

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 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 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,

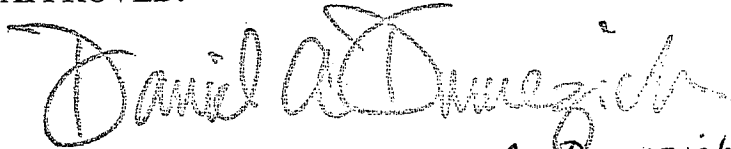


J. Bradley King  
Co-Director



Pamela Potesta  
Co-Director

**APPROVED:**



~~Thomas E. Wheeler, II~~ Daniel A. Dumezich  
Chairman

# Original

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INDIANA ELECTION COMMISSION  
PUBLIC MEETING AGENDA

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Date: Monday, November 16, 2009

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

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

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**Connor + Associates, Inc.**

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1650 One American Square  
Indianapolis, IN 46282

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(317) 236-6022

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**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

1           **CHAIRMAN T. WHEELER:** All right. In the  
2 absence of my gavel, I will call this meeting to  
3 order. It's a long running joke. Some day I  
4 hope to have it down -- I did have it down at  
5 some point.

6           **COMMISSIONER D. DUMEZICH:** When?

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

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

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

23           **CHAIRMAN T. WHEELER:** And can you introduce  
24 yourself?

25           **MR. J. BENSON:** Jason Benson.

1           **CHAIRMAN T. WHEELER:** And Jason is filling  
2 in for, somewhat large shoes, of Tony Long. The  
3 first item on the agenda is an approval of  
4 forms, and who is...

5           **MR. B. KING:** Mr. Chairman.

6           **CHAIRMAN T. WHEELER:** Brad, go ahead.

7           **MR. B. KING:** Mr. Chairman, Members of the  
8 Commission, before you is a very large packet  
9 with a binder clip captioned Order No. 209-313.  
10 This order contains most but not quite all of  
11 the forms that will be necessary for use in the  
12 2010 Primary and 2010 General Elections.

13           Let me begin by just generally describing  
14 the changes involved. Most are simply changes  
15 of dates, from 2008, or in some cases, 2009 to  
16 2010. They're also the usual typographical  
17 errors that are corrected, changes to other  
18 laws, such as the elimination of county courts,  
19 have been the basis for changes in some forms.

20           I'd like to call your particular attention  
21 to Page 4 of the order, which references the VRG  
22 7 and VRG 11. No changes are made to those  
23 forms of any substance. These are the voter  
24 registration by mail forms, except for the  
25 removal of an obsolete e-mail address for the

1 Indiana Election Division, which if you try to  
2 contact us using that e-mail, it will bounce it  
3 back to you at this point.

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

10 In addition to that, Mr. Chairman, you  
11 should have a copy of a single document, a  
12 single page document, the Absentee Voter's Bill  
13 of Rights. This has been updated for use in  
14 2010, and also would call the Commission's  
15 attention to the third bullet which adds warning  
16 for the voter who receives an absentee ballot to  
17 be certain to check for the two sets of initials  
18 which to be counted must included on the back of  
19 the ballot and advises the absentee voter to  
20 contact the County Election Board to ask for a  
21 replacement ballot.

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



1 be happy to answer any questions.

2 **CHAIRMAN T. WHEELER:** Questions from the  
3 commission members?

4 *(No response.)*

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

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

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

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

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

19 *(No response.)*

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

23 **COMMISSIONER S. RIORDAN:** Just for purposes  
24 of clarification, are you talking -- voting on  
25 the entire motion or...

1           **CHAIRMAN T. WHEELER:** I was going to or do  
2 you want to go in pieces?

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

6           **COMMISSIONER D. DUMEZICH:** That's an  
7 amendment.

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

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

11          **CHAIRMAN T. WHEELER:** Do I have a second?

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

13          **CHAIRMAN T. WHEELER:** Any further  
14 discussion?

15               *(No response.)*

16          **CHAIRMAN T. WHEELER:** Hearing none, all in  
17 favor of approving Order No. 2009-313 as amended  
18 to include the Absentee Voter's Bill of Rights  
19 as well, 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. I'm  
25 going to go a little bit -- we have an

1 additional item on the agenda which I'm going to  
2 jump to at this point involving a -- we have an  
3 additional item which I'm going to add to the  
4 amendment at this point involving a campaign  
5 finance issue or candidacy issue, and Pam, are  
6 you presenting on this one?

7 **MS. P. POTESA:** Yes, Mr. Chairman.

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

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

17 *(The witnesses complied.)*

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

19 *(The witnesses complied.)*

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

1           **THE WITNESSES:** I do.

2           **MR. B. KING:** Thank you.

3           **CHAIRMAN T. WHEELER:** All right, Pam.

4           **MS. P. POTESTA:** Mr. Chairman, this is in  
5 regards to Mr. Eric Miller's campaign reports.  
6 Our Division sent Mr. Miller the standard memo  
7 on March 19th, 2008. In the third paragraph we  
8 say the candidates that are on the ballot this  
9 election year must file a quarterly report from  
10 January 1st, 2008 through March 31st, 2008, due  
11 in this office by noon Indianapolis time, April  
12 15th, 2008.

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

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

22           **MR. B. KING:** And Mr. Chairman, it would be  
23 the recommendation of the co-directors to  
24 dismiss the cause in this matter for that  
25 reason.

1           **CHAIRMAN T. WHEELER:** Mr. Miller, I know  
2 you're here, do you want to make any comments  
3 on...

4           **MR. E. MILLER:** I concur with their  
5 recommendation.

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

10           *(No response.)*

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

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

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

19           **COMMISSIONER S. RIORDAN:** I'll second it.

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

22           **COMMISSIONER S. RIORDAN:** Just to be clear  
23 about exactly what happened, we sent out a  
24 letter with instructions, which the instructions  
25 were in error?

1 MS. P. POTESA: Correct.

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

4 MS. P. POTESA: Yes.

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

7 MS. P. POTESA: That's correct.

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

10 MS. P. POTESA: Correct.

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

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

19 CHAIRMAN T. WHEELER: And dismiss the  
20 violation?

21 COMMISSIONER D. DUMEZICH: Yes, dismiss the  
22 violation.

23 CHAIRMAN T. WHEELER: Motion's been made  
24 and amended, do I have a second on the amended  
25 motion?

1                   **COMMISSIONER S. RIORDAN:** Second.

2                   **CHAIRMAN T. WHEELER:** Any further  
3 discussion?

4                   *(No response.)*

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

7                   **MR. B. KING:** Enforcement action.

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

11                   **THE COMMISSIONERS:** Aye.

12                   **CHAIRMAN T. WHEELER:** Those opposed, same  
13 sign?

14                   *(No response.)*

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

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

21                   **CHAIRMAN T. WHEELER:** All right. Next up  
22 on the agenda is voting system certification. I  
23 notice we have our friends from Ball State here.  
24 We didn't break these out, Brad, what order do  
25 you guys want to go in and how are we going to

1 do this?

2           **MR. B. KING:** Mr. Chairman and Members of  
3 the Commission, I believe the red folder has the  
4 summary report from Ball State University in the  
5 order that the voting systems were on the agenda  
6 at the September 18th meeting, but of course,  
7 that's at the pleasure of the Commission,  
8 whatever order you wish to make them.

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

13           **MR. B. KING:** That's correct.

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

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

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

20           **MR. B. KING:** That is correct, Mr.  
21 Chairman.

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

25           **MR. R. SCHEELE:** Sure. Again, I'm Ray



1 Scheele from the Bowen Center, co-director of  
2 the Bowen Center, and co-director of the Voting  
3 System Technical Oversight Program, along with  
4 Dr. Jay Bagga, who's Professor of Computer  
5 Science and co-director of the program with me,  
6 and us again today is Dr. Joe Losco associated  
7 with the project and is chair of the Political  
8 Science Department at Ball State University.

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

20 Hart InterCivic, we reported on this on the  
21 September 18th meeting of the Commission. We  
22 reviewed the documents and we've tested the  
23 machines and we find that System 6.2.1 of Hart  
24 InterCivic with the type of voting systems  
25 specified here on the document meets all of the

1 requirements of the Indiana Code for use in the  
2 State of Indiana, and this includes the meeting  
3 of all legal certified requirements with voters  
4 with disabilities. We'll be glad to respond to  
5 any questions.

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

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

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

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

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

17 **COMMISSIONER S. RIORDAN:** Right.

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

20 *(No response.)*

21 **CHAIRMAN T. WHEELER:** As I recall, we were  
22 ready to approve the Hart InterCivic at the last  
23 meeting and there was a concern about the Ball  
24 State review process so I'd like -- it's been  
25 vetted. I do want to ask one additional

1 question and some clarification, if needed, as  
2 we look to the approval of this. Is Robb  
3 McGinnis here?

4 **MR. R. MCGINNIS:** Yes.

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

8 **MR. R. MCGINNIS:** Sure.

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

15 **MR. R. MCGINNIS:** I do.

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

20 **MR. R. MCGINNIS:** I did.

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

24 **MR. R. MCGINNIS:** I just had a question for  
25 Brad asking certification status? I was not

1 allowed to give a demonstration because we were  
2 not certified, and I just simply asked the  
3 question, if they were able to do the same?

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

7 **MR. R. MCGINNIS:** Correct.

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

12 **MR. R. MCGINNIS:** That is correct.

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

17 **MR. R. MCGINNIS:** That is correct.

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

21 **MR. R. MCGINNIS:** Absolutely.

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

24 **MR. R. MCGINNIS:** I did.

25 **CHAIRMAN T. WHEELER:** And has the Division

1 looked into that?

2 **MR. B. KING:** Mr. Chairman, on October  
3 23rd, I responded to Mr. McGinnis and Pam  
4 Potesta, along with Sherry Brown, who serves as  
5 the circuit clerk court of Harrison County  
6 requesting further information regarding the  
7 information that Mr. McGinnis has provided.

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

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

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

24 **CHAIRMAN T. WHEELER:** But for the Division  
25 raising a question about Ball State's

1 involvement in the process, the approval  
2 process, they were completely done basically;  
3 correct?

4 **MR. B. KING:** Correct.

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

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

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

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

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

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

24 **CHAIRMAN T. WHEELER:** Any other questions  
25 from the Commissioners?

1           **COMMISSIONER S. RIORDAN:** Only if there's  
2 discussion.

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

8           *(No response.)*

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

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

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

20           **COMMISSIONER S. RIORDAN:** Yes, Mr.  
21 Chairman. In the past we have had  
22 allegations of impermissible marketing brought  
23 before us, and we've taken a pretty hard stance  
24 on that. We don't have much substantiation of  
25 this right now, but I am still reluctant to

1 approve and certify a vendor that's acting  
2 contrary to law.

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

10 **CHAIRMAN T. WHEELER:** Pam, Leslie, anybody?

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

25 Ball State has taken the role formerly



1 assigned to the co-directors, in terms of making  
2 a formal recommendation regarding compliance  
3 with 2002 or 2005 Federal Standards and Indiana  
4 law, and so we defer to Ball State in that  
5 regard.

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

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

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

22 **CHAIRMAN T. WHEELER:** Statutorily -- can  
23 you give me the statutory site -- if they meet  
24 the statutory requirements, are we bound to  
25 approve the certification -- does it say there's

1 six -- six things, all six of these?

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

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

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

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

1 election cycle?

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

4           **COMMISSIONER S. RIORDAN:** Yeah. Anybody?

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

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

24           **COMMISSIONER S. RIORDAN:** And we're six  
25 months from the Primary, almost six months from

1 the Primary; right, and so if they -- if we held  
2 this up until our next meeting -- recognizing  
3 that our folks from Ball State have said that  
4 technically everything is the way it's supposed  
5 to be, if we held this up to do a little bit  
6 more fact finding about either conduct in  
7 Harrison County, is that something that would  
8 make trouble for the May election -- it doesn't  
9 seem like it, but again, I mean, I -- I don't  
10 know the role of the Commission, but my sense is  
11 that if there's an allegation of improper  
12 marketing with uncertified materials, we can't  
13 let that happen.

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

22 We certified it on September 18th, I'm  
23 inclined to vote in favor of the motion, certify  
24 the equipment, and make sure we have a response  
25 from the Harrison County clerk as to what

1           happened, and if -- in fact, if they have  
2           violated the statute regarding marketing, ensure  
3           that we take action at that point in time, and  
4           that way we're not punishing the county, we're  
5           only punishing the vendor.

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

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

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

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

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

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

25          **COMMISSIONER S. RIORDAN:** That's my point.

1           **CHAIRMAN T. WHEELER:** Nevertheless --

2           **COMMISSIONER S. RIORDAN:** It's still  
3 important.

4           **COMMISSIONER D. DUMEZICH:** No, I agree.

5           **CHAIRMAN T. WHEELER:** It is important, No.  
6 1, and No. 2, if for example, competitors have  
7 been holding off marketing and have continued to  
8 market, that is a problem. I would note that I  
9 have the same concerns with everybody else who's  
10 out in there the marketplace and I would hope  
11 that we don't get reports that other vendors  
12 were marketing between September 18th and the  
13 present -- I assume the systems were certified,  
14 because I think, clearly, as you've heard from  
15 Commissioner Riordan, that's an expectation we  
16 expect upheld; particularly, if you guys are at  
17 a point with one another about doing anything,  
18 make sure your house isn't made of glass as  
19 well.

20           **COMMISSIONER D. DUMEZICH:** Which brings my  
21 problem up, if we do find out about that and set  
22 a precedence and not certifying them at this  
23 point, we could end up disenfranchising them in  
24 May, so that's why the proper thing to do is  
25 certify them and look into the allegations of

1 the misconducts and dispose of those at a  
2 different -- at a time when we may not have the  
3 press of time pushing us to make some decisions  
4 we'd rather not make.

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

9 **COMMISSIONER S. RIORDAN:** No.

10 **CHAIRMAN T. WHEELER:** Motion has been made  
11 to approve Hart InterCivic Platform System  
12 6.2.1 --

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

14 **CHAIRMAN T. WHEELER:** -- from Ball State?

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

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

18 **THE COMMISSIONERS:** Aye.

19 **CHAIRMAN T. WHEELER:** Those opposed, same  
20 sign?

21 *(No response.)*

22 **CHAIRMAN T. WHEELER:** But I think the one  
23 thing we did hear -- although we've approved the  
24 system now, that's not a retroactive approval;  
25 am I correct?

1           **MR. D. SIMMONS:** That's as of today,  
2 correct.

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

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

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

13           **CHAIRMAN T. WHEELER:** In November?

14           **MR. B. KING:** In November.

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

18           **MR. R. SCHEELE:** Formerly Premier.

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

23           **MR. R. SCHEELE:** Yes. This system again  
24 was tested on the campus of Ball State by our  
25 team. This is a recertification request



1 application for, as you can see here, the model  
2 number were Model Nos. A, B, C and D. The only  
3 model we tested was Model D. We have been  
4 informed by the representatives of the vendor  
5 that only Model D is in service in Indiana, and  
6 that is the model we tested.

7 The SSL certificate which is -- had expired  
8 and a new certificate was tested by us, by our  
9 team on the Model D. The last paragraph on Page  
10 2 of this report, that on the basis of or  
11 evaluation, we find that the voting systems  
12 referenced herein (the two Model D systems, with  
13 the SSL Certificate) meet all of the  
14 requirements of the Indiana Code for use in  
15 Indiana, and this includes compliance with the  
16 requirements for voters with disabilities.

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

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

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

1           **CHAIRMAN T. WHEELER:** And what was -- I see  
2 they filed a revised application on October 2nd,  
3 so they were not -- they had not completed the  
4 certification process at Ball State on September  
5 18th; right?

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

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

11          **MR. R. SCHEELE:** Right.

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

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

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

19          **MR. R. SCHEELE:** We tested it on September  
20 23rd and the 25th. I think that's a Wednesday  
21 and a Friday.

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

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

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

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

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

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

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

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

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

19               The SSL, we had not tested ourselves by the  
20 time of the September 18th meeting, but we did  
21 have a report that Wiley Labs did test it and  
22 Wiley Labs said it was fine, we then tested it  
23 on our meetings on September 23rd and 25th to  
24 confirm, so we submitted it to additional tests  
25 on those days.

1           The -- and again, the difference in the  
2 applications was that the first application was  
3 not fully filled out with all the check boxes  
4 appropriately taken care of.

5           **CHAIRMAN T. WHEELER:** Questions from the  
6 commissioners?

7           *(No response.)*

8           **CHAIRMAN T. WHEELER:** Anything else from  
9 Ball State?

10          *(No response.)*

11          **CHAIRMAN T. WHEELER:** Anything from the  
12 Division?

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

14          **CHAIRMAN T. WHEELER:** Pam?

15          **MS. P. POTESA:** No.

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

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

21          **MR. J. LOSCO:** By Premier, approximately,  
22 15.

23          **CHAIRMAN T. WHEELER:** What's the  
24 application, is the application for A, B, C and  
25 D?

1           **MR. J. LOSCO:** Yes, it is.

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

4           **MR. J. LOSCO:** No.

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

8           **MR. J. LOSCO:** Correct.

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

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

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

17           **COMMISSIONER S. RIORDAN:** Well, I think  
18 that it certainly be limited to Model D, so I  
19 move that we certify Election Systems and  
20 Software (Formerly Premier Election Solutions)  
21 application for renewal of a previously approved  
22 system and re-evaluation and modification to a  
23 certified system for AccuVote-TSX DRE Touch  
24 Model D only and AccuVote-OS Optical Scan Model  
25 D only.

1           **CHAIRMAN T. WHEELER:** Do I have a second on  
2 the motion?

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

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

6           *(No response.)*

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

10          **MR. R. MCGINNIS:** Yes, Kyle or myself.

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

13          **MR. R. MCGINNIS:** Correct.

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

17          **MR. K. CONRAD:** To be honest with you, the  
18 application was completed the same as it was  
19 last time. It's -- all the same information  
20 from the previous application was resubmitted.  
21 I believe the amended application on October  
22 2nd, took some things off that was not in use in  
23 Indiana so we could expedite the process and not  
24 have to test...

25          **CHAIRMAN T. WHEELER:** All right. So as I

1 understand it, it's not going to be any problem  
2 for anybody that wants to...

3 **MR. K. CONRAD:** Right.

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

6 *(No response.)*

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

9 **THE COMMISSIONERS:** Aye.

10 **CHAIRMAN T. WHEELER:** Those opposed, same  
11 sign?

12 *(No response.)*

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

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

18 **CHAIRMAN T. WHEELER:** Let me ask two  
19 preliminary questions.

20 **MR. R. SCHEELE:** Sure.

21 **CHAIRMAN T. WHEELER:** One, what did we do  
22 with this application at the September  
23 18th meeting?

24 **MR. B. KING:** Mr. Chairman, Members of the  
25 Commission, this application was denied by vote

1 of the commission at the September 18th meeting.

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

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

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

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

13 **CHAIRMAN T. WHEELER:** Why not?

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

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

20 **MR. B. KING:** This is correct, Mr.  
21 Chairman.

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

24 **MR. B. KING:** They haven't.

25 **CHAIRMAN T. WHEELER:** And as I understand



1 it, that's a statutory mandate in and of itself;  
2 correct?

3 **MR. D. SIMMONS:** Yes, Mr. Chairman. In  
4 3-11-15-4, each application for certification of  
5 a voting system shall be accompanied by a fee of  
6 \$1,500.

7 **CHAIRMAN T. WHEELER:** And as I understand  
8 3-11-15-6, it says the Commission shall not  
9 approve any system until the fee and expenses  
10 incurred by the Election Division have been  
11 paid?

12 **MR. D. SIMMONS:** Correct.

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

16 **MR. D. SIMMONS:** Correct.

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

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

24 **MS. L. BARNES:** I don't know that I'm  
25 comfortable speaking on this issue because I

1 just became aware of it this morning. Let me  
2 defer to...

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

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

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

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

23 **CHAIRMAN T. WHEELER:** The way I take it, we  
24 need -- you need -- you need to refile your  
25 application. As I take -- let me summarize,

1 Ray, you guys are now done; right?

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

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

5 MR. R. SCHEELE: Right.

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

13 MR. R. MCGINNIS: Okay.

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

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

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

23 MR. R. MCGINNIS: I'm assuming that we did.

24 CHAIRMAN T. WHEELER: I will have -- if  
25 you'll wait, I'll have them make a copy so

1           you've got it, and Brad, if you'll make sure  
2           they understand what they're supposed to do so  
3           this gets taken care of. The way I look at it,  
4           I don't have anything to take up at this point  
5           with regard to ES&S; correct?

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

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

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

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

15          **MR. S. SHAMO:** Yes.

16          **CHAIRMAN T. WHEELER:** Could you state your  
17          names?

18          **MR. J. RIES:** Jim Ries.

19          **MR. S. SHAMO:** Steve Shamo.

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

22          **MR. B. KING:** Mr. Chairman, Members of the  
23          Commission, with respect to MicroVote its  
24          application was also denied by the Commission on  
25          September the 18th. There is a report from Ball

1 State concerning the system that was the subject  
2 of that application.

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

7 MR. S. SHAMO: We received it.

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

12 *(Witnesses complied.)*

13 CHAIRMAN T. WHEELER: Go ahead, Brad.

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

19 MR. S. SHAMO: I do.

20 MR. J. RIES: I do.

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

23 MR. J. RIES: Yes.

24 MR. S. SHAMO: Yes.

25 CHAIRMAN T. WHEELER: Have you refiled the

1 application?

2 MR. S. SHAMO: No.

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

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

8 MR. R. MCGINNIS: And -- and I -- I think  
9 that was our issue as well.

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

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

24 MR. R. SCHEELE: Correct.

25 CHAIRMAN T. WHEELER: And let's go ahead.

1 I'm going to have them go through that so you  
2 know what you need to do to get this complete.

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

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

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

18 Our team was informed that the only  
19 difference between this version 3.07 and version  
20 3.10 was the correction of software pertaining  
21 to the straight party ballot option specified in  
22 the Indiana Code.

23 Copies of letters from the vendor were  
24 presented from CIBER labs to the IEC stating  
25 that changes in the original voting system had

1           been tested and found to comply with the 200d  
2           federal standards.

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

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

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

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

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

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

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



1           **CHAIRMAN T. WHEELER:** And that's lab report  
2 for system 3.10?

3           **MR. R. SCHEELE:** Correct.

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

6           **MR. R. SCHEELE:** Yes.

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

9           **MR. S. SHAMO:** Yes.

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

12          **MR. S. SHAMO:** Yes.

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

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

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

20          **MR. S. SHAMO:** Two, three years.

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

23          **MR. S. SHAMO:** Nor will it ever been  
24 created.

25          **CHAIRMAN T. WHEELER:** I understand, but let

1 me ask you why?

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

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

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

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

16 **MR. J. RIES:** Right. As of September 20th,  
17 2006, CIBER was not reaccredited under the  
18 Election Systems Commission, meaning they lost  
19 their accreditation status for voting system  
20 testing lab, and therefore, that report was not  
21 generated.

22 We complied. We did all the testing. We  
23 never received a final report, which was  
24 requested in the conditional certification, and  
25 that report just doesn't exist so that's why.

1           **CHAIRMAN T. WHEELER:** Have you taken any  
2 steps to get it examined by anybody else?

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

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

13           **MR. J. RIES:** Not anymore.

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

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

21           **COMMISSIONER D. DUMEZICH:** But just out of  
22 curiosity, why wouldn't -- knowing that you  
23 needed this report, why wouldn't you take the --  
24 go to another lab and get the report issued for  
25 us?

1           **MR. J. RIES:** Because those standards --  
2 Brad might be a little more knowledgeable about  
3 it, the 2007 -- the 2002 standards were no  
4 longer recognized, so if we were to go to  
5 another lab, we would have to do exactly what  
6 we've done, is resubmit our product under the  
7 2005 standards for voting systems, the  
8 guidelines, so that's what we've done, and it  
9 took, approximately, two years to complete that  
10 process.

11           **COMMISSIONER D. DUMEZICH:** And that process  
12 is completed?

13           **MR. J. RIES:** That is correct.

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

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

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

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

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

23           **COMMISSIONER D. DUMEZICH:** I understand. I  
24 thought you were just being defiant --

25           **MR. J. RIES:** No.

1           **COMMISSIONER D. DUMEZICH:** -- rather than  
2 unable to accomplish it.

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

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

15           **MR. S. SHAMO:** The one with the report, the  
16 3.07, lacks the report.

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

19           **MR. S. SHAMO:** No.

20           **COMMISSIONER S. RIORDAN:** We're using 3.10,  
21 but we don't have an independent lab report on  
22 3.10?

23           **MR. S. SHAMO:** No.

24           **COMMISSIONER S. RIORDAN:** And it is the  
25 straight party voting?

1           **CHAIRMAN T. WHEELER:** To refresh the  
2 Commission's recollection, as I recall, this  
3 move from 3.07 and 3.10 is also the subject of  
4 both the enforcement action by this commission,  
5 and I think by the appellate briefs are due  
6 fairly soon in the Secretary of State's office.

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

11           **MR. J. RIES:** They lost their  
12 accreditation.

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

15           **MR. J. RIES:** We completed testing prior to  
16 their suspension. We completed testing August  
17 20th of 2006. They were an accredited voting  
18 system testing lab at that time sanctioned by --  
19 the sanction group was NASED at that point.

20           July of '06, the jurisdiction of all this  
21 voting system testing went from NASED to the  
22 election systems commission, and it required all  
23 the VSTLs to resubmit application for  
24 certification to the EAC, which CIBER had done,  
25 but for whatever reason, they did not -- they

1 were not granted the accreditation by the EAC.

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

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

8 **CHAIRMAN T. WHEELER:** It hasn't been.

9 **COMMISSIONER S. RIORDAN:** It hasn't been.

10 **CHAIRMAN T. WHEELER:** That's the problem.

11 What I struggle with -- the part I struggle  
12 with, and I find difficult to understand having  
13 dealt with EAC, and maybe Brad can jump in on  
14 this, I don't think why 3.10 which you're  
15 applying for recertification so you still want  
16 to sell and market and have people work on 3.10,  
17 I don't understand why that can't be reviewed  
18 and approved by another testing laboratory.

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

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

25 **CHAIRMAN T. WHEELER:** I understand you've

1 done that, and you don't want to do it again?

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

5 **CHAIRMAN T. WHEELER:** For what system?

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

8 **COMMISSIONER S. RIORDAN:** And will that  
9 replace 3.10?

10 **MR. J. RIES:** Yes.

11 **COMMISSIONER S. RIORDAN:** And when will  
12 that happen -- I mean, is it possible -- when is  
13 3.10 is going to be used in Indiana next, May?

14 **MR. S. SHAMO:** When is 3.10?

15 **COMMISSIONER S. RIORDAN:** Yes.

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

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

24 **MR. S. SHAMO:** You have a letter that was  
25 filed with Chairman Wheeler from --



1           **MR. J. RIES:** From CIBER.

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

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

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

12           **MR. J. RIES:** It was completed.

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

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

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

19           **MR. J. RIES:** I think we had sent a letter  
20 to CIBER on August 20th of 2005, and I can give  
21 you copies, specifically, asking for  
22 documentation from this particular gentleman,  
23 and he responded back on August 30th, that yes,  
24 in fact, they complied with the 2002 federal  
25 voting system standards.

1           **MR. S. SHAMO:** Where -- the criteria --  
2 when you say documentation, IEC 11 states  
3 documentation from the testing authority. Is  
4 there a further description of documentation  
5 beyond that point, or is it just all available  
6 document from the testing authority -- it's  
7 subjectivity to the board, or is there a  
8 statement that final report from the EAC is a  
9 mandatory requirement?

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

12           **MR. D. SIMMONS:** Yeah.

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

15           **MR. D. SIMMONS:** Mr. Chairman, I think the  
16 form he's referring to in this specific sections  
17 quotes right out of the statute 3-11-5-7, or  
18 3-11-15-7, and it's subpart A-16, provide  
19 documentation from all independent testing  
20 authorities that have examined the system.

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

1           unsatisfactory, and...

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

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

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

19                   **MR. J. BAGGA:** Essentially, we look at the  
20          Indiana Code and map all the requirements from  
21          the Indiana Code to the particular sections in  
22          the report, so for that we do need the entire  
23          report to map all the sections. So we want to  
24          make sure that it's a complete report, in the  
25          sense of satisfying all the federal

1 requirements, and on top of that, the Indiana  
2 Code requirements, and you create a spreadsheet  
3 afterwards for those.

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

7 **MR. J. LOSCO:** An additional letter?

8 **CHAIRMAN T. WHEELER:** Right.

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

15 **CHAIRMAN T. WHEELER:** So what was wrong  
16 with the report that precluded you from -- on  
17 3.10, what was wrong with the document --  
18 Steve's position, as I understand it, it just  
19 says documentation, we provided the  
20 documentation, but it doesn't say final report  
21 anywhere.

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

24 **CHAIRMAN T. WHEELER:** No, I understand.

25 **MR. S. SHAMO:** What I'm saying is what

1 we've got is what we've got, and that's where  
2 we're at, and that's why we sent the request of  
3 direction.

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

16           **MR. R. SCHEELE:** No.

17           **MR. J. LOSCO:** As it stands now, our letter  
18 of those additional letters that we got  
19 indicated that there was a recollection from a  
20 member who worked with CIBER that tests were  
21 done but no actual confirmation that this system  
22 performed as it was supposed to, and again, the  
23 way that we've examined all of these systems is  
24 to be very careful about the tests that were  
25 done and the actual report, whether or not the

1 report has the checkmark saying that each of  
2 these elements of the system is approved, and  
3 that, we don't have, and so we don't feel  
4 comfortable in giving our approval.

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

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

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

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

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

24 **CHAIRMAN T. WHEELER:** Okay. Let me make a  
25 couple of suggestions and see if the Commission

1 understands. No. 1, we don't have an  
2 application in front of us so we're not going to  
3 do anything today, that's clearly the case. No.  
4 2, it strikes me, and this is kind of why I  
5 wanted to go with this conversation, but it  
6 strikes me there needs to be a conversation  
7 between Ball State and you guys, and there are a  
8 couple of questions and I'd like the commission  
9 members to pipe in, but A) I want to know -- I  
10 want you to look at what they're saying, that we  
11 ain't going to get a final report and nobody  
12 else can look at it -- you know, I don't mean  
13 this with the tone that you're saying, Steve, I  
14 don't mean it that way, but you know, take it or  
15 leave it, this is what we've got; is that in  
16 fact the case, or is it gee, we don't want to  
17 take all our stuff to Wiley or someone else  
18 because it's going to cost us a bunch more money  
19 to get it certified going backwards, and I don't  
20 know the answer to that, and I think that's what  
21 Sarah was asking a couple of minutes was, you  
22 know, can they do that, and I don't know the  
23 answer to that, and I guess that's why we rely  
24 on your technical expertise to do this.

25

MR. R. SCHEELE: Right.

1           **COMMISSIONER S. RIORDAN:** How many  
2 counties, again?

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

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

8           **COMMISSIONER S. RIORDAN:** Match that up  
9 with them.

10          **CHAIRMAN T. WHEELER:** Match it up.

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

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

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

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

23          **MR. J. RIES:** August 20th, 2006.

24          **COMMISSIONER S. RIORDAN:** So that's just  
25 before CIBER certification got pulled?



1           **MR. J. RIES:** Yes.

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

4           **MR. J. RIES:** No.

5           **COMMISSIONER S. RIORDAN:** But basically  
6 that retroactively made work that they had  
7 done...

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

11           **COMMISSIONER S. RIORDAN:** Understood.

12           **MR. J. RIES:** We just never received a  
13 report.

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

18           **MR. J. RIES:** Absolutely.

19           **COMMISSIONER S. RIORDAN:** But we can't have  
20 48 counties with potential -- with this change  
21 that affect straight party voting without every  
22 single "T" being crossed and every single "I"  
23 being dotted.

24           And I understand what you're saying that we  
25 have letters from people at CIBER who say we did

1 it, it's okay -- I mean, I don't think -- for  
2 me, that's not enough, unless they can tell me,  
3 tell us as a commission that the proper scrutiny  
4 has been applied to that system.

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

13 **MR. S. SHAMO:** For two years.

14 **CHAIRMAN T. WHEELER:** -- for several years,  
15 and I don't -- I don't know that we've had  
16 problems so I respect that. On the other hand,  
17 you know, we need to make sure that this is done  
18 and that it's done right and that it's done to  
19 the satisfaction of Ball State. I would ask  
20 Ball State, as you go through this with these  
21 guys, and I hope everybody will work quickly to  
22 get this done and -- you know, as evidenced by  
23 the fact that we're sitting here today, we're  
24 willing to come -- for Sarah and I, again, it's  
25 not a big deal for us to come across the street,

1 but Dan's coming down from Chicago and Tony's  
2 got some health issues so I'm not sure what his  
3 status, but we're certainly willing. I will  
4 tell -- I will tell you the criteria I'm working  
5 on, which is the Clerks Conference is...

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

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

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

20 What I would ask is that you guys get  
21 together quickly and get this taken care of. It  
22 doesn't strike me this is that complicated, and  
23 been going on for three years, and with all due  
24 respect, you guys should have had your tail ends  
25 back in here and made sure that this worked.

1           You guys went for three years with -- it  
2 was conditional approval without a final report  
3 and you should have done it.

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

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

16           **COMMISSIONER S. RIORDAN:** Does the upgrade  
17 come anyway?

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

23           We just don't feel that we have enough time  
24 to submit this application, get approval from  
25 the Commission, and then go to all 48 counties.

1           **COMMISSIONER S. RIORDAN:** Has CIBER totally  
2           disbanded?

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

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

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

18          So now we're in a -- we're in a vicarious  
19          situation where we could mandate a cost on the  
20          counties by submitting our 2005 certified  
21          version and just move forward and say sorry,  
22          that's what it is -- we might lose some  
23          customers along the way because of it, you see  
24          what I mean, but that's a very difficult  
25          business decision to make to basically say we're

1 not going to mandate revenues on our customers  
2 and try to wrangle through what we have on the  
3 table here today. If there's no resolution,  
4 then that's where we're at.

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

9 **MR. J. RIES:** Yeah.

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

12 **MR. S. SHAMO:** Right.

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

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

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

25 **MR. B. KING:** But it can't be modified or

1 marketed. The grandfather strictly applies to  
2 counties that are former purchasers of the  
3 system.

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

6 *(No response.)*

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

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

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

13 **MR. R. SCHEELE:** Sure.

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

19 **MR. R. MCGINNIS:** Yes.

20 **CHAIRMAN T. WHEELER:** So I'll ask the  
21 commissioners to look at their schedules and get  
22 back with me on the 1st, and hope that you guys  
23 can diligently work in that direction. I know  
24 we'll have forms on the 1st as well -- we have a  
25 couple of more forms to do before the 1st, so

1 we'll have at least those two things. Maybe  
2 Sarah and I and a couple of proxys for Dan and I  
3 think Tony's definitely out.

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

9 **CHAIRMAN T. WHEELER:** I think assuming  
10 Sarah's -- I'm pretty sure I've got the  
11 1st open.

12 **COMMISSIONER S. RIORDAN:** Yeah.

13 **CHAIRMAN T. WHEELER:** Sarah and I have the  
14 1st, and I don't -- and Dan's got the 1st, so we  
15 will hold a meeting on the 1st and I will put  
16 voting system certification on the agenda, so  
17 that means in terms of -- it's a question of you  
18 getting to Ball State and Ball State having the  
19 report to me.

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

25 **MR. B. KING:** Mr. Chairman, I think for the



1 co-directors, we're simply serving the staff or  
2 the Commission to provide what material we can.  
3 The real question is with regard to material  
4 getting reviewed in time by Ball State.

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

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

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

20 Ball State can just simply say look, we  
21 worked late last night, we'll get the report to  
22 you, we're good to go to, so you've got a couple  
23 of weeks. So you guys work together and figure  
24 this out, and then I'll set a meeting on the  
25 1st and we'll go from there. Anything else?

1           **MR. B. KING:** Mr. Chairman, just to  
2 suggest, Ball State may want to give us a very  
3 quick oral report on applications that are still  
4 pending review at this time.

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

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

14           **MR. R. SCHEELE:** This is the ES&S Unity  
15 3.2.0.0 and the ES&S Assure Voting System.

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

21           **MR. R. SCHEELE:** Right.

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

24           **MR. R. MCGINNIS:** Yes.

25           **CHAIRMAN T. WHEELER:** Okay. Those are new

1           certifications?

2           **MR. R. SCHEELE:** Right, new certifications.

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

5           **MR. R. MCGINNIS:** Thank you.

6           **CHAIRMAN T. WHEELER:** Anything else?

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

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

14           *(No response.)*

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

17           **COMMISSIONER D. DUMEZICH:** Motion to  
18 adjourn.

19           **COMMISSIONER S. RIORDAN:** Second it.

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

22           **THE COMMISSIONERS:** Aye.

23           **CHAIRMAN T. WHEELER:** Those opposed, same  
24 sign?

25           *(No response.)*

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**CHAIRMAN T. WHEELER:** Thank you.

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

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

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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 23<sup>rd</sup> day of November, 2009.

  
NOTARY PUBLIC

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