a little bit situation from ES&S because Ball State has approved ES&S in the interim, so ES&S simply needs to refile, and then we'll take it up at the next meeting. I think from Ball State's position, they're not complete; correct?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: And let's go ahead.
I'm going to have them go through that so you know what you need to do to get this complete.

**MR. R. SCHEELE:** Again, the model numbers are noted here. We met with representatives from MicroVote on September 15th of this year to review their independent lab reports as it pertained to their application.

Our project team conducted then hands-on testing of the voting systems that are described herein. No independent laboratory results were made available for this voting system with these components.

An independent laboratory reporting pertaining to the Infinity 3.07 voting system was made available, but the recertification applications lists the system as the MicroVote Infinity VP-1 revision C Firmware 3.10.

Our team was informed that the only difference between this version 3.07 and version 3.10 was the correction of software pertaining to the straight party ballot option specified in the Indiana Code.

Copies of letters from the vendor were presented from CIBER labs to the IEC stating that changes in the original voting system had
been tested and found to comply with the 200d federal standards.

However, the actual test results and the lab report were not made available. In a September 14, 2009 e-mail to the MicroVote representative we requested additional information pertaining to the testing lab reports.

Additional communications with the vendor representatives failed to result in obtaining the requested lab reports. The disability features were also tested and found to comply with statutory provisions.

Because the lab reports made available pertained to system 3.07 instead of system 3.10, which was applied for, which is the system under consideration, it is not possible at this time to find that system 3.10 meets all the statutory requirements of Indiana.

CHAIRMAN T. WHEELER: So as I understand it, they're missing the lab report?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: That's what they need to provide; correct?

MR. R. SCHEELE: Correct.
CHAIRMAN T. WHEELER: And that's lab report for system 3.10?

MR. R. SCHEELE: Correct.

CHAIRMAN T. WHEELER: So it's a recertification?

MR. R. SCHEELE: Yes.

CHAIRMAN T. WHEELER: All right. So 3.10 has previously been certified?

MR. S. SHAMO: Yes.

COMMISSIONER S. RIORDAN: Even with the changes -- pardon me, even with the changes?

MR. S. SHAMO: Yes.

CHAIRMAN T. WHEELER: But as I recall, it was certified conditionally upon you providing this lab report letter on 3.10; is that correct?

MR. S. SHAMO: Upon receipt of the report, as we had...

CHAIRMAN T. WHEELER: And it's been how many years -- two, three years?

MR. S. SHAMO: Two, three years.

CHAIRMAN T. WHEELER: Three years, and they don't have the lab report.

MR. S. SHAMO: Nor will it ever been created.

CHAIRMAN T. WHEELER: I understand, but let
me ask you why?

**MR. J. RIES:** The Indiana Election Commission approved certification for 3.10 which was on the application submitted to Ball State. On August 20th, 2006, it was certified with the condition based on receiving the final report from CIBER, the independent testing laboratory. On September 20th, CIBER was suspended by the EAC --

**CHAIRMAN T. WHEELER:** Let me stop you there. We approved 3.10 conditionally upon receiving the report, the lab report?

**MR. J. RIES:** That's correct.

**CHAIRMAN T. WHEELER:** And that was three years ago?

**MR. J. RIES:** Right. As of September 20th, 2006, CIBER was not reaccredited under the Election Systems Commission, meaning they lost their accreditation status for voting system testing lab, and therefore, that report was not generated.

We complied. We did all the testing. We never received a final report, which was requested in the conditional certification, and that report just doesn't exist so that's why.
CHAIRMAN T. WHEELER: Have you taken any steps to get it examined by anybody else?

MR. J. RIES: I just sent Brad and the Division the entire package of information that we received from CIBER with a letter from the independent testing lab explaining chronologically all the steps that we had complied with and that report simply doesn't exist.

CHAIRMAN T. WHEELER: But CIBER is not the only independent testing lab; correct, certified by the EAC?

MR. J. RIES: Not anymore.

CHAIRMAN T. WHEELER: With all due respect, it's been three years.

MR. J. RIES: Well, we completed the testing and the report was never generated. We've seen submitted our current, our upgraded product to the EAC, and received accreditation and certification on the 2005 scanner.

COMMISSIONER D. DUMEZICH: But just out of curiosity, why wouldn't -- knowing that you needed this report, why wouldn't you take the -- go to another lab and get the report issued for us?
MR. J. RIES: Because those standards — Brad might be a little more knowledgeable about it, the 2007 -- the 2002 standards were no longer recognized, so if we were to go to another lab, we would have to do exactly what we've done, is resubmit our product under the 2005 standards for voting systems, the guidelines, so that's what we've done, and it took, approximately, two years to complete that process.

COMMISSIONER D. DUMEZICH: And that process is completed?

MR. J. RIES: That is correct.

MR. S. SHAMO: You can't test back -- you can't test backwards to the older version with the lab; is that correct?

MR. J. RIES: That's correct.

MR. S. SHAMO: That's the answer to the question, you can't take the equipment and...

COMMISSIONER D. DUMEZICH: You could not accomplish what we instructed you to do?

MR. J. RIES: That's correct.

COMMISSIONER D. DUMEZICH: I understand. I thought you were just being defiant —

MR. J. RIES: No.
COMMISSIONER D. DUMEZICH: -- rather than
unable to accomplish it.

COMMISSIONER S. RIORDAN: So there isn't
some older version that can't be the subject of
an independent test that is out there to be sold
or to be used by the counties -- I mean, my
concern is do we have -- I know that we cannot
get a lab report, I understand what you've just
said, but is there equipment out there in play
or in use that we do not have an independent lab
report for, if we certify this?

MR. J. RIES: Well, the current certified
version in the 48 counties that use this system
is the subject of the lack of report.

MR. S. SHAMO: The one with the report, the
3.07, lacks the report.

COMMISSIONER S. RIORDAN: But they're not
using 3.07 anymore; right?

MR. S. SHAMO: No.

COMMISSIONER S. RIORDAN: We're using 3.10,
but we don't have an independent lab report on
3.10?

MR. S. SHAMO: No.

COMMISSIONER S. RIORDAN: And it is the
straight party voting?
CHAIRMAN T. WHEELER: To refresh the Commission's recollection, as I recall, this move from 3.07 and 3.10 is also the subject of both the enforcement action by this commission, and I think by the appellate briefs are due fairly soon in the Secretary of State's office.

I guess what I'm struggling with is knowing all that, knowing that we approved them conditionally, you still haven't gotten a report or a letter from anybody?

MR. J. RIES: They lost their accreditation.

MR. S. SHAMO: Yeah, it doesn't exist. They can't...

MR. J. RIES: We completed testing prior to their suspension. We completed testing August 20th of 2006. They were an accredited voting system testing lab at that time sanctioned by -- the sanction group was NASED at that point.

July of '06, the jurisdiction of all this voting system testing went from NASED to the election systems commission, and it required all the VSTLs to resubmit application for certification to the EAC, which CIBER had done, but for whatever reason, they did not -- they
were not granted the accreditation by the EAC.

CHAIRMAN T. WHEELER: But there are other companies that do have that accreditation?

COMMISSIONER D. DUMEZICH: As long as the current system that we're going to use has gone through the lab and is certified, then that's approved by these guys at Ball State, then...

CHAIRMAN T. WHEELER: It hasn't been.

COMMISSIONER S. RIORDAN: It hasn't been.

CHAIRMAN T. WHEELER: That's the problem. What I struggle with -- the part I struggle with, and I find difficult to understand having dealt with EAC, and maybe Brad can jump in on this, I don't think why 3.10 which you're applying for recertification so you still want to sell and market and have people work on 3.10, I don't understand why that can't be reviewed and approved by another testing laboratory.

COMMISSIONER S. RIORDAN: Even recognizing that would involve a tremendous duplication of work and probably additional expense, but is that possible?

MR. J. RIES: Well, we've already done that.

CHAIRMAN T. WHEELER: I understand you've
done that, and you don't want to do it again?

MR. J. RIES: We actually did it again. We went through the 2005 federal standards testing and that took about two years to complete.

CHAIRMAN T. WHEELER: For what system?

MR. J. RIES: It's version 4.0, which we have yet to submit for certification.

COMMISSIONER S. RIORDAN: And will that replace 3.10?

MR. J. RIES: Yes.

COMMISSIONER S. RIORDAN: And when will that happen -- I mean, is it possible -- when is 3.10 is going to be used in Indiana next, May?

MR. S. SHAMO: When is 3.10?

COMMISSIONER S. RIORDAN: Yes.

MR. S. SHAMO: It will be grandfathered into the May elections for use, and we'll just be prohibited from leasing or selling equipment at that point.

COMMISSIONER S. RIORDAN: But we don't have a report from anybody saying that the straight party voting aspect is subject to independent testing?

MR. S. SHAMO: You have a letter that was filed with Chairman Wheeler from --
MR. J. RIES: From CIBER.

MR. S. SHAMO: From CIBER in that month of August to clarify that, yes, in fact, it been tested which granted additional certification at that point in time.

COMMISSIONER S. RIORDAN: But CYBER's accreditation has been pulled for whatever reason?

CHAIRMAN T. WHEELER: But that was not the full lab report, that just said that the testing was going on?

MR. J. RIES: It was completed.

CHAIRMAN T. WHEELER: But they had not issued a report?

MR. J. RIES: That's correct.

CHAIRMAN T. WHEELER: So we don't know. The report could have been no, this system is terrible and doesn't work; right?

MR. J. RIES: I think we had sent a letter to CIBER on August 20th of 2005, and I can give you copies, specifically, asking for documentation from this particular gentleman, and he responded back on August 30th, that yes, in fact, they complied with the 2002 federal voting system standards.
MR. S. SHAMO: Where -- the criteria --
when you say documentation, IEC 11 states
documentation from the testing authority. Is
there a further description of documentation
beyond that point, or is it just all available
document from the testing authority -- it's
subjectivity to the board, or is there a
statement that final report from the EAC is a
mandatory requirement?

CHAIRMAN T. WHEELER: Dale, did you
understand what he just asked?

MR. D. SIMMONS: Yeah.

CHAIRMAN T. WHEELER: Would you answer
that, please?

MR. D. SIMMONS: Mr. Chairman, I think the
form he's referring to in this specific sections
quotes right out of the statute 3-11-5-7, or
3-11-15-7, and it's subpart A-16, provide
documentation from all independent testing
authorities that have examined the system.

Now the way I read it -- read it before is
that that documentation has to be documentation
that's to the satisfaction of the commission.
The commission members may remember a time or
two where the documentation was unclear,
unsatisfactory, and...

CHAIRMAN T. WHEELER: I believe that was the case with the prior MicroVote information, which is why we approved it conditionally upon receiving the final lab report; correct me if I'm wrong?

MR. D. SIMMONS: That reflects some level of uneasiness with the documentation that was submitted. There was some documentation, surely, but yes, the Commission wanted the full report.

MR. R. SCHEELE: If we could just add to that, in terms of the way we handle the lab reports from certified labs such as Wiley, and we've been at their facility in Alabama, and Jay, you might just describe very quickly the protocol we use as we look at the lab report documentation.

MR. J. BAGGA: Essentially, we look at the Indiana Code and map all the requirements from the Indiana Code to the particular sections in the report, so for that we do need the entire report to map all the sections. So we want to make sure that it's a complete report, in the sense of satisfying all the federal
requirements, and on top of that, the Indiana
Code requirements, and you create a spreadsheet
afterwards for those.

CHAIRMAN T. WHEELER: Did they provide, did
MicroVote provide you with what Steve has
referred to is the documentation from CIBER?

MR. J. LOSCO: An additional letter?

CHAIRMAN T. WHEELER: Right.

MR. J. LOSCO: Yes. I believe we got that
from Brad, not from MicroVote, but we did
look -- we did examine that, but we found it to
be deficient, since it wasn't an actual report
that -- of the kind that we need in order to
ensure that the test was done.

CHAIRMAN T. WHEELER: So what was wrong
with the report that precluded you from -- on
3.10, what was wrong with the document --
Steve's position, as I understand it, it just
says documentation, we provided the
documentation, but it doesn't say final report
anywhere.

MR. S. SHAMO: That implies a little bit of
a tone of defiance in trying to work...

CHAIRMAN T. WHEELER: No, I understand.

MR. S. SHAMO: What I'm saying is what
we've got is what we've got, and that's where we're at, and that's why we sent the request of direction.

CHAIRMAN T. WHEELER: That's fine, and I understand that -- you know, we gave additional approval three years ago, and what I'm going to do is try to match up what you're saying with what Ball State is saying and find out if Ball State can take the documentation that you've provided, and given the fact it is apparent that we're not going to get a final report, since it's three years out, is that documentation sufficient to allow you to perform your gatekeeping responsibility -- you guys are -- yes or no?

MR. R. SCHEELE: No.

MR. J. LOSCO: As it stands now, our letter of those additional letters that we got indicated that there was a recollection from a member who worked with CIBER that tests were done but no actual confirmation that this system performed as it was supposed to, and again, the way that we've examined all of these systems is to be very careful about the tests that were done and the actual report, whether or not the
report has the checkmark saying that each of
these elements of the system is approved, and
that, we don't have, and so we don't feel
comfortable in giving our approval.

CHAIRMAN T. WHEELER: All three of you are
shaking your head yes, you're not comfortable
with giving an approval based on what you've
seen so far?

MR. R. SCHEELE: Correct, we cannot give an
approval. My recollection is what Joe just
said, the person that signed the letter, Jack
Cobb, I believe is his name, worked for CIBER at
the time, he's now with Wiley Labs, but he was
able to say yes, I remember the MicroVote system
was in CIBER and was tested but he could not say
anything about any details.

MR. S. SHAMO: I think we're talking about
two different documents. That was the most
recent one; correct?

MR. R. SCHEELE: Yes.

MR. S. SHAMO: We're referring to the one
from September 12th, 2006, which was to the
board stating that it wasn't that.

CHAIRMAN T. WHEELER: Okay. Let me make a
couple of suggestions and see if the Commission
understands. No. 1, we don't have an application in front of us so we're not going to do anything today, that's clearly the case. No. 2, it strikes me, and this is kind of why I wanted to go with this conversation, but it strikes me there needs to be a conversation between Ball State and you guys, and there are a couple of questions and I'd like the commission members to pipe in, but A) I want to know -- I want you to look at what they're saying, that we ain't going to get a final report and nobody else can look at it -- you know, I don't mean this with the tone that you're saying, Steve, I don't mean it that way, but you know, take it or leave it, this is what we've got; is that in fact the case, or is it gee, we don't want to take all our stuff to Wiley or someone else because it's going to cost us a bunch more money to get it certified going backwards, and I don't know the answer to that, and I think that's what Sarah was asking a couple of minutes was, you know, can they do that, and I don't know the answer to that, and I guess that's why we rely on your technical expertise to do this.

MR. R. SCHEELE: Right.
COMMISSIONER S. RIORDAN: How many counties, again?

MR. J. RIES: Forty-eight. And there are two specific documents that we provided the commission.

CHAIRMAN T. WHEELER: What I want you to do is give it to them.

COMMISSIONER S. RIORDAN: Match that up with them.

CHAIRMAN T. WHEELER: Match it up.

MR. J. RIES: This is a specific letter to Chairman Wheeler from Jack Cobb dated October 20th, 2006, specifically, confirming that the testing was done and compliant and finished on 2002 federal voting system standards. That document as well as --

COMMISSIONER S. RIORDAN: What's the date of it?

MR. J. RIES: As well as a letter that was requested by Chairman Wheeler.

COMMISSIONER S. RIORDAN: Sir, what's the date of that letter?


COMMISSIONER S. RIORDAN: So that's just before CIBER certification got pulled?
MR. J. RIES: Yes.

COMMISSIONER S. RIORDAN: And we don't know why their certification got pulled?

MR. J. RIES: No.

COMMISSIONER S. RIORDAN: But basically that retroactively made work that they had done...

MR. J. RIES: That's our contention, is that we completed the testing within their parameters when they were currently approved.

COMMISSIONER S. RIORDAN: Understood.

MR. J. RIES: We just never received a report.

COMMISSIONER S. RIORDAN: So I think that it seems here that CIBER definitely let you down; right -- it seems that way, that CIBER let you down?

MR. J. RIES: Absolutely.

COMMISSIONER S. RIORDAN: But we can't have 48 counties with potential -- with this change that affect straight party voting without every single "T" being crossed and every single "I" being dotted.

And I understand what you're saying that we have letters from people at CIBER who say we did
it, it's okay -- I mean, I don't think -- for me, that's not enough, unless they can tell me, tell us as a commission that the proper scrutiny has been applied to that system.

CHAIRMAN T. WHEELER: And what I would like to see happen is what Ball State says they do is they go through, the reason they need the final report is they match up each criteria. If you've got documentation but you don't have -- I don't want to get caught form over substance, okay, and I recognize the fact that you guys have been using 3.10 --

MR. S. SHAMO: For two years.

CHAIRMAN T. WHEELER: -- for several years, and I don't -- I don't know that we've had problems so I respect that. On the other hand, you know, we need to make sure that this is done and that it's done right and that it's done to the satisfaction of Ball State. I would ask Ball State, as you go through this with these guys, and I hope everybody will work quickly to get this done and -- you know, as evidenced by the fact that we're sitting here today, we're willing to come -- for Sarah and I, again, it's not a big deal for us to come across the street,
but Dan's coming down from Chicago and Tony's
got some health issues so I'm not sure what his
status, but we're certainly willing. I will
tell -- I will tell you the criteria I'm working
on, which is the Clerks Conference is...

MR. B. KING: December 1st and 2nd.

CHAIRMAN T. WHEELER: Historically, we felt
at least a short meeting in association with the
Clerks Conference to approve some forms, we're
certainly willing to address -- if ES&S gets
their stuff in, we're certainly willing to
address it at that point in time.

And if you can get this done -- I don't
know if you can, but I'm certainly willing to
consider that. I think the Commission is --
we're not concerned, with all due respect,
bending over backwards for you guys, but we are
for the clerks in making sure you get the voting
systems going.

What I would ask is that you guys get
together quickly and get this taken care of. It
doesn't strike me this is that complicated, and
been going on for three years, and with all due
respect, you guys should have had your tail ends
back in here and made sure that this worked.
You guys went for three years with -- it was conditional approval without a final report and you should have done it.

**MR. J. RIES:** Well, the report would have never been generated so our option was to submit the current product under the EAC guidelines for testing.

If we're not able to come to an agreement with this particular version, then we'll be forced to submit an application for the upgraded version, the 2005 standards, but that will come at a cost to the counties so there is some financial burden -- if we are not able to resolve these issues, there could be some massive costs to the counties.

**COMMISSIONER S. RIORDEAN:** Does the upgrade come anyway?

**MR. J. RIES:** It's available, but timing as it is -- you know, we start candidate filing in February, there's not a whole lot of time for us to -- because there's some hardware modifications that need to take place.

We just don't feel that we have enough time to submit this application, get approval from the Commission, and then go to all 48 counties.
COMMISSIONER S. RIORDAN: Has CIBER totally disbanded?

MR. J. RIES: No, they've kind of come back around and now they're back in the business again.

MR. S. SHAMO: The cycle that I don't think you see from the vendor standpoint is that, for instance, you know, the reference to the upgrade, it's a substantial cost. It's been a substantial cost to us and you then literally have hardware changes on every machine out there.

But in order to do that, you're talking about a clerk's budget cycle beginning of last June to be approved for August to be put into place this year in an economy that is cutting jobs.

So now we're in a -- we're in a vicarious situation where we could mandate a cost on the counties by submitting our 2005 certified version and just move forward and say sorry, that's what it is -- we might lose some customers along the way because of it, you see what I mean, but that's a very difficult business decision to make to basically say we're
not going to mandate revenues on our customers and try to wrangle through what we have on the table here today. If there's no resolution, then that's where we're at.

COMMISSIONER S. RIORDAN: Right, but the other side of the coin is that you can't sell stuff to counties in Indiana unless it's legal; right, and that's why we're here?

MR. J. RIES: Yeah.

COMMISSIONER S. RIORDAN: And that's not a business decision.

MR. S. SHAMO: Right.

CHAIRMAN T. WHEELER: Brad, what's the status -- this was a recertification application, what's the status of version 3.10 right now?

MR. B. KING: Mr. Chairman, the status would be -- it was subject to the grandfather clause that I cited to earlier, meaning a county that had leased, purchased, etc. this particular version prior to October 1, 2009, is authorized to continue using version 3.10 indefinitely.

CHAIRMAN T. WHEELER: But it can't be modified?

MR. B. KING: But it can't be modified or
marketed. The grandfather strictly applies to counties that are former purchasers of the system.

CHAIRMAN T. WHEELER: All right. Any other questions, comments from the commissioners?

(No response.)

CHAIRMAN T. WHEELER: I would ask Ball State that you loop through them.

MR. R. SCHEELE: We'll be glad to.

CHAIRMAN T. WHEELER: Work through and keep documentation. I would ask that either Pam or Leslie and Brad or Dale also be looped in --

MR. R. SCHEELE: Sure.

CHAIRMAN T. WHEELER: -- so the Division knows what exactly is going on so they could let us know what we need to do. I anticipate we will have an ES&S application if I do hold a meeting on the 1st?

MR. R. McGINNIS: Yes.

CHAIRMAN T. WHEELER: So I'll ask the commissioners to look at their schedules and get back with me on the 1st, and hope that you guys can diligently work in that direction. I know we'll have forms on the 1st as well -- we have a couple of more forms to do before the 1st, so
we'll have at least those two things. Maybe Sarah and I and a couple of proxys for Dan and I think Tony's definitely out.

**MR. S. SHAMO:** I'm trying to get the cycle down between resubmitting the application. What would be the drop dead submission of the application to be considered on December 1st or the December 2nd meeting?

**CHAIRMAN T. WHEELER:** I think assuming Sarah's -- I'm pretty sure I've got the 1st open.

**COMMISSIONER S. RIORDAN:** Yeah.

**CHAIRMAN T. WHEELER:** Sarah and I have the 1st, and I don't -- and Dan's got the 1st, so we will hold a meeting on the 1st and I will put voting system certification on the agenda, so that means in terms of -- it's a question of you getting to Ball State and Ball State having the report to me.

**MR. S. SHAMO:** And usually, it's through Brad or Pam, in terms of how -- who many days you prepare your packets and such before the meeting. It's about a week, we're about a week out essentially.

**MR. B. KING:** Mr. Chairman, I think for the
co-directors, we're simply serving the staff or the Commission to provide what material we can. The real question is with regard to material getting reviewed in time by Ball State.

CHAIRMAN T. WHEELER: The thing I'm going to need is on the 1st, I'm going to need a report from Ball State that says you guys are good to go, that's what I'm going to need.

In terms -- I think you -- so in terms of the application, all you have to do is rework the application and resubmit -- the same thing as ES&S -- I assume you can do that almost immediately, so that shouldn't be a problem.

The problem is getting the report from Ball State, you guys getting to Ball State and come to some kind of agreement. It'll be on the agenda, so if you guys -- I have no problem with Ball State coming and giving me an oral report. I don't need a written report.

Ball State can just simply say look, we worked late last night, we'll get the report to you, we're good to go to, so you've got a couple of weeks. So you guys work together and figure this out, and then I'll set a meeting on the 1st and we'll go from there. Anything else?
MR. B. KING: Mr. Chairman, just to suggest, Ball State may want to give us a very quick oral report on applications that are still pending review at this time.

MR. R. SCHEELE: Correct, we have two applications for totally new certification of voting system in this, and as I indicated at the front of the meeting, we have tested those two systems and we are just now triple checking all of our data and we could have a report at any time at your convenience.

CHAIRMAN T. WHEELER: And which two are these, who are they by?

MR. R. SCHEELE: This is the ES&S Unity 3.2.0.0 and the ES&S Assure Voting System.

CHAIRMAN T. WHEELER: Robb, do you need those; do you want us to take those? Those applications are already up, running, and everything's good with those pending your report?

MR. R. SCHEELE: Right.

CHAIRMAN T. WHEELER: Do you want me to take those up on the 1st?

MR. R. McGINNIS: Yes.

CHAIRMAN T. WHEELER: Okay. Those are new
certifications?

MR. R. SCEELE: Right, new certifications.

CHAIRMAN T. WHEELER: So we'll take those up on the 1st as well.

MR. R. McGINNIS: Thank you.

CHAIRMAN T. WHEELER: Anything else?

MR. B. KING: Mr. Chairman, just to clarify, the Assure 1.2 was originally a Premier product, which now has an application submitted under the name of ES&S, as opposed to the other which was ES&S originally.

CHAIRMAN T. WHEELER: All right. Going once, going twice?

(No response.)

CHAIRMAN T. WHEELER: Hearing nothing, I'll accept a motion to adjourn.

COMMISSIONER D. DUMEZICH: Motion to adjourn.

COMMISSIONER S. RIORDAN: Second it.

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

THE COMMISSIONERS: Aye.

CHAIRMAN T. WHEELER: Those opposed, same sign?

(No response.)
CHAIRMAN T. WHEELER: Thank you.

(At this time the proceedings were adjourned.)
STATE OF INDIANA )
COUNTY OF HENDERICKS )

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 23rd
day of November, 2009.

Rhonda J. Hobbs
NOTARY PUBLIC

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