

1 times every 40 years, and.

2 COMMISSION MEMBER C. CUMMINGS: It came up.

3 MR. S. SHAMO: It came up.

4 COMMISSION MEMBER C. CUMMINGS: Well, I'll
5 confused as to why this is an emergency and perhaps
6 it doesn't really matter, but I just don't
7 understand exactly why it's an emergency if we've
8 known about it since 2000 and there's been other
9 software -- this is 7.4E, which may or may not have
10 had this problem, why are we waiting til the last
11 minute to install this, because clearly,
12 their -- their desperately needing it?

13 MR. S. SHAMO: This actually -- the original
14 application for 7.5 (indiscernible) at the time
15 this came up, and again the question other day
16 earlier was the road block there because it's
17 (indiscernible). It was prior to the ITA
18 (indiscernible).

19 COMMISSION MEMBER C. CUMMINGS: Thank you.
20 Okay. And then -- okay, well, you've pretty much
21 answered all my questions. Thank you.

22 CHAIRMAN D. CRUEA: Any other questions?

23 (No response.)

24 CHAIRMAN D. CRUEA: Okay. Call for the vote.

25 All those in favor of the motion, signify by saying

1 aye?

2 THE COMMISSION: Aye.

3 CHAIRMAN D. CRUEA: Opposed?

4 (No response.)

5 CHAIRMAN D. CRUEA: Okay.

6 MR. B. KING: Thank you, Mr. Chairman. If I
7 can call to attention of the members, Page 4 of the
8 memo, No. 3, the MicroVote MV 464. This is an
9 existing direct recording electronic voting system
10 that's used in many counties in Indiana. As the
11 status indicates, the certification for the MV 464
12 will expire on September 30th, 2002.

13 The application for MicroVote in this case is
14 limited to the hardware itself, not the software of
15 the voting system. MicroVote did submit an
16 application for recertification and stated no
17 documentation has changed since MV 464 was
18 certified in 1997.

19 Since this application only applies to
20 hardware, there is no escrow requirement. I would
21 call your attention to the top of Page 5 where I
22 would note that since this is an existing system,
23 we did submit notices of this application to each
24 counties, that MicroVote identified as users,
25 asking for their comments with regard to this

1 recertification application.

2 We've received many letters from counties that
3 are included in your packet, and based on the
4 information that we've submitted, the
5 recommendation of the co-directors would be on Page
6 5, that the Commission finds the voting system
7 complies with state statute cited there, and that
8 the MV 464 direct recording electronic voting
9 system hardware only be certified for use in
10 elections in Indiana for a five-year period ending
11 September 5, 2007.

12 And Mr. Shamo may have some comments with
13 regard to MicroVote corporation's plans with regard
14 to software development and the software that would
15 eventually be used on the MV 464 System.

16 MR. S. SHAMO: The software that ultimately
17 will combine the two systems is M software. It's
18 my opinion ready to go (indiscernible). That is
19 2.0 to 2.4, (indiscernible) with the M software
20 which has since already been (indiscernible) of the
21 state. My plans are to introduce that at the start
22 of next year and start incorporating that over and
23 converting the system. Now again, that doesn't
24 change anything in the machine itself. The machine
25 itself will retain -- we don't need to do a, like a

1 chip change in the machine to accept this
2 ultimately because the files are programmed to
3 (indiscernible).

4 CHAIRMAN D. CRUEA: Okay. Any questions on
5 this MicroVote MV 464?

6 COMMISSION MEMBER C. CUMMINGS: Actually, I
7 have one. This is a question for me, I was reading
8 through all the glowing letters of recommendation
9 and I also received some phone calls on their
10 behalf. I did notice there was one letter in here
11 from the Wabash County clerk where she just
12 mentioned that she had had a problem with a
13 computer upgrade where something wasn't compatible
14 with the MicroVote equipment. I don't know what
15 that means or you can answer that?

16 MR. S. SHAMO: I would like to raise that,
17 too, because this is a complete (indiscernible)
18 question in terms of something that -- the other
19 thing that is included in 7.5 (indiscernible),
20 Wabash (indiscernible) computer
21 (indiscernible) -- it was in (indiscernible) and at
22 that point, when the software was written, a
23 certain timeout was never put into the software. I
24 think we're fine through pending one, pending two,
25 pending three actually -- actually, the speed

1 exceeded the processing timeouts in the software.

2 And so when you ask about -- to kind of tie up
3 your previous question of why it would be deemed an
4 emergency, there we have a situation there in their
5 system with the software as they have established
6 on their computer. So in terms of what happened at
7 that time, that essentially was a processing speed
8 issue with the software, and what we did there was
9 we went in and showed up and manually entered
10 (indiscernible) try to get this up.

11 COMMISSION MEMBER C. CUMMINGS: What do you do
12 to try and stay on top of those kind of changes
13 with these (indiscernible). As things change, I've
14 got Windows XP for Christmas on my new computer and
15 I couldn't find anybody by AOL who was able to
16 support internet connectivity for about a two-month
17 period. How -- how are you aware in advance of
18 things like this that might happen and stay on top
19 of that in the technological field?

20 MR. S. SHAMO: I'll tell you what, that's
21 (indiscernible) -- our biggest problem
22 (indiscernible) -- I mean and you may even
23 get -- we see a situation where you might get a
24 (indiscernible) one or two computers from Dell or
25 Compaq and everything works fine, and on a Hewlett

1 Packard, it doesn't.

2 There's all sorts of things. How we keep on
3 it as quickly as (indiscernible). Unfortunately,
4 in elections your trials only come in six months
5 and so it is -- it is a very difficult situation,
6 you know, to address.

7 How we do it, we quite frankly -- I mean,
8 you're simply asking how, we have -- you keep ten
9 different versions of computers including
10 (indiscernible) ourselves just to try to find
11 anything that might be in conflict but
12 (indiscernible).

13 CHAIRMAN D. CRUEA: Any other questions on the
14 MicroVote MV 464?

15 (No response.)

16 CHAIRMAN D. CRUEA: Hearing none, I will move
17 that we follow the co-directors' recommendation
18 that the system be certified for use in elections
19 in Indiana for a five-year period ending
20 September 5th, 2007?

21 VICE CHAIR A. LONG: Second.

22 CHAIRMAN D. CRUEA: Any discussion?

23 (No response.)

24 CHAIRMAN D. CRUEA: All those in favor,
25 signify by saying aye?

1 THE COMMISSION: Aye.

2 CHAIRMAN D. CRUEA: Opposed?

3 (No response.)

4 CHAIRMAN D. CRUEA: Okay.

5 MR. B. KING: Mr. Chairman, on Page 5 of the
6 Memo, No. 4, Election Systems and Software Model
7 100 Precinct Counter for Optical Scan Ballot,
8 firmware upgrade to 4.7.6. I'll note that the
9 application fee has been submitted. Documentation
10 of escrow, and I would note this is firmware, has
11 been provided by ES&S.

12 Demonstration has not been performed because
13 it's a software upgrade, and on the top of Page 6,
14 we do have a letter from Wyle Laboratories, an
15 independent testing authority stating that the
16 firmware upgrade complied FEC standards.

17 The recommendation of the co-directors would
18 be that the Commission find that the voting system
19 complies with the law cited, and that the ES&S
20 Model 100 Precinct Counter for Optical Scan Ballot,
21 Firmware, Version 4.7.6 be approved for elections
22 in Indiana for a five-year period expiring
23 September 5, 2007.

24 I believe that Mr. Jones from ES&S and may
25 able to have further information.

1 MR. C. JONES: Actually, with upgrading
2 firmware which resulted in a technical data package
3 is virtually identical to the certified version
4 with I believe two or three items that were added
5 to diagnose the modes for technicians. Really, it
6 has nothing to do with the functionality of the
7 unit itself. It gave our technicians additional
8 functionality in testing, is what we did.

9 CHAIRMAN D. CRUEA: Okay. Any questions?

10 COMMISSION MEMBER C. CUMMINGS: Not from this
11 end.

12 CHAIRMAN D. CRUEA: Okay.

13 COMMISSION MEMBER C. CUMMINGS: There's so
14 much information about MicroVote before as I just
15 had it to peruse through.

16 CHAIRMAN D. CRUEA: Okay. I will make a
17 motion that we follow the recommendation of the
18 co-directors in that the Election Systems and
19 Software Model 100 Precinct Counter for Optical
20 Scan Ballots Firmware, Version 4.7.6 be approved
21 for use in elections in Indiana for a five-year
22 period expiring September 5th, 2007.

23 VICE CHAIR A. LONG: Second.

24 COMMISSION MEMBER B. MORGAN: Second.

25 CHAIRMAN D. CRUEA: Any discussion?

1 (No response.)

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

4 THE COMMISSION: Aye.

5 CHAIRMAN D. CRUEA: Opposed?

6 (No response.)

7 CHAIRMAN D. CRUEA: Okay.

8 MR. B. KING: Mr. Chairman, on Page 6, Item 5,
9 this is Diebold, for Diebold Election Systems and
10 GBS Systems R6 AccuTouch Electronic Ballot Station,
11 Direct Recording Electronic Voting System Upgrade
12 and Firmware Version 4-1-11 and upgraded software
13 GEMS Version 1-17-17.

14 Noting the status, these are upgrades for
15 previously approved systems. The application has
16 been required and submitted along with the required
17 fee and a copy of that application and materials is
18 in your packet.

19 With regard to escrow, I spoke to Mr. Corey
20 before the meeting and understand he has
21 documentation regarding escrow to submit at this
22 time. With regard to the independent testing
23 authority, there is a letter submitted by the
24 vendor prepared by Wyle Laboratories stating that
25 the firmware upgrade complies with FEC standards,

1 and likewise, a letter from CIBER, formerly
2 Metamora that the software complies with the
3 functional testing standards established for the
4 software, and again, copies of those documents are
5 available.

6 The recommendation of the co-directors on Page
7 7 would be subject to the documentation being
8 submitted with regard to escrow at this meeting,
9 that the Commission finds that the voting system
10 complies with the statute cited and that the
11 Diebold Election Systems R6 AccuTouch Electronic
12 Ballot Station, DRE Voting System Firmware Version
13 4-1-11 and Software GEMS Version 1-17-17 be
14 approved for use in elections in Indiana for a
15 five-year period, expiring September 5th, 2007, and
16 Mr. Corey is here to provide additional
17 information.

18 CHAIRMAN D. CRUEA: Mr. Corey.

19 MR. S. COREY: Chairman, if I may approach the
20 Commission, I'd like to hand out -- I've got copies
21 for everybody. Sorry about the quality of this.
22 It's a fax. I told Brad before the meeting that
23 hard copies will be mailed to me -- pardon --
24 okay -- hard copies will be mailed to me and I can
25 provide a cleaner copy if need be, but it's the

1 same escrow company we've used from Day 1. We
2 actually have an account set up through them
3 with -- the State of Indiana has their own account
4 number and so forth and we submitted the CDs for
5 both the firmware and software. Any additional
6 questions, I'd be more than happy to answer.

7 CHAIRMAN D. CRUEA: My question to staff is
8 does this meet your satisfaction on meeting the
9 escrow?

10 MR. B. KING: Mr. Chairman and Members of the
11 Commission, we're just having a chance to review
12 it, and I do see that the escrow is here for the
13 software 1-17-17, the GEMS, and for the firmware
14 4. -- 4-1-11, --

15 CHAIRMAN D. CRUEA: Okay.

16 MR. B. KING: -- so yes, it does appear to be
17 sufficient.

18 MR. S. COREY: I included the Wyle and the
19 CIBER copy.

20 CHAIRMAN D. CRUEA: Are there any questions on
21 this system?

22 COMMISSION MEMBER C. CUMMINGS: Mr. Chairman?

23 CHAIRMAN D. CRUEA: Uh-huh.

24 COMMISSION MEMBER C. CUMMINGS: Does anyone
25 ever open these to make sure that what's on these

1 discs is readable and that it is what it says that
2 it is, because I noticed it's specified label,
3 although I didn't review it?

4 MR. B. KING: Mr. Chairman, if I may suggest,
5 it may be useful for Mr. Simmons to explain the
6 function of an escrow agency with regard to our
7 legal access to them in the third party.

8 COMMISSION MEMBER C. CUMMINGS: Oh, okay.
9 Well, that --

10 MR. B. KING: Maybe that will answer the
11 question.

12 VICE CHAIR A. LONG: I'd like to have --
13 that -- that was exactly what I was thinking.
14 We've got CDs labeled.

15 COMMISSION MEMBER C. CUMMINGS: But we don't
16 know what it is.

17 VICE CHAIR A. LONG: How do we know what's on
18 them? We may have a movie on there.

19 COMMISSION MEMBER C. CUMMINGS: And further, I
20 think I heard it referenced possibly encrypted
21 software going on them without decryption software
22 that goes along so how much use is the escrow
23 agreement?

24 VICE CHAIR A. LONG: That's what you get when
25 you hand these escrow agreements out -- see, to let

1 us look at them, we might...

2 COMMISSION MEMBER B. MORGAN: Has Claudia been
3 here long enough to be named in any lawsuits yet?

4 CHAIRMAN D. CRUEA: Not yet, but give her
5 time. It won't be long. Probably within a week.

6 COMMISSION MEMBER B. MORGAN: I think
7 (indiscernible).

8 VICE CHAIR A. LONG: How do we know what's on
9 the CDs?

10 MR. D. SIMMONS: Mr. Chairman, I can't -- I
11 don't know if I can address that question, but I
12 can address the larger question, what's the
13 function of an escrow agreement? The escrow
14 agreement is -- it acts -- every vendor has
15 copyright protected software.

16 The purpose of an escrow agreement, and the
17 escrow agreement is entered into between the state
18 and the vendor for the benefit of the counties
19 primarily to address the situation, as I indicated
20 before -- let's say the vendor goes bankrupt, goes
21 out of business, there's nobody to contact to
22 provide support from the vendor anymore, it allows
23 us access under circumstances like that and other
24 circumstances to the source code, but it doesn't
25 allow access unless those contractual conditions

1 are met.

2 So until those occur, I don't -- I don't
3 believe there's a way we can check it, it's
4 escrowed, and it goes to (indiscernible)
5 conditions, and this is the way I understand it,
6 are met, we can -- we can then look at it.

7 CHAIRMAN D. CRUEA: Okay. Any other
8 questions?

9 VICE CHAIR A. LONG: This is -- we're on
10 Diebold; right?

11 CHAIRMAN D. CRUEA: Uh-huh, Page 7.

12 VICE CHAIR A. LONG: I recommend we -- I mean,
13 y'all approved the escrow?

14 MR. B. KING: Yes, sir.

15 VICE CHAIR A. LONG: I recommend we adopt the
16 recommendation -- do I have to say all that -- I
17 may not make this motion again -- the Diebold
18 Election Systems and Governmental Business Systems
19 R6 AccuTouch Elect -- AccuTouch Electronic Ballot
20 Station, Direct Recording Electronic Voting System,
21 Firmware Version 4 -- I believe that's 4.1.11 and
22 Software GEMS Version 1.17.17 be approved for use
23 in election for Indiana for a five-year period
24 expiring September 5th, 2007.

25 CHAIRMAN D. CRUEA: I'll second that.

1 VICE CHAIR A. LONG: Are you sure you don't
2 want me to state it again?

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

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

7 THE COMMISSION: Aye.

8 CHAIRMAN D. CRUEA: Opposed?

9 COMMISSION MEMBER C. CUMMINGS: Aye.

10 CHAIRMAN D. CRUEA: Okay. So it's 3-1. Okay,
11 No. 6.

12 MR. B. KING: Mr. Chairman, if I can call the
13 attention to the Commission Members to Page 7 of
14 the memo. This concerns Voting Technologies
15 International --

16 CHAIRMAN D. CRUEA: Excuse me. I had --
17 sorry. I assumed when the last --

18 COMMISSION MEMBER C. CUMMINGS: I apologize.

19 CHAIRMAN D. CRUEA: That she was
20 voting -- Commissioner Cummings was voting against
21 that, but she's voting for it. I don't know, if
22 maybe you took it that way -- I didn't, so it's
23 4-0.

24 VICE CHAIR A. LONG: She said aye. I heard
25 her say that.

1 CHAIRMAN D. CRUEA: Yeah, she did. I -- it
2 was a late aye.

3 COMMISSION MEMBER C. CUMMINGS: It was very
4 delayed. I apologize.

5 VICE CHAIR A. LONG: It was delayed.

6 COMMISSION MEMBER C. CUMMINGS: I was thinking
7 of new questions.

8 CHAIRMAN D. CRUEA: Okay. No. 6. Sorry to
9 interrupt you. Let's go ahead with that one.

10 MR. B. KING: Thank you, Mr. Chairman. This
11 application concerns Voting Technologies
12 International, which is often referred to as VTI
13 VotWare 3.3.4 Touch Screen Direct Recording
14 Electronic Voting Systems.

15 This is an application for certification after
16 new voting system not previously approved in
17 Indianapolis. VTI has submitted an application
18 along with all documentation required by law and
19 paid the required fee.

20 That application was provided to the
21 commission at the previous meeting. VTI has
22 submitted in a copy of its escrow agreement and
23 that is provided in the packet here.

24 With regard to the demonstration, VTI has
25 offered to conduct demonstration and always

1 prepared to do so. The Indiana testing authority,
2 Wyle Laboratories has submitted documentation
3 indicating that the system has been tested and
4 found to comply with FEC standards.

5 The letter does note that this certification
6 only extends to software registered on the system
7 often referred to as firmware and not the software
8 located on other PCs and used for election
9 administration purposes outside the precinct.

10 The recommendation of the co-directors is
11 subject to a successful demonstration here today
12 and the answer to any questions or issues that the
13 commission might have, that the Commission find
14 that the voting system complies with the cited
15 state statutes and that VTI VotWare 3.3.4 Touch
16 Screen Direct Recording Electronic Voting System be
17 approved for use in elections in Indiana for a
18 five-year period expiring September 5th, 2007, and
19 a representative from VTI is here to conduct the
20 demonstration and to answer questions -- Mr.
21 Anthony Bolden, the chief executive officer of VTI.
22 I believe he's in the back row.

23 CHAIRMAN D. CRUEA: Okay.

24 MR. A. BOLDEN: Okay. Good afternoon, ladies
25 and gentlemen. I am very honored and privileged to

1 be here today so I look forward to serving the
2 great State of Indiana in the years ahead. We have
3 a very new type voting system here (indiscernible)
4 you have not seen before, although you probably
5 have seen computer equipment, and it's kind of
6 likely -- it's kind of in the direction
7 (indiscernible).

8 The category equipment called CVS for Computer
9 Voting System, where we're utilizing off-shelf
10 (indiscernible) in an unique way to secure and
11 reliable voting environment. It's very unique in
12 the fact that it can also be even used all
13 year-round for the counties or cities that like to
14 (indiscernible). So we have a regular PC. This
15 one in particular is a Hewlett Packard.

16 CHAIRMAN D. CRUEA: Do we want to go back and
17 look at it?

18 COMMISSION MEMBER C. CUMMINGS: Yes.

19 CHAIRMAN D. CRUEA: Do you want this left on?

20 VICE CHAIR A. LONG: No.

21 CHAIRMAN D. CRUEA: It probably won't pick it
22 up, will it?

23 VICE CHAIR A. LONG: No.

24 CHAIRMAN D. CRUEA: So let's for the
25 demonstration...

1 (The Commission went to view the
2 presentation.)

3 CHAIRMAN D. CRUEA: I guess for the record,
4 what I want to know is okay, you have been -- you
5 said you are in a county in Florida so you have
6 been certified in Florida; is that correct?

7 MR. A. BOLDEN: We have not been certified in
8 Florida at the time, (indiscernible).

9 CHAIRMAN D. CRUEA: Okay. Have you been
10 certified in any state?

11 MR. A. BOLDEN: Not at this time.

12 CHAIRMAN D. CRUEA: Not at this time, okay.

13 MR. A. BOLDEN: We are currently -- we just
14 got certified by Wyle Laboratories back
15 (indiscernible) multiple states, including
16 (indiscernible).

17 CHAIRMAN D. CRUEA: What states have you
18 applied to be certified in?

19 MR. K. HUGHES: Indiana, Kentucky, West
20 Virginia, Ohio, California, Colorado, Wisconsin,
21 Michigan, Iowa, Missouri, Idaho, Washington,
22 Pennsylvania, and I believe that's -- that's it.

23 CHAIRMAN D. CRUEA: Okay. So you've applied
24 in all those counties, or I mean, all those states?

25 MR. A. BOLDEN: Yes, sir.

1 CHAIRMAN D. CRUEA: Have you been turned down
2 in any state?

3 MR. A. BOLDEN: No.

4 CHAIRMAN D. CRUEA: Anyone else have any
5 questions?

6 COMMISSION MEMBER C. CUMMINGS: No questions.
7 Go ahead. My question (indiscernible).

8 CHAIRMAN D. CRUEA: Okay.

9 MR. B. KING: Mr. Chairman, I think that both
10 Dale and I had a couple of specific questions with
11 regard to the system and its compliance with
12 Indiana statutes regarding the casting of a ballot.
13 The particular question I had was with regard to
14 the generation of the voter security card, and I
15 understood the purpose of that to create a randomly
16 established number that would permit a voter to
17 determine whether or not a ballot with that number
18 had been counted, that it would not be linked for a
19 particular voter; is that correct, would be my
20 first question? That's correct.

21 MR. A. BOLDEN: The voter security card,
22 all -- all that does is enable -- it initiates the
23 voting application. That prevents a random person
24 to walk to the machine and cast a ballot. After
25 that point where it initiates (indiscernible), it

1 is removed from the process and the votes are
2 counted without being able to associate back to
3 the -- back to the registered (indiscernible).

4 MR. B. KING: And Mr. Chairman, if I could
5 just follow up on that question? Indiana statutes
6 don't provide for the issuance of the voter
7 security card in any way. I don't know that it's
8 prohibited. My question would be: Is a voter
9 objective in any way to the generation of a random
10 number -- as far as its process, would it be
11 possible for that function to be disabled and have
12 the voter proceed to vote even though a voter
13 security card number wasn't generated?

14 MR. A. BOLDEN: For system security, you would
15 unable to initiate a vote without logging in with
16 that number (indiscernible). The voter does not
17 wish to see or have this card disclosed, they could
18 be logged in by a poll record but they would still
19 be generated with that number sequence in order for
20 the station to be initiated, otherwise, you run the
21 risk of random people going up to the station and
22 voting or having somebody sit in a booth and votes
23 more than one time for multiple periods. Thank
24 you.

25 COMMISSION MEMBER C. CUMMINGS: I did have a

1 follow-up to that, if I may, and that is would it
2 be possible for perhaps the poll workers to have an
3 identification card where -- in two-party
4 precincts, hopefully, each judge for example might
5 have a number and you enter both numbers in to
6 prove that the voter was valid and it would be the
7 same number all day, could something like that be
8 accomplished through your software?

9 MR. A. BOLDEN: I think I misunderstood your
10 question. Say it again.

11 COMMISSION MEMBER C. CUMMINGS: Okay. I'm
12 wondering if perhaps, and I threw in a couple of
13 complicating factors so let me take back out the
14 complicating factors and just ask a straight
15 question, which is: Can the same number be used
16 all day, for example?

17 MR. A. BOLDEN: Voter -- once a voter ID is
18 utilized for voting, it cannot be utilized again.

19 COMMISSION MEMBER C. CUMMINGS: Okay. And
20 that can't be reprogrammed?

21 MR. A. BOLDEN: It cannot be reprogrammed,
22 otherwise, you risk the security of the system,
23 thus, it makes (indiscernible) security card and
24 sit and vote multiple times.

25 COMMISSION MEMBER C. CUMMINGS: That's where

1 my (indiscernible) came in where I said two
2 members, one from each party and they both need to
3 be entered in order to cast a ballot.

4 MR. A. BOLDEN: It's programmable. I don't
5 believe that -- I know this isn't -- cannot be
6 accomplished right now (indiscernible). If Indiana
7 so desires, (indiscernible).

8 CHAIRMAN D. CRUEA: I guess I've got some
9 concerns on this today is that we've had a lot of
10 questions asked over there whether they comply with
11 Indiana statute with the box with the no voter and
12 if that even comes up on the last page, whether
13 that's legal or not, and I think probably
14 staff -- for me to be more comfortable in voting
15 for this system, I think staff needs to look into
16 this a little bit more and see what things there do
17 not match statute and if they can be changed before
18 we go and vote on this today.

19 VICE CHAIR A. LONG: Another issue that I
20 would like for them to address at some point is for
21 voters that have special needs immediately come do
22 bear -- vision impaired voters, how do you deal
23 with those?

24 MR. A. BOLDEN: Well, vision -- with visually
25 impaired voters, most are blind, but first of all

1 we do have (indiscernible) screen. The version on
2 our operating system that we talked about earlier,
3 it does have a headset and keypad that allows --
4 each contest to be verbally spoken to a voter with
5 special needs and the keypad of up and down
6 buttons, it allows them to navigate to the screen
7 so they do not have to reach and touch. They have
8 a keypad in their lap beneath there and make their
9 choices. Unfortunately, that feature is not on
10 this system. They're finalizing it all through
11 Wyle Laboratories. I believe the date is
12 (indiscernible) of this month, but that will be
13 (indiscernible) and we'll come back and have this
14 (indiscernible).

15 CHAIRMAN D. CRUEA: Okay.

16 VICE CHAIR A. LONG: I think there's -- I
17 agree with you, Mr. Chairman. I think there's some
18 questions that maybe staff could further explore
19 and report back on.

20 CHAIRMAN D. CRUEA: And also, I think we've
21 done this in the past is looked at -- talked with
22 other states on systems that have -- even though
23 they haven't been approved in any other state but
24 maybe talked to some of these states where they
25 have applied to see what questions they have about

1 the system and I think that's been done in the past
2 and I would like for that to be done, if we could.

3 COMMISSION MEMBER C. CUMMINGS: Mr. Chairman,
4 may I?

5 CHAIRMAN D. CRUEA: Uh-huh.

6 COMMISSION MEMBER C. CUMMINGS: In addition,
7 I'm wondering if it would be appropriate to offer a
8 demonstration to be available to some of the county
9 clerks. They might have suggestions about ballot
10 design and things that might need to be taken into
11 (indiscernible).

12 CHAIRMAN D. CRUEA: Could we do that in the
13 December meeting; have some systems come in and
14 show their...

15 MR. S. VALENTINE: I don't see why not -- yes,
16 Mr. Chairman. I guess the only thing I do have is
17 that, and it's certainly good to -- certain, I
18 would have no objection to it, we are not
19 certifying a system for a county to be stuck with
20 that they cannot make a decision.

21 I would say that in general, I wouldn't hold
22 up involving clerks to review something because
23 they're not -- we're not (indiscernible) it's on
24 advice of -- that's -- I'm just making that
25 clarification for the record.

1 COMMISSION MEMBER C. CUMMINGS: Right. And if
2 I just add, my concern here, and it kind of goes
3 against my typical nature because I don't believe
4 in a (indiscernible) -- tell us what to do. If a
5 county wants to buy a system that they think it's
6 okay, I guess they should be able to.

7 But once we certify something and if someone
8 buys it, then -- then it's there -- I mean, we have
9 to deal with whatever may come. So I would just
10 suggest that like (indiscernible) pass a few sets
11 of eyes just to get an administrator's perspective
12 in addition to a legal perspective. That just
13 might be helpful in terms of function.

14 CHAIRMAN D. CRUEA: Okay.

15 MR. B. KING: Mr. Chairman, I would echo my
16 agreement with Mr. Valentine on this. I don't know
17 what the vendor's availability is, but I would note
18 there are a couple of district clerk meetings later
19 this month on the 10th and 19th in different parts
20 of the state which might be an opportunity, if the
21 Clerks Association is willing to make -- make the
22 system available to view, those who'll attend that,
23 and I know the staff would certainly welcome the
24 opportunity to meet with the vendor on a mutually
25 convenient basis and work through the legal issues

1 and others it would have.

2 MR. A. BOLDEN: And we would certainly
3 (indiscernible) come to any (indiscernible)
4 associations if they have any questions for
5 discussion.

6 MR. S. VALENTINE: I just want to point one
7 thing out, if I could, Mr. Chair, the first time I
8 demonstrated, my particular demonstration was
9 knowledgeable with that. State Board of Accounts
10 (indiscernible) clerks where they had a
11 (indiscernible) demonstrating several -- so having
12 Indiana clerks there certainly (indiscernible) in
13 the positive.

14 COMMISSION MEMBER C. CUMMINGS: Oh, they did.

15 MR. S. VALENTINE: We've got several
16 feedbacks.

17 COMMISSION MEMBER C. CUMMINGS: You got
18 feedback?

19 MR. S. VALENTINE: Yeah, I did get the
20 feedback.

21 CHAIRMAN D. CRUEA: On this system? They
22 were...

23 MR. S. VALENTINE: (indiscernible) yes, on
24 (indiscernible) discussed it (indiscernible). So
25 it has been in front of some clerks. I thought VTI

1 deserved that for the record.

2 CHAIRMAN D. CRUEA: Any other questions or
3 comments on this?

4 (No response.)

5 CHAIRMAN D. CRUEA: I'll make a motion that we
6 table this until some -- til our next meeting until
7 some legal questions are answered and a little bit
8 more investigation is done.

9 VICE CHAIR A. LONG: Second.

10 CHAIRMAN D. CRUEA: Any discussion?

11 (No response.)

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

14 THE COMMISSION: Aye.

15 CHAIRMAN D. CRUEA: Opposed?

16 (No response.)

17 CHAIRMAN D. CRUEA: Okay. We certainly
18 appreciate you coming in and giving us a
19 demonstration today and at least it helped open up
20 some questions that we might have on some legal
21 issues so that we can -- if you'll work with staff
22 and get those worked out before our next meeting.

23 MR. A. BOLDEN: I certainly (indiscernible).

24 CHAIRMAN D. CRUEA: Okay. Thanks. It looks
25 like status report and voting system procurement

1 contracts.

2 MR. D. SIMMONS: Mr. Chairman and Members of
3 the Commission, we had previously reported on our
4 progress in negotiating and coming to final
5 agreement with each of the four vendors who
6 participated in requested proposals and bidding
7 process, and we have now four, what we consider
8 final contracts with these vendors. In review of
9 the statute, 3-11-6.5, which is the voting system
10 improvement, we noted that in order to proceed with
11 this process, the legislature had set out some
12 requirements for the commission to make some
13 findings.

14 The findings relate to the voting systems that
15 are part -- they don't relate to the contracts
16 themselves, they relate to the voting systems that
17 are part of each of those contracts. In your
18 packet we have included the -- a draft of that
19 order. It tracks the statutory language. The
20 findings basically are with respect to those voting
21 system -- voting systems that are part of
22 that -- those quantity purchase agreements that
23 they improve the reliability, efficiency, and use
24 and the public confidence in those systems.

25 And I would like to point out that there was

1 one addition made to this order, one change we have
2 for signature that's not part of the ones included
3 in your packet. It is in Section 1 where we set
4 out various methods of acquisition, the purchase or
5 lease, and what I had left out in that Section 1
6 was a lease purchase.

7 And at least one vendor did make a proposal in
8 his part of the quantity purchase agreement that
9 they have at least purchase arrangement that they
10 would offer a county as far as acquisition.

11 So Section 1, the only addition was that in
12 addition to the purchase or lease agreements, I
13 added the word lease purchase because we do have
14 that option under one of the contracts.

15 I do have copies of the remainder of the
16 contracts. These involve systems that have been
17 approved by the commission. A lot of these systems
18 were approved very recently by the commission, at
19 least one older system, the MicroVote MV 464, but
20 they also have their Infinity as part of that, as
21 you can see from the contract, that we've included
22 in the packet.

23 I have the other contracts here. I know you
24 already have a lot of paper. We thought we ought
25 to make these part of the record as well.

1 VICE CHAIR A. LONG: Is that in there already?
2 This is the changed one?

3 MS. K. ROBERTSON: We included the MicroVote
4 one as a copy. It shows them what...

5 VICE CHAIR A. LONG: Okay, I'm with you.

6 MS. M. THOMPSON: What we had, so they're all
7 basically the same.

8 CHAIRMAN D. CRUEA: So this is on each system?

9 MR. D. SIMMONS: Yeah, each system.

10 CHAIRMAN D. CRUEA: Okay.

11 MR. D. SIMMONS: The differences in
12 these -- we tried to make them uniform, and I think
13 we accomplished that. The only difference in these
14 are the products and the product descriptions.
15 Those are different for each of the vendors.

16 MR. S. VALENTINE: Mr. Chairman?

17 CHAIRMAN D. CRUEA: Yes.

18 MR. S. VALENTINE: And I don't know if

19 Dale -- I'm not interrupting you?

20 MR. D. SIMMONS: Oh, no. Go ahead.

21 MR. S. VALENTINE: I just want to make one
22 thing clear, and I believe Brad will agree with
23 this, it was our discussion, I believe again that
24 when we did the initial RFP, we asked the vendors
25 to write us all information for all aspects of

1 their voting system.

2 When it came time to create the quantity
3 purchase agreement, the intent being to splice the
4 statute for the onetime funding of reimbursement of
5 the counties and the like, we decided to trim it
6 down to a much more specific items of the system,
7 not ongoing secondary items and the like.

8 So I just want to make sure that not every
9 product and item attached to these was made part of
10 this, only the -- only the -- we tried to keep it
11 down to what was needed for placing
12 (indiscernible).

13 CHAIRMAN D. CRUEA: Okay.

14 MR. B. KING: I would just -- Mr. Chairman, I
15 would just add that yes, I do agree with Mr.
16 Valentine's comments. There were a number of
17 products as well as services that some vendors did
18 submit for consideration in this process and we
19 reached the agreement to start with the more
20 limited scope for the purchase agreement.

21 CHAIRMAN D. CRUEA: Okay. So what are we
22 looking for here? Are you looking for approval on
23 these?

24 MR. B. KING: Yes, we are.

25 VICE CHAIR A. LONG: Now this -- this is just

1 Proposed Order 2002-134; correct.

2 MR. D. SIMMONS: Mr. Chairman, we're not
3 looking for approval of the contracts themselves.
4 We're looking for approval of the order which makes
5 the findings required by statute to go forward with
6 this process. That is before we sign these
7 contracts, the legislature has provided that the
8 commission should make these findings before we
9 sign.

10 Without these findings, I don't think we can
11 go forward were these contracts, but with the
12 signing, we can go forward in finalizing the
13 process -- matter of fact, this is the last step in
14 the process. If the findings are made, these will
15 be sent out for signature and then these will be
16 put on the website distributed to the county
17 commissioners and clerks and then they will begin
18 looking at these in their acquisition process.

19 VICE CHAIR A. LONG: Are these the only
20 systems we've approved?

21 MR. S. VALENTINE: Which one -- Mr. Chairman,
22 I'm sorry, the quantity purchase agreement?

23 VICE CHAIR A. LONG: No, are these the only
24 systems we've approved, period?

25 MR. S. VALENTINE: I think so.

1 COMMISSION MEMBER B. MORGAN: You mean for
2 certification?

3 VICE CHAIR A. LONG: Yeah.

4 MR. S. VALENTINE: For certain -- no, there's
5 more -- there are more systems.

6 COMMISSION MEMBER B. MORGAN: There's the ones
7 that's implied on --

8 MR. S. VALENTINE: There are systems that are
9 certified. This is the quantity purchase
10 agreement.

11 COMMISSION MEMBER B. MORGAN: -- in this
12 legislation?

13 VICE CHAIR A. LONG: All right. We -- this is
14 exactly what we've labored with all the time,
15 saying -- now we're saying to the counties, the
16 department administration that we, this commission
17 believes that all of these systems (end of tape) --
18 as I labor -- every time I vote to certify one of
19 these things, and boy, here they are.

20 You know, I've been on the other side of this
21 coin out in the county and say well, hell, the
22 state certified it, and by gosh, it ought to be
23 right, and here we go, and then something goes
24 wrong and who do we blame now for it, and we've
25 always said before, we don't have any staff that is

1 it technically trained to do this.

2 We rely upon the reviews we make, we rely on
3 these independent testing agencies, and now we're
4 saying that each one of these four systems will
5 enhance your system out there better now than what
6 it is before and your public will love you a lot
7 more and have a lot more confidence in them, and
8 we're telling them we made this finding.

9 And boy, I'm uncomfortable as the day lights
10 doing that. I mean, I don't want to look at a
11 clerk in the eye and county commissioner who spent
12 a million and a half to buy a system in their
13 county and it flops -- well, we relied on you guys.

14 COMMISSION MEMBER B. MORGAN: You can stick in
15 a hold harmless clause in there; right?

16 VICE CHAIR A. LONG: Disclaimers.

17 CHAIRMAN D. CRUEA: Do you concur with his
18 assessment on this or do you have a different
19 opinion on it?

20 MS. K. ROBERTSON: I concur with -- I reviewed
21 the order and it requests what the statute requires
22 for our next step. I mean, they -- the legislature
23 did take a further step -- I agree and say that
24 they...

25 VICE CHAIR A. LONG: Endorse them saying this

1 will help you, right, I agree, and I'm not
2 taking -- the legislature -- this clearly follows
3 the law but this is one of those unfunded mandates
4 that they're wanting us to go further now than what
5 we've ever done before in certifying these to the
6 county.

7 But they've not given us nor have we taken any
8 steps other than asking these people to give you a
9 price, to give us a quantity purchase of price,
10 that's all this is. Here's a standardized
11 contract, we'll -- this is just like a bid.

12 We're taking the bids for the counties but we
13 don't do any -- but -- which I think is great, QPAs
14 are great, you get a lot better -- you get a lot
15 better buy but we've got to certify it and more
16 than just a QPA on it, we've got to certify these
17 will do what you want done and I'm uncomfortable
18 doing that because I don't know that they will.

19 CHAIRMAN D. CRUEA: And if we don't, the
20 counties can't get any money back from the state;
21 right.

22 MS. K. ROBERTSON: We can't take the next step
23 in signing the quantity purchase agreements that
24 would then allow the counties to be reimbursed
25 (indiscernible).

1 VICE CHAIR A. LONG: Welcome aboard.

2 UNIDENTIFIED SPEAKER: From Day 1 on the other
3 side as a vendor, I think the QPA has some strong
4 benefits from what I was -- my concern has always
5 been -- I believe an objection to a (indiscernible)
6 if Spencer were on board about it, the four
7 criteria that you're describing, and my question is
8 the cost invalid for any one of the items listed in
9 the cost of this QPAs because they keep coming back
10 to that term the efficiency of an election, yet the
11 cost of an optical scan election is somewhat more
12 expensive than a (indiscernible) election.

13 VICE CHAIR A. LONG: Do you have a system in
14 Indiana?

15 UNIDENTIFIED SPEAKER: Yes, we do.

16 VICE CHAIR A. LONG: All right. Now what's
17 the guy over here, what's his name?

18 MR. S. COREY: Steve Corey.

19 VICE CHAIR A. LONG: Steve Corey, he -- he
20 comes into one of your counties and says the
21 election commission has said if you buy one of my
22 systems, it will enhance the reliability of your
23 county's voting system. Do you think that's true?

24 I mean, is his system over yours that you're
25 already in place with an approved Microsoft 464, is

1 he going to come in and say they've already found
2 if you buy my system, it'll improve what you've
3 already got?

4 UNIDENTIFIED SPEAKER: And see, that's a big
5 question, too, because you can take our situation
6 (indiscernible) Wabash County, there is a situation
7 on that election day and that day -- no, it wasn't
8 more efficient (indiscernible) because they didn't
9 get the results out until 8:00 o'clock the next
10 morning, the next election they may get them out at
11 7:00 o'clock the next night, so it's all in the
12 definition of the term efficiency on any given
13 election day.

14 I've been, and my thing on this is as a VRE
15 member, a keypad on this little thing, the cost of
16 (indiscernible), and if that's not appropriating
17 the overall cost of the QPA, you're looking at
18 subjective money towards supplement, it's --
19 essentially, it's going to cost more than had you
20 done nothing at all with equal accuracy so...

21 VICE CHAIR A. LONG: I agree these are the
22 major players in the system and I'm not talking
23 down the systems at all. You know, we're relying
24 on your credibility in the industry when we vote to
25 certify plus the technical advice we get from the

1 independent testing folks.

2 UNIDENTIFIED SPEAKER: I think in the past,
3 too, kind of loosely is the -- using the IPA
4 certification or the state certification, at no
5 point does the IPA about the secondary lockouts
6 under the guide demonstration. Can the system
7 handle a secondary lockout on the school board
8 race?

9 There's nothing -- and ITA will ever test
10 that, yet Indiana's using that criteria to certify
11 a voting system and you may get to a month before
12 your school board election and say our system can
13 handle this ballot situation and then emergency
14 certification comes up and you get pressed up
15 against the wall.

16 So it's kind of the same -- the same thing
17 I've seen happen when you go to outside sources and
18 get away from (indiscernible) and these sort of
19 things that were kept in-house.

20 VICE CHAIR A. LONG: There any money out there
21 now to reimburse these folks?

22 UNIDENTIFIED SPEAKER: No.

23 VICE CHAIR A. LONG: I mean, what if we don't
24 do anything, is anybody going to get hurt right
25 now, or if they go ahead and buy and it gets later

1 funded -- I mean, it seems to me if we don't do
2 this, the legislature has put a gun to our head and
3 said you've got to do this for your clerks and your
4 county commissioners, even if they buy before we
5 fund it, you won't get any money back when we do
6 fund it -- I mean, I would assume there would be
7 something in the law that even though it may not be
8 funded presently, they may be eligible for
9 reimbursement later.

10 UNIDENTIFIED SPEAKER: Mr. Chairman, one
11 of -- if I could, one of the points -- one of the
12 other added wrinkles we've got here is that there
13 is a December or January deadline for them to make
14 application for the counties to make application
15 for funding, for funding that doesn't exist yet.
16 The reimbursements are not funded.

17 CHAIRMAN D. CRUEA: Certainly, something would
18 be done by the legislature next year, I would
19 assume.

20 UNIDENTIFIED SPEAKER: I know the -- the -- at
21 least during discussions, the reason for January
22 being set is that was the beginning of a budget
23 session. One of the reasons for doing a QPA, one
24 of the reasons for all this was that Chairman Bauer
25 wanted to know what it would cost? He wanted --

1 you know, he had asked this for a reason, what's it
2 going to cost to fully fund this, and the answer
3 would be between 18 and \$40 million -- can you
4 narrow that down a little for us -- no.

5 In the RFP -- when Lawrence (Phonetic)
6 contacted -- overhearing some of that and contacted
7 me and recommended the QPA process,
8 contacted -- give notice and they all thought the
9 concept was sound -- I think the concept is
10 generally sound, but the added wrinkle as you've
11 pointed out of you guys certifying a lot more than
12 just -- that it is a certifying system, we're back
13 to additional standards similar to the ones we've
14 got written over and above the FEC standards.

15 CHAIRMAN D. CRUEA: I'd move we table it.

16 VICE CHAIR A. LONG: Can we do that, you
17 think, comfortably, if we would -- can we -- if we
18 would table this til our next meeting, it will
19 honestly give us some thought on this; is that
20 going to create -- what -- what problems do we
21 create?

22 MR. D. SIMMONS: Mr. Chairman, the problem --
23 the only problem that I can think of that a lot of
24 counties are looking forward to this process for
25 two reasons. One reason, of course, is the chance

1 of reimbursement. The other is to stream line
2 their acquisition process. The county purchasing
3 agency under statute can buy off of what's called a
4 QPA and -- as I understand it, that let's them
5 forgo a lot of the other processes they have to go
6 through, like our RFP process, because we've
7 already done it.

8 Certainly, they can negotiate in the way that
9 QPA contracts are set up as either ceiling prices
10 and they can't charge no more than but they're
11 looking to these for two reasons, and those are the
12 two reasons.

13 Now, I think there's a lot of counties
14 anxious. I mean, I get several calls because I've
15 been sort of the contact guy negotiating and
16 finalizing these with where are you, we're ready to
17 go -- Tippecanoe County, I can think of. Adams
18 County called me yesterday.

19 So I think they're ready to go, trusting, I
20 guess, at some point the money will be there either
21 from our state legislature but most likely from
22 maybe the Feds who have really hammered out -- my
23 understanding, though, they haven't come to a final
24 compromise, they are getting closer and closer as
25 time draws near.

1 UNIDENTIFIED SPEAKER: Mr. Chairman, one
2 more -- I'm sorry, (indiscernible). Tabling it, I
3 don't know what it gets you. I'm not sure.

4 VICE CHAIR A. LONG: I'll tell you if
5 you'll -- if I get my word in what it gets us. I
6 think that we can add some language to this and
7 make these findings not in the purpose of
8 disclaimer -- I'm not trying to duck the issue, but
9 I think in our order, we can -- if we put language
10 in there that our reviews relate to technical and
11 you know -- and emphasize the true importance of
12 the local purchasing units deciding for their own
13 needs and as to the effectiveness of this equipment
14 for their own purpose.

15 What my fear is is that when I'm -- if I'm in
16 the county, I might want to assume that we've done
17 something more up here because the state has
18 required us to make some findings. We've done
19 something more than what we've done before, and I
20 think we need to communicate in this order while we
21 can -- we make these findings, that are required to
22 be made.

23 They are not to replace the local
24 investigation and determination because you know,
25 we don't -- we're not either endorsing any of these

1 systems nor are we certifying the -- whatever we're
2 not certifying -- we certify some things, but you
3 understand what I'm talking about -- I'm not
4 getting the words to it very well.

5 But I think it -- I think there's a middle
6 ground here that we could meet the legislative
7 mandate and still impress about the counties and
8 send it out with a cover letter saying that, you
9 know, this has been done and I think you can tell
10 them the consensus -- they call you now.

11 At least from my perspective, I'm willing to
12 vote for this order but I'd be a lot happier for it
13 if we could get some -- some limiting language or
14 some precautionary language.

15 CHAIRMAN D. CRUEA: Okay. Mr. King.

16 MR. B. KING: Mr. Chairman, thank you. I just
17 have a couple of questions to bring out what was
18 previously addressed. The one other entity
19 involved in this process is the Department of
20 Administration. I know they've been contacting
21 Dale regularly to see what the status of the QPA
22 process is, and Dale, I don't know if you're aware
23 of any other deadlines that would be impacted by
24 the commission's further consideration of what I --
25 if I may express my opinion, are very helpful

1 suggestions that Commissioner Long has made with
2 regard to the -- the additional language in the
3 order.

4 MR. D. SIMMONS: Mr. Chairman, they haven't
5 given me any legal drop deadlines, they just keep
6 saying it's now. Now we've never had a file open
7 this long and have explained the different
8 processes we've had to go through to make this
9 meeting, but they are anxious to get close -- and
10 towards that end, I think -- and Brad and I
11 discussed this, we could modify -- I mean, every
12 proposed order we bring down is just that, proposed
13 order.

14 If there is a section, let's say after Section
15 2 and before Section 3 we want to add to the fact
16 that the Commission -- the Commission wants to make
17 clear that it's review, or the Commission -- just
18 say the Commission review (indiscernible), but the
19 Commission's review of these systems is limited to
20 the statutory standards set out in Indiana's
21 statute in 3.

22 And there was something else you want to add
23 to that, to the effect that the county should
24 engage in its own analysis and exercise its own
25 judgment in selecting the system. The Commission

1 does not intend to endorse any one system over
2 another system or similar language, something to
3 that effect.

4 VICE CHAIR A. LONG: He's asking -- we're
5 going to be here a bit. They can sit here and work
6 up some language today if it's a -- if there's an
7 emergency to get it done.

8 MR. D. SIMMONS: Well, I...

9 MR. B. KING: I want to move as soon as
10 possible, too.

11 COMMISSION MEMBER C. CUMMINGS: I'd like to
12 share some thoughts, and that is I don't want to
13 have to go face Nia Knightlinger (Phonetic) in two
14 weeks and tell her that I tabled this because
15 I -- I'd get skewered alive, just to be that blunt.
16 but county clerks have are clamoring to have this
17 resolved, and if there's a way to resolve it today,
18 I would definitely like to do so.

19 There's weaknesses in the statute, I
20 believe -- I mean, for example, it says that these
21 systems will enhance -- well, enhance over what --
22 I mean, you have to have a baseline to enhance.

23 So if it's -- like you're saying it's going to
24 enhance over my old lever machines half of ton, I'd
25 say yes, certainly, it will. But if you're going

1 to say that Steve Corey is going to sell something
2 to one of Steve's competitor, one of Mr. Shamo's
3 competitors or counties, I don't know that you can
4 because when (indiscernible) -- these are proven
5 systems here in Indiana, and quite frankly, if they
6 didn't perform effectively, I think we'd know about
7 it.

8 It's just like I know about a couple of
9 obscure little things that happened with MicroVote.
10 I know some strange things that have happened with
11 some other vendors. I think we would note they
12 didn't perform more effectively and I don't know if
13 there's ever going to be a resolution to enhance
14 when there's no baseline given to what that means,
15 enhance above what?

16 Further, I don't know that there is a solution
17 to the term efficiency either. There's ongoing
18 debate of DRE versus optical scan or whether or not
19 the efficiencies gained by one or -- shadowed by
20 the other, and you know, some would say that --
21 that the cost of ballot printing is nothing
22 compared to the multiple units used in the -- with
23 DREs are complicated or the nature of DREs for
24 older voters or things like that.

25 So -- so again, efficiency, I don't know that

1 we could ever address that. I do definitely
2 represent, or understand Commissioner Long's
3 thoughts about not wanting to misrepresent this to
4 the clerks, but I just -- I worry about tabling it
5 today.

6 And if I could suggest, and I don't know if
7 this is ever done, if there can be a joint letter
8 from the commission kind of explaining in less
9 legalistic language to the county clerks exactly
10 what the process is for certification or that we
11 don't know enhanced over what or -- or something
12 like that where in an informal setting, we inform
13 the county clerks and the commissioners of -- of
14 our lack of endorsement, if -- if that could be
15 said, that would be amenable, or if we could just
16 amend today, that would be great, too, but to say
17 that we don't need to pass this to get moving
18 forward, I think for certain county clerks and
19 commissioners in the state, that's not an accurate
20 portrayal.

21 UNIDENTIFIED SPEAKER: What's happening
22 basically in a nutshell is there's a lot of clerks
23 that don't want to have to go through the bid
24 process and the code system and find the number,
25 quite frankly -- I mean, that's what the problem is

1 and situation, that you don't want to go out to the
2 (indiscernible), you don't want competition to come
3 in and unseat an (indiscernible) -- you don't have
4 to deal with this process (indiscernible), and the
5 deadline is ticking -- I mean, September 26
6 (indiscernible) in the text ten days.

7 COMMISSION MEMBER C. CUMMINGS: I mean, is
8 there some way that we could just amend it today
9 because I completely understand the sentiment? I
10 would just hate to hold it up. Would you like for
11 me to propose some language, is that helpful?

12 CHAIRMAN D. CRUEA: Do you have some language
13 to propose?

14 COMMISSION MEMBER C. CUMMINGS: No, I don't,
15 but I'll think of something.

16 CHAIRMAN D. CRUEA: Well, why don't we just
17 move on to forms approval and you can mark down
18 some things and then maybe we can talk about that
19 at the end; is that all right with everyone?

20 (No response.)

21 CHAIRMAN D. CRUEA: Forms approval.

22 MS. K. ROBERTSON: Mr. Chairman and Members of
23 the Commission, we have been getting some requests
24 already for 2004 petition forms, specifically, for
25 governor and U.S. Senate and for presidential

1 candidate (indiscernible) petition a signature in
2 order to be president in a primary election
3 (indiscernible) 2004 so we went ahead and revised
4 the CAN-4 and the CAN-8 form, made it similar to
5 our CAN-19 form which is the form for independent
6 (indiscernible) party candidate so she can get on
7 the ballot.

8 You will note there are two different versions
9 of the CAN-4. I want to tell you why we did that.
10 The only difference (indiscernible), the area where
11 the candidate would place their name and address
12 and their office slot, on one version, that was
13 replaced with two candidates, on the other there is
14 a place for one. Previously the form had a place
15 for just one.

16 Because in 2004, there will be -- the US
17 Senate seat and the governor seat will be up at the
18 same time. We wondered if the parties may like the
19 opportunity together to petition signatures with
20 more than -- for more than one candidate. Our
21 CAN-19 form, our independent form, we have a place,
22 I think for four candidates on there so you can
23 gather signatures for more than one candidate at
24 the time.

25 I think that the co-directors spoke with the

1 parties about their input on which one they
2 preferred so if you all have something to share on
3 that.

4 MR. B. KING: Mr. Chairman, I'll just -- yes,
5 I did discuss this with Republican State Committee
6 and also with Miss Robertson one particular issue
7 and that was the potential, what I call the shotgun
8 marriage with candidates, where a recognized
9 candidate who would be named Evan Bayh or Dick
10 Lugar, for example, would be on the ballot at the
11 same time that a candidate for governor unknown to
12 either of those prominent individuals would choose
13 to circulate petitions and have the prominent
14 individual's name on them and thereby imply
15 association between two candidates.

16 The feedback I had from the party was yes,
17 that was a concern, and there was also recognition
18 that there would be a significant benefit on the
19 administrative side where circuit court clerks and
20 voter registration offices would have the ability
21 to process fewer petitions rather than having two
22 equal stacks.

23 I just want to add for clarification we are
24 talking here not about independent of third party
25 petitions, we're talking about Democratic Party or

1 Republican Party primary candidates for these
2 offices. Do you have anything to...

3 MR. S. VALENTINE: Mr. Chairman, I spoke with
4 the executive director of Indiana State Democratic
5 party toward this very item, and at first their
6 response was yes, that would make petition
7 gathering easier, and then I pointed out to them
8 the shotgun marriage approach, and then they
9 (indiscernible), but their recommendation at the
10 end was more on the lines of having each of it be
11 individual so (indiscernible).

12 With that said, they -- they were also
13 confident that -- that the Commission could discuss
14 this themselves and they could live under either.

15 CHAIRMAN D. CRUEA: I personally would like to
16 see each individual candidate have their own form.

17 COMMISSION MEMBER C. CUMMINGS: Mr. Chairman?

18 CHAIRMAN D. CRUEA: Uh-huh.

19 COMMISSION MEMBER C. CUMMINGS: Let me ask
20 (indiscernible) thoughts on this?

21 CHAIRMAN D. CRUEA: (Indiscernible)?

22 MR. B. KING: Mr. Chairman, currently, they're
23 not required to circulate petitions.

24 CHAIRMAN D. CRUEA: Oh, that's right.

25 COMMISSION MEMBER B. MORGAN: (Indiscernible).

1 UNIDENTIFIED SPEAKER: My general feeling on
2 it would be, and I assume this would be party's
3 feeling as well that having the opportunity for as
4 many multiple names as you'd like makes it easier
5 from an administrative standpoint and makes the
6 process go a little bit more smoothly.

7 Obviously, the candidates have the opportunity
8 to look up the name on the form that they prefer,
9 and if somebody unbeknownst to them wants to help
10 them out, they can volunteer.

11 CHAIRMAN D. CRUEA: I guess the question I
12 have is what if someone signed this and they say
13 I'm only signing there for such and such for
14 governor, it does not include the one for senator,
15 then how is the clerk going to look at that -- you
16 know, they might say -- they might say I'm own
17 signing for one of these, not any of the others,
18 and also this was a question that Commissioner
19 Cummings brought up about the residence address,
20 can we have registration address on there?

21 UNIDENTIFIED SPEAKER: (Indiscernible).

22 CHAIRMAN D. CRUEA: Okay.

23 MS. K. ROBERTSON: Mr. Chairman, as
24 Commissioner Cummings pointed out, and the statute
25 actually says residence and mailing address which

1 is what I think we had on our form previously which
2 would be even more confusing, I think then
3 residence address.

4 What we tried to do the forms, I think, is we
5 tried to stay as true to the statute as possible,
6 but of course, we want them to be -- people to
7 understand them, and if the statute doesn't explain
8 enough, you know, we will -- we will add
9 language -- there will be instructions where you
10 mail the form usually added and we incorporate
11 statute and then to go further (indiscernible)
12 explain it.

13 So it's not something that we have to follow
14 the statute completely, but the statute actually
15 says residence mailing address. But what we're
16 trying to get here is where they're registered to
17 vote because that's what we'll -- the counties will
18 be tracking some sort of certification, is this
19 person registered to vote at this address?

20 CHAIRMAN D. CRUEA: But see, I can see a lot
21 of -- especially in Tippecanoe County and Monroe
22 County where there's big universities where they
23 put they're registered to vote at their college
24 there, but they see residence address and they say
25 oh, I -- I actually live in Covington, Indiana and

1 they put Covington, Indiana, but they're registered
2 at Purdue. I could see where that could get
3 confusing.

4 COMMISSION MEMBER C. CUMMINGS: May I ask?

5 CHAIRMAN D. CRUEA: Uh-huh.

6 COMMISSION MEMBER C. CUMMINGS: Is this going
7 to be placed on the administrative changes for
8 (indiscernible) code, and if so, is it just to
9 remove the word mailing or is it to change it to a
10 registration?

11 MS. K. ROBERTSON: I think that's only
12 something that Dale and I have discussed so far and
13 we do have a list that we put together to submit to
14 the Census Data Advisory Committee and
15 (indiscernible) Study Committee. I think it would
16 be something that I wouldn't mind adding, but I
17 think doesn't compare either their residence
18 address or mailing address.

19 I think probably what we would suggest is to
20 make it coincide with what the statute says in
21 other places, and now residence, also registration
22 address that are consistent, but right now,
23 residence mailing address is something that's
24 (indiscernible).

25 CHAIRMAN D. CRUEA: Okay. Now so give me the

1 scenario, if we approve this, then in January we
2 get the legislature to change the language to say
3 your registration, voter registration address and
4 we change the form, then if they get any of these
5 signatures before -- after we've changed that form
6 on this old one, then they're not going to be
7 counted.

8 MS. K. ROBERTSON: Well, what we've done in
9 the past in regards to (indiscernible) forms,
10 unless we were required to make a substantive
11 change to the form because of change in legislation
12 that would be, you know, confusing, it would make
13 the previous form not compliant with the statute.

14 We've also grandfathered in, like we do for
15 voter registration forms so that people that have
16 already gathered signatures on this but in the next
17 two years we may find we need to the forms for
18 other reasons but it doesn't necessarily mean that
19 the information that we gather on signatures would
20 be not still reusable.

21 CHAIRMAN D. CRUEA: Okay.

22 MS. K. ROBERTSON: So I would think that we
23 probably could do that.

24 CHAIRMAN D. CRUEA: Okay.

25 MS. K. ROBERTSON: We would grandfather this

1 in as well as any future versions so then
2 signatures would not be lost.

3 CHAIRMAN D. CRUEA: It'd sure be nice if we
4 could get more signatures than just ten on a page,
5 then you won't have to use so many.

6 COMMISSION MEMBER B. MORGAN: (Indiscernible).

7 CHAIRMAN D. CRUEA: Any way on the back that
8 we could cut some of that down and add even five
9 more lines or -- I don't see it. We've got -- I
10 mean, you've got on the front page the county puts
11 number of valid signatures and then you've also got
12 on the back page where the county puts number of
13 valid signatures so...

14 MS. K. ROBERTSON: I know this. On the
15 second, I think that's (indiscernible).

16 COMMISSION MEMBER B. MORGAN: Well, just
17 earlier in the day, it doesn't matter how many
18 signatures you get.

19 MS. K. ROBERTSON: I think on the second from
20 the left, you can just cut off and corrected, that
21 should be on the back.

22 CHAIRMAN D. CRUEA: Oh, it's not on the first
23 one, I see. Is there any discussions or comments
24 on that?

25 VICE CHAIR A. LONG: I could see the advantage

1 of it but the disadvantages are obvious also.
2 Maybe it's something you'll want some future
3 thought on it.

4 COMMISSION MEMBER B. MORGAN: I could see
5 (indiscernible) turned sideways.

6 VICE CHAIR A. LONG: George (indiscernible).

7 COMMISSION MEMBER B. MORGAN: Not to bring up
8 old history or anything.

9 VICE CHAIR A. LONG: That's a nice name. I'm
10 trying to think -- it's Burton.

11 CHAIRMAN D. CRUEA: I think it was Regan last
12 meeting.

13 VICE CHAIR A. LONG: Now that's -- it was
14 going to be.

15 CHAIRMAN D. CRUEA: Mr. King.

16 MR. B. KING: Mr. Chairman, I would just add
17 one thing that if the Commission does take action
18 on this order today, I know it would be useful for
19 several people who have made inquiries that specify
20 previous petition forms will be grandfathered as
21 far as any motion or (indiscernible).

22 COMMISSION MEMBER C. CUMMINGS: Or actually
23 (indiscernible);right, not previous ones?

24 MR. B. KING: Mr. Chairman, no, I understand
25 that there have been people circulating petitions

1 already.

2 CHAIRMAN D. CRUEA: Yes, I've seen it.

3 VICE CHAIR A. LONG: Well, they'll have --
4 make sure they get enough of them. They don't need
5 very many but four or five.

6 COMMISSION MEMBER B. MORGAN: I carry some in
7 my glove box.

8 COMMISSION MEMBER C. CUMMINGS: May I ask,
9 does grandfathering these old petitions cause any
10 problem or this is an insignificant change at this
11 point just to...

12 MS. K. ROBERTSON: Well, yes.

13 COMMISSION MEMBER C. CUMMINGS: Mr. Chairman,
14 I'm wondering if the motion could include some
15 language.

16 CHAIRMAN D. CRUEA: There hasn't been a motion
17 yet so...

18 COMMISSION MEMBER C. CUMMINGS: I thought
19 there was a motion. Should I make a motion?

20 CHAIRMAN D. CRUEA: Would you like to make a
21 motion -- sure.

22 COMMISSION MEMBER C. CUMMINGS: Mr. Chairman,
23 I move that we approve the petition for primary
24 ballot placement as the candidate for governor and
25 the United States Senator with the single candidate

1 name as proposed by the Election Division with the
2 proviso that we grandfather in the immediate past
3 version of the form for use in the upcoming 2004
4 election cycle and that we proceed with efforts to
5 change the term from residence mailing address in
6 the code to registration address.

7 CHAIRMAN D. CRUEA: Okay, do you want to do
8 the other -- we've got that other petition?

9 COMMISSION MEMBER C. CUMMINGS: Further, I
10 move, Mr. Chairman, that we approve the Indiana
11 petition for presidential primary ballot placement
12 and grandfather in the immediate past version of
13 the form as prepared by the election division.

14 CHAIRMAN D. CRUEA: I'll second that. Is
15 there any discussion?

16 COMMISSION MEMBER B. MORGAN: So we have no
17 forms that have the shotgun marriage in them?

18 MS. K. ROBERTSON: No.

19 CHAIRMAN D. CRUEA: Okay. All those in favor
20 of the motion, signify by saying aye?

21 THE COMMISSION: Aye.

22 CHAIRMAN D. CRUEA: Opposed?

23 (No response.)

24 CHAIRMAN D. CRUEA: Precincts, Miss
25 Hershberger.

1 MS. L. HERSHBERGER: Yes, Mr. Chairman, I'm
2 here to give an update on where we stand with the
3 precincts that we have. I have been calling the
4 counties that did not get commission approval at
5 the last commission meeting, and with those
6 counties I have set up appointment with each of
7 them for us to make a verification, and I got ten,
8 and the schedule is here.

9 I have started the work with Allen County. We
10 do have a map of Allen County, although when we
11 pull it through our system, it distorts, and kind
12 of after the last week I did some investigation
13 into why it distorts in our version of the
14 software. One of the things I had another vendor
15 take a look at, they had taken out all of their
16 water-shaped files and that makes a bit of a
17 difference when you're pulling it in because we're
18 having -- we have more blocks showing than what
19 they have and it also kind of confuses the
20 (indiscernible) program.

21 I also have started the mapping process. I am
22 this far along, and I apologize, I only have one of
23 those, y'all can pass it around -- that's where I
24 am. I started getting the files from the Allen
25 County Executive Board Director, she sends in to me

1 in a format, I pull them out, match up the census
2 blocks and map it.

3 I would anticipate two days of hard work, I
4 can have it done, and we will have a complete
5 readable with the census geography underneath it.

6 CHAIRMAN D. CRUEA: Okay. Any questions?

7 VICE CHAIR A. LONG: Where are the other four
8 counties? I count 18 on this list you gave us. I
9 didn't check them off. Did I miscount? Maybe I
10 did.

11 MS. L. HERSHBERGER: If you can tell me
12 which...

13 VICE CHAIR A. LONG: I don't know. There's 22
14 counties that didn't get done, am I correct?

15 MS. L. HERSHBERGER: I did not make any
16 arrangements with Marion.

17 VICE CHAIR A. LONG: How many -- may I ask a
18 question -- I know she's under orders not to answer
19 any questions of mine, I think, but if I could ask
20 a question, Mr. Chairman, to -- not counting Marion
21 County, how many counties were not approved? I
22 would ask that of the executive directors.

23 MR. B. KING: Twenty.

24 VICE CHAIR A. LONG: Twenty.

25 MR. B. KING: According to my record.

1 CHAIRMAN D. CRUEA: Okay, 21, counting Marion
2 County.

3 MR. B. KING: Twenty-one, including Marion
4 County.

5 CHAIRMAN D. CRUEA: So 20. So we're missing
6 two on the next list.

7 VICE CHAIR A. LONG: Where are the two
8 counties then, that would be my question? Are they
9 in Indiana, I -- I hope they are. You know, I'll
10 sit down here -- I'm sorry, let's get a -- I'll
11 find out which ones they are in just a second.

12 MS. L. HERSHBERGER: Adams is one.

13 CHAIRMAN D. CRUEA: Adams is one. I see it on
14 here and Bartholomew -- oh, no, Adams is on here.

15 MR. B. KING: I don't see Bartholomew County.

16 CHAIRMAN D. CRUEA: Bartholomew was one.

17 MS. L. HERSHBERGER: It's -- it's my mistake.
18 I'm waiting on a call back from the Bartholomew
19 County clerk. I left a message. I've played phone
20 tag with her. So that's -- that's one that's not
21 scheduled.

22 CHAIRMAN D. CRUEA: If you'll read the
23 counties, I'll check them off.

24 MR. B. KING: The counties that we had are
25 Allen.

1 CHAIRMAN D. CRUEA: Okay.

2 MR. B. KING: Bartholomew.

3 CHAIRMAN D. CRUEA: Okay.

4 MR. B. KING: Blackford.

5 CHAIRMAN D. CRUEA: Okay.

6 MR. B. KING: DeKalb.

7 CHAIRMAN D. CRUEA: Okay.

8 MR. B. KING: Hancock.

9 CHAIRMAN D. CRUEA: Okay.

10 MR. B. KING: Henry.

11 MS. L. HERSHBERGER: Henry is the other one.

12 CHAIRMAN D. CRUEA: Henry is not on here.

13 VICE CHAIR A. LONG: So we've got which one?

14 CHAIRMAN D. CRUEA: Bartholomew and Henry.

15 MS. L. HERSHBERGER: With Henry, I have -- I

16 called Nancy last week and she was going to wait

17 and talk to their GIS person and it's one I was

18 waiting to get back on as well.

19 CHAIRMAN D. CRUEA: Okay.

20 MS. L. HERSHBERGER: It's Nancy Marcum

21 (Phonetic) from Henry County is who I talked to and

22 (indiscernible).

23 CHAIRMAN D. CRUEA: Okay. Any other

24 questions?

25 (No response.)

1 CHAIRMAN D. CRUEA: Okay. Thank you. I think
2 there'll be more in the co-directors' report, if
3 I'm not correct.

4 MR. B. KING: I would just add, Mr. Chairman,
5 that commission members have received copies of the
6 letters we sent to Vice Chairman Long by Mr.
7 Valentine and myself during August that provides
8 status reports on the counties with you know
9 approved precincts and address a number of
10 other -- on number of other issues.

11 COMMISSION MEMBER B. MORGAN: (Indiscernible).

12 CHAIRMAN D. CRUEA: Okay. Co-Directors'
13 report.

14 MR. B. KING: Mr. Chairman and Members of the
15 Commission, I want to begin by acknowledging that
16 we've already been given a large amount of paper
17 with regard to the other considerations before the
18 commission today, but I felt it was important to
19 give you a 20-page document that sets forth my
20 answers to a couple of questions posed by
21 Commissioner Long as far as an earlier request of
22 information regarding the status of reprecincting.

23 I want to state at the beginning that Spencer
24 and I worked together along with Lori Hershberger
25 to come up with status reports for the counties

1 that were referenced earlier and was very pleased
2 to be able to do that. So we had identified -- I
3 said we had identified a couple of questions that
4 were included in the initial inquiry, that as
5 Chairman Cruea indicated, addressed personnel
6 matters, and I felt needed to be handled by the
7 co-directors as part of their responsibility as
8 managers of the Election Division.

9 So what I have done in the last day is to
10 provide each of the commission members either
11 directly through Mr. Valentine with a detailed
12 report that addresses those two questions as best I
13 understood them. The 20-page report identifies a
14 number of factors that I felt responsive to the
15 question as to why the precincts in 20 plus
16 counties were not approved by the commission
17 earlier this year, and I'll be happy to give the
18 commission members and anyone else an opportunity
19 to review the information in the file.

20 The large stack of rubber bands around it here
21 at the front of the table incorporate exhibits that
22 were submitted as part of the investigation process
23 regarding the performance of Lori Hershberger, not
24 getting in the middle of this summer -- I reviewed
25 those submissions and incorporated many of them by

1 reference in this report. I think what I'll say in
2 summary at this point is that I identified a fairly
3 large number of factors that contributed to the
4 problems of the Election Division and the
5 Commission's experience in the reprecincting
6 process.

7 With regard to those factors, they involve
8 everything from software glitches to the
9 establishment of new offices with a new role in the
10 process to personally animosity that I think played
11 a significant role in this process to natural
12 partisan conflict that I think is something to be
13 expected with redistricting and has the potential
14 to spill over in the reprecincting.

15 I also took a look at the role that the
16 Election Division (indiscernible) Miss Hershberger
17 played, and in doing so I relied to the greatest
18 extent possible on the information that was
19 provided to me. As I said, at the beginning of the
20 report, I wasn't here to witness what went on in
21 the Election Division in months prior and I've had
22 the opportunity to review minutes and discussions
23 since that time and so I reached conclusions about
24 that process I hope are responsive.

25 But I will also note that my conclusions are

1 not necessarily the only conclusions that a
2 reasonable person can reach, and as I said to Mr.
3 Valentine earlier, I would say to anyone who
4 participated in the submission information, that
5 not only will I make the -- the documentation
6 available, but if they wish to submit additional
7 information to clarify a question to dispute a
8 conclusion I've reached, then I'll be happy to
9 include that in the file as well.

10 I want to conclude my presentation by noting a
11 couple of points. One I included is a reference or
12 rather a letter that refers to Miss Hershberger's
13 specific performance -- I did so with her
14 agreement, and I've identified specific points
15 where I believe she could improve her work
16 performance.

17 I also want to note that at the end of the
18 report that I've submitted, I've identified some
19 specific things -- specific steps that I'm going to
20 take as one of the managers in the Election
21 Division to try to ensure that the problems that
22 the division experienced don't happen again.

23 On my side of the aisle, that includes
24 instituting fairly typical standard employee
25 evaluations, where every six months I'll review

1 employee performance of all the staff members I'm
2 primarily responsible for and monitor that
3 performance.

4 I've also instituted a regularly scheduled
5 meeting of the employees that I'm responsible for
6 on a bimonthly basis -- every two weeks, I should
7 say, to make certain that communication among and
8 between employees and managers is improved.

9 With regard to the precincting process, in
10 general, I should take this point to say that after
11 reviewing the material, I would stress by the
12 sincerity and depth of concern that Mr. Long
13 expressed in the meetings prior to January of this
14 year with regard to problems in the completion of
15 precincting work, and I think that the good that
16 may come from that is that when we renew the
17 process of approving precinct changes in
18 anticipation of the 2003 municipal elections, that
19 we can take some steps in our office to make sure
20 it's a less painful process for everybody
21 concerned, and I've identified those in the report.

22 I've mentioned most of them to my colleague
23 and to the fellow staffers involved in this project
24 as logical steps for us to take. They include
25 scheduled meetings with the co-directors, the

1 relevant election division staff and those OCD
2 staff during the next several months to monitor
3 process. They include setting a deadline -- my
4 proposal was December for the submission of
5 necessary information by counties.

6 I think one of the problems that I identified
7 was an understandable willingness to try to do
8 everything for everyone, and I think given the time
9 constraints allowed, that caused part of our
10 difficulties as an office and for the Commission.
11 I would just say again that I appreciate the
12 opportunity to present this to you. I've had the
13 opportunity as well to correspond or share
14 correspondence with each member of the Commission
15 on some of the other issues, and from my
16 perspective, I've instructed employees they are to
17 provide information to any inquiry from a
18 commission member that concerns business pending
19 before this body.

20 Again, as I said in our last meeting on
21 June 27th, with the understanding, I think the
22 co-directors of the Election Division have a
23 special responsibility to monitor employee
24 performance and impose discipline when necessary,
25 and again, I realize that commission members have

1 not had a chance to read the entire stack of paper
2 here, but I'll be happy to answer questions.

3 CHAIRMAN D. CRUEA: Okay.

4 VICE CHAIR A. LONG: Is Miss Hershberger now
5 free to answer questions if I'm -- not necessarily
6 here today, but you wrote to her on June 25th
7 instructing her not to be present at the meetings
8 or to answer any questions regarding this matter.
9 Is that still the order of the day? Is there a
10 superior?

11 MR. B. KING: Mr. Chairman, no, Mr. Long, it
12 is not.

13 VICE CHAIR A. LONG: Okay. Now I have spent
14 some time today, and I grant you, I will read all
15 this as I've read everything else, but your letter
16 dated yesterday is the third response that you've
17 made, and I don't want to talk about it for the
18 moment -- what I want to ask you about is
19 August the 21st, you wrote a letter to me and I
20 think sent it to a number of folks, and there were
21 a number of things with it, and I didn't see in
22 your letter of the 4th any inclusion of Mr.
23 Sachtleben's letter that he sent to all of us under
24 date of August the 30th that caused -- to be very
25 frank, Brad, caused me some real serious concerns,

1 particularly -- I mean, this was a pretty pointed
2 situation as to the accuracy of the -- your letter
3 to me of August the 21st.

4 Are you -- is there some point in time and I
5 notice folks from the OCD -- I'll preface anything
6 I say, I think these folks have done a spectacular
7 job in this case, and Mr. Sachtleben, I know you've
8 not been here for all of our meetings, but your
9 staff people have been majorly impressive to me and
10 nothing I say at any point should be taking
11 critical, or criticism because I think that your
12 people have done a wonderful job.

13 But I think, Brad, that we need -- the
14 Commission needs a response to the statements that
15 have been said here to usually the Legislative
16 Services Agency because I -- because it's a real
17 concern to me to getting to the bottom, and I --
18 you know, I don't know, maybe I started more here
19 than I start I was starting. I wrote one letter
20 and I've now got two reams of responses from
21 it -- please, less is more sometimes. I'm reading
22 what I consider not a very healthy relationship
23 between the division and the Legislative Services
24 Agency and that causes me a great deal of concern.

25 I mean, these -- we need these people and we

1 need their expertise and I guess I would ask that
2 at some point that I receive, and I assume the
3 other commissioners would want to see also, your
4 observations about this August the 30th letter --
5 memorandum from the Legislative Services Office.
6 It's -- it was very troublesome to me when I read
7 it, and I mean, it's -- I don't know highlight a
8 lot and this one got a lot of pink in it -- I mean,
9 just some real troublesome things.

10 MR. B. KING: Mr. Chairman, might I respond?
11 Yes, Mr. Long, when I received that, I did feel a
12 need for a narrative response. The letter that it
13 references was from both Mr. Valentine and myself
14 so I did meet with him, I believe it was the day
15 before yesterday, to discuss this letter. He
16 brought some forward -- brought forward some
17 information to me that I think is useful for a
18 response, but I would prefer, assuming people will
19 do so, we continue our practice of conveying that
20 sort of information in a joint manner -- I'd be
21 happy to work with him to do that and to be
22 responsive.

23 I would say also say yes, I identify in the
24 report personal animosities and conflicts in the
25 past between this office and OCD, without assigning

1 blame for any of that, but noting that it was an
2 impediment to the effective work of the office and
3 that's why one of the steps I proposed was having a
4 regular ongoing meeting with OCD and the
5 co-directors to make sure that the process is not
6 deflected by that type of relationship.

7 VICE CHAIR A. LONG: I don't have anything
8 else that -- I want to digest it all before I...

9 CHAIRMAN D. CRUEA: Okay.

10 VICE CHAIR A. LONG: I mean, I -- I'm
11 sure -- you can rest assured I'll probably have
12 considerable more to say but it's not today and
13 it's too late today to do that and there's a
14 lot -- it would not be fair to -- I think the
15 co-directors to not have the whole thing.

16 CHAIRMAN D. CRUEA: Okay. Mr. Valentine --
17 are you done, Mr. King, with your --

18 MR. B. KING: That's all of my response, yes.

19 CHAIRMAN D. CRUEA: -- director report? Okay.

20 VICE CHAIR A. LONG: I don't know if these
21 folks, since -- unless they're going to -- if
22 Spencer's got anything on this subject, I think in
23 deference to -- these people have sat here all day,
24 if they've got any...

25 MR. S. VALENTINE: I defer to my director's

1 report to other business for OCD.

2 CHAIRMAN D. CRUEA: Okay.

3 UNIDENTIFIED SPEAKER: Mr. Chairman, I really,
4 and it was really on the previous point in the
5 agenda which dealt with the outstanding counties
6 because I want to make sure that our records -- the
7 Office of Census Data shows there are 22 counties
8 counting Marion that are outstanding, and I believe
9 you said with Marion County, if you took that out,
10 there are only 20, but I want to make sure that the
11 records are in agreement that somewhere there's not
12 some county out there that we don't have accounted
13 for.

14 If it's more properly reflected that it did
15 get addressed, then our records accurately reflect
16 that, but currently, and the -- and the Election
17 Division has this information that we've provided
18 to them and the Commission prior as well, but the
19 Office of Census Data shows 22 counties
20 outstanding.

21 VICE CHAIR A. LONG: Including Marion?

22 UNIDENTIFIED SPEAKER: Including Marion
23 County, yes, sir.

24 VICE CHAIR A. LONG: That was where I came up
25 with that a while ago. I thought there were 22.

1 CHAIRMAN D. CRUEA: Well then, we're still
2 missing one. Do you have that list?

3 UNIDENTIFIED SPEAKER: Yes, sir.

4 MS. L. HERSHBERGER: Yes, sir.

5 CHAIRMAN D. CRUEA: Okay. I have Allen
6 County, Hancock, Stueben, Huntington, Lawrence,
7 Adams, Wells, Jefferson, Ripley, Jennings --

8 MS. L. HERSHBERGER: Wait a second.

9 UNIDENTIFIED SPEAKER: (Indiscernible).

10 CHAIRMAN D. CRUEA: Yeah, I have them in the
11 order of their meetings so that's why.

12 MS. L. HERSHBERGER: Okay.

13 CHAIRMAN D. CRUEA: Jennings, Jackson -- I'll
14 try to -- Shelby, Tipton, DeKalb -- DeKalb,
15 Morgan --

16 COMMISSION MEMBER B. MORGAN: Here.

17 VICE CHAIR A. LONG: Marion.

18 CHAIRMAN D. CRUEA: Yeah, like Marion County.
19 Did you get Whitley?

20 MS. L. HERSHBERGER: (Indiscernible).

21 CHAIRMAN D. CRUEA: 8th District meeting next
22 morning, or at the end of this month, I'm going to
23 let her know that I'm in that district. Okay, did
24 you get Whitley?

25 MS. L. HERSHBERGER: Yes, sir.

1 CHAIRMAN D. CRUEA: Blackford, Tippecanoe,
2 Bartholomew, Henry and Marion. What one do...

3 UNIDENTIFIED SPEAKER: Mr. Chairman, Randolph
4 is the county that I don't show.

5 CHAIRMAN D. CRUEA: Okay.

6 MS. L. HERSHBERGER: Randolph is one. I have
7 not contacted Randolph.

8 UNIDENTIFIED SPEAKER: Mr. Chairman, if it
9 helps, I went also to this record as coming from
10 the Election Division and it too shows 22 counties.

11 UNIDENTIFIED SPEAKER: I was just -- that's
12 what I was worried about, (indiscernible.)

13 CHAIRMAN D. CRUEA: Okay, so Randolph County
14 is -- okay, thank you. Anything else?

15 MR. P. SACHTLEBEN: My name is Phil Sachtleben
16 and I'm the executive Director of Legislative
17 Services. (Indiscernible) reporting with the
18 Office of Census Data, and quite frankly -- you
19 know there's several things that I'm concerned
20 about -- I know the hour is late and
21 (indiscernible), but first of all, about animosity,
22 I don't think the animosity is legitimate thing to
23 bring up in this discussion.

24 We -- I've worked with the most partisan
25 (indiscernible) and we work out the differences

1 when there's a job to be done. (indiscernible)
2 that this redistricting was a just another job to
3 them. It did not have to (indiscernible), and
4 regardless what got done, this is a job we done,
5 and (indiscernible), and for a variety of reasons,
6 everybody's got something (indiscernible). You
7 can't raise software problems today because we will
8 never get anything done. Responsibility today, and
9 that should work around software problems, and not
10 just by hiring some new consultant or somebody
11 (indiscernible). We have to learn the software and
12 do the (indiscernible) and get down an
13 understanding.

14 We had the same thing. We did this all once
15 with redistricting, which my folks are very
16 interested in, didn't tolerate, terrible regiments
17 and it got done. We can talk to any of the
18 hundreds and hundreds of people and members of the
19 district, but talked to the people in general, and
20 they will say that these two people made
21 redistricting from a technical standpoint
22 (indiscernible), so we are very familiar with GIS
23 problems. The (indiscernible) with all the slivers
24 and that (indiscernible), but we had to work around
25 it. This is a job to get done and if you apply

1 yourself, you get it done, and from our viewpoint,
2 we should have no approval for any -- for any other
3 concerns with respect to the precincting except
4 when we get something from IED on a very short
5 time, these two people turned around and had it
6 ready every time, and there have been
7 suggestions -- I read the documentation -- Spencer
8 tells me he was writing up to (indiscernible) -- I
9 read (indiscernible), some of those comments were
10 not approved because IED didn't do their job, or I
11 mean, excuse me, OCD, and any suggestion, I've
12 indicated to the very, we keep records down to the
13 minute of when we sent things, when we got -- our
14 turnaround is outstanding. These people know their
15 jobs and I will not allow their work and
16 reputations to be (indiscernible) because their
17 association with another process, which to me has
18 lots of problems.

19 And that is my point, Mr. Chair. I just want
20 you to know that we will not stand for that. I
21 work for an agency, I run an agency that has an
22 outstanding reputation, because these and other
23 employees have earned that, and we get over these
24 political technology and all these other problems
25 and get the job done, and I think you have to erase

1 the excuses and say this job didn't get done and
2 find who is responsible for that.

3 Now maybe it's someone who's already got the
4 staff (indiscernible). We submitted response to
5 Brad's questions, what I thought was clear evidence
6 that addressed to what you had that -- our role in
7 this because of the timing of submissions and
8 (indiscernible) and submissions and the difference
9 between employees. I haven't seen all of Brad's
10 20-page report (indiscernible), but my only point
11 is (indiscernible).

12 You have to -- there's no difference here,
13 just being productive, you have to get the job
14 done, and these people always got the job done. So
15 first the submission that I read (indiscernible)
16 that there was some OCD involvement in any part of
17 the recent bind that the Commission was unable to
18 finish its work.

19 I would, as I say, (indiscernible every time
20 it's ready, and that -- it's part of a different
21 problem, and I guess maybe it is animosity, and
22 that is one of our charges -- one of these two
23 folks' charges is to develop relationship with
24 local officials. They are here to get information
25 and give information to local officials.

1 Our relationship to them as an agency is very
2 important. You've got to lot of information from
3 the locals that we work with and too many times, we
4 have been told by them that somebody at IED said we
5 were responsible for some problem and we cannot
6 identify the problem, but we have a problem either
7 in the districting (indiscernible) precinct.

8 So I will stand by that. I will be happy to
9 date any of the paperwork. We keep all
10 information. We like to call it as it is. And I
11 really don't -- you know, it's not my personnel,
12 it's not my problem, in a sense, except to --
13 except that we are statutory are tied in the
14 process of reprecincting, and we've never been
15 (indiscernible) before.

16 So the -- there are some structural problems
17 at IED, as -- what's Brad talked about, and I will
18 grant that. There is nobody that comes over there
19 to the politician, and where I come from, there's
20 accountability. It's not on a partisan basis.

21 But there's accountability for elected
22 officials that the IED, relay instruction by a
23 statute, doesn't achieve, and I believe that's --
24 this was in the newspapers, if some of the failings
25 of IED in the last several years have been in the

1 newspapers, there would be elected officials -- my
2 experience would be that elected officials would be
3 screaming at changing the (indiscernible), but
4 because now it's gotten all lost in the hay, it
5 doesn't have to be.

6 You may satisfied, but you're the commission,
7 you're the people that whereby -- I understand
8 (indiscernible) staff and they work for you and you
9 can hire and fire them, but you're the people that
10 under the law, I think, (indiscernible) running
11 this show and (end of tape.)

12 MR. B. KING: I just want to say two or three
13 things very briefly. One is I think that when
14 anyone has an opportunity to review the 20-page
15 reference that I reference, I would be hard pressed
16 to see any criticism of OCD staff for their
17 performance -- in fact, I make several
18 complimentary references to them.

19 I'm also pleased to hear Sachtleben's
20 statement with regard to his view that he
21 understands there's a relationship between the
22 Election Division and the Office of Census Data,
23 but the Election Division is responsible for the
24 evaluation and discipline of employees of the
25 Election Division, but OCD has an ongoing interest

1 in the success of the past.

2 The third thing I would say is that I view
3 the -- not the -- the question is not whether the
4 job got done -- I think that's obvious and I state
5 that, but I think it's subject to question and the
6 disagreement (indiscernible), and I'll welcome any
7 comment that you may have on that at a later
8 (indiscernible).

9 CHAIRMAN D. CRUEA: Okay. How are we coming
10 along on that document?

11 VICE CHAIR A. LONG: I had written out -- do
12 you want me to read it to you?

13 COMMISSION MEMBER C. CUMMINGS: Yeah.

14 VICE CHAIR A. LONG: I had written this while
15 I was sitting there a while ago.

16 CHAIRMAN D. CRUEA: Okay.

17 VICE CHAIR A. LONG: And this would be an
18 independent section, by making this order, the
19 commission does not imply an endorsement or
20 warranty of any product offered by any vendor.
21 Additionally, no further review of vendors'
22 products has been undertaken beyond the
23 investigation proceeding the commission's
24 certifications. Each county must satisfy itself as
25 to the sufficiency, dependability and durability of

1 any product under consideration.

2 COMMISSION MEMBER C. CUMMINGS: I don't much
3 have a problem with that.

4 COMMISSION MEMBER B. MORGAN: (Indiscernible).

5 CHAIRMAN D. CRUEA: So we would add -- would
6 there be anything taken out of the...

7 COMMISSION MEMBER B. MORGAN: Pretty much how
8 I would have wrote it.

9 CHAIRMAN D. CRUEA: Yeah. Yeah.

10 VICE CHAIR A. LONG: It's what you told me, I
11 thought. I just wrote down what you told me.

12 CHAIRMAN D. CRUEA: I thought that's what
13 Claudia passed by here.

14 COMMISSION MEMBER C. CUMMINGS: Much better.
15 Thank you, sir. I don't know that there's anything
16 that we need to take out.

17 CHAIRMAN D. CRUEA: Okay. Well, then, are you
18 proposing a motion, Mr. Long?

19 VICE CHAIR A. LONG: I would move that the
20 order be amended to include that -- would it be on
21 the tape to get it -- you can take mine.

22 MS. K. ROBERTSON: I can write -- I can write
23 it.

24 CHAIRMAN D. CRUEA: Okay.

25 VICE CHAIR A. LONG: You can fax it to me and

1 I can read it.

2 CHAIRMAN D. CRUEA: I will second that motion.

3 Any discussion?

4 (No response.)

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

7 THE COMMISSION: Aye.

8 CHAIRMAN D. CRUEA: Opposed?

9 (No response.)

10 VICE CHAIR A. LONG: Don't we need to approve
11 the order as amended, that would be the -- you're
12 the clerk's representative, we'll give you the
13 honor, and you can be the hero and (indiscernible).

14 COMMISSION MEMBER C. CUMMINGS: Okay.

15 Mr. Chairman, I so move that we approve Order
16 2002-134 of the Indiana Election Commission as
17 amended.

18 COMMISSION MEMBER B. MORGAN: So moved.

19 CHAIRMAN D. CRUEA: Any discussion?

20 (No response.)

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

23 THE COMMISSION: Aye.

24 CHAIRMAN D. CRUEA: Opposed?

25 (No response.)

1 CHAIRMAN D. CRUEA: Other business.

2 MR. S. VALENTINE: Mr. Chairman,
3 (indiscernible).

4 CHAIRMAN D. CRUEA: Oh, sorry, I thought you
5 gave up all your time.

6 MR. S. VALENTINE: I don't know if I meant
7 defer much as delay. First piece was going to be
8 the (indiscernible) contract that Vice Chair Long
9 had (indiscernible), and rightly so, I believe,
10 it's important -- it's more than to note that we
11 took that seriously. We contacted -- Dale Simmons
12 contacted the (indiscernible) Commission to ask
13 would it be appropriate or if they have any
14 objections to us replacing that contract?
15 We -- they said no. We offered them money to adopt
16 a different contract -- (indiscernible) a different
17 contract, one that discusses or one that makes it
18 entirely (indiscernible) Election Division.

19 You may want to -- because it is an election
20 division device, the website, it holds the contents
21 of the Election Commission. We're open to an order
22 or a motion from this board to clarify what pieces
23 they're willing to allow us to place on the website
24 to cover the Commission's part of it, but for the
25 most part, it is an agreement between the Division

1 and the (indiscernible) Commission, and we
2 apologize for any difficulties caused by that
3 previous drafting.

4 I'd like to thank both attorneys for taking
5 that on, especially, Dale, (indiscernible). I'd
6 like to also thank -- I know we discussed earlier,
7 the point of Kristi being (indiscernible), but I
8 want to thank legal counsel for that again,
9 especially, Dale, in working through this a great
10 deal and has done a fine job working through all
11 those issues.

12 With regard to the -- with regard to the
13 precincting issues -- with regard to, specifically,
14 first off, to Mr. Sachtleben's points. I don't
15 believe it's the sole -- I don't believe it's --
16 there's one sentence that I'm speaking of that is
17 on the co-director recommendation form is the sole
18 and only objection that's stated in there, but I
19 would say this, the sentence in question was meant
20 by me and directed at the time to point out this is
21 more not the fault of OCD.

22 Now, I'm not a lawyer, and I'll be the first
23 one to admit that, and so if it is mis -- if it was
24 mistaken and read as something to place the blame
25 for why there's something in the past of OCD, I'll

1 officially say now that was certainly not my
2 intent, and the intent there was to state that OCD,
3 we had not necessarily -- being the Election
4 Division had not necessarily provided OCD things in
5 time for them to go forward -- respond in a timely
6 fax for us.

7 Intent notwithstanding -- I apologize,
8 (indiscernible) any misunderstanding this has
9 caused. I do not, however, believe it's the sole
10 (indiscernible). I mean, there are
11 (indiscernible). I believe there is. There are
12 some (indiscernible). There are -- some of the
13 things that are sent -- sent by members of the
14 Indiana Election Division staff have
15 (indiscernible) Office of Census Data at the time.
16 No member of my half of the staff would do that and
17 I would -- and I apologize with regard to that.

18 It's been (indiscernible) throughout this
19 process. I've found them to be very helpful people
20 to go to and work with throughout this. I know
21 Michelle Brzycki and her interaction,
22 (indiscernible) assistance and found their
23 interaction helpful and we have nothing but good
24 things to say about them.

25 My final piece that I would like to do -- I

1 prepared a statement with regard to reprecincting,
2 and if we could offer me a tab. It's not -- it's
3 not like Commissioner Perkins' file
4 (indiscernible) -- with all due respect, he served
5 well. It has been said success has many fathers
6 while failure as an orphan. There's been an
7 ongoing paternity battle with regard to the 2001
8 precincting.

9 In Co-Director King's memo yesterday, he makes
10 clear that he believes there was no debacle. It
11 lays blame to the debacle due to the co-directors'
12 time, myself, and Laurie Christie's. While I can
13 and do dispute many of Mr. King's assertions, I
14 must and have always accepted the principle that
15 managers are ultimately accountable for the short
16 comings of organization.

17 I could order many specific discrepancies to
18 points in Mr. King's memo, but in the interest of
19 the Commission's time in moving forward, I will
20 make only a couple of points. Mr. King assumes
21 that if something is not in my (indiscernible), it
22 did not happen. There were several instances of
23 warnings about outcomes, discussions on procedure
24 and protocol and altering of staff, (indiscernible)
25 strategies to myself and Miss Christie and Miss

1 Hershberger that were not included in the letter of
2 July 23, simply for the sake of distilling several
3 months into a single document.

4 I would suffice by saying that several times
5 throughout the process, I made my concerns clear to
6 Miss Christie and Miss Hershberger. Several times
7 throughout the process I asked Miss Brzycki to take
8 on more counties, and she was an unmitigated
9 success in her efforts. I took to the field myself
10 handling the reprecincting of several counties in
11 an effort to pitch and avoid a division failure.

12 I brokered a deal with Miss Christie and Mr.
13 Simmons in the final days before the deadline, that
14 give the commission discretion to provisionally
15 pass down -- if there was a willingness to
16 negotiate a settlement -- I did this and more to
17 try to make sure precincting was completed. I want
18 to make one thing abundantly clear, Miss Michelle
19 did a yeoman's pertaining to the duties assigned to
20 her. She is to be applauded for her service. I
21 for one thank her for her diligence, quality and
22 timeliness of her work.

23 Any intimation that the person who
24 successfully completed their duties is culpable for
25 the failures of others in this process is patently

1 ridiculous. Ultimately, as one of the parents of
2 this embarrassing child, that is the reprecincting
3 debacle, I must and do accept responsibility as
4 co-director of the division of the failure of the
5 division in this matter. I will take a fresh view
6 of my managerial responsibilities and move from
7 here and be in constant with all staffers, more
8 fully and intimately aware of all their activities
9 and duties.

10 For the sake of moving forward and leaving the
11 debacle behind us, I offer the commission and
12 counties what I have heard and no one else needs to
13 bear -- know one else needs to bear an apology. I
14 apologize for any embarrassment this affair has
15 caused the Commission. I would also like to make
16 that apology to the Office of Census Data as well.

17 I ask now that we take a cleansing breath, put
18 this child to bed and move forward with the present
19 future responsibilities of the Division and the
20 Commission. I do so hope ending a ongoing ton of
21 paper, that I do this in hope that we can move
22 forward and create something rather than continue
23 to destroy. Thank you. I would ask that that be
24 entered into the record for today.

25 CHAIRMAN D. CRUEA: Okay. Thank you. Any

1 other comments?

2 (No response.)

3 CHAIRMAN D. CRUEA: No other business?

4 VICE CHAIR A. LONG: I move we adjourn.

5 CHAIRMAN D. CRUEA: One -- before that, I know
6 there's a lot of things --

7 VICE CHAIR A. LONG: You're supposed to
8 look -- look at me and I, you know...

9 CHAIRMAN D. CRUEA: There's a lot of
10 signatures and the hour of the night is late and
11 can we give staff approval to stamp --

12 VICE CHAIR A. LONG: Yep.

13 CHAIRMAN D. CRUEA: -- our signature --

14 VICE CHAIR A. LONG: Yep.

15 CHAIRMAN D. CRUEA: -- on all -- everything
16 that we...

17 VICE CHAIR A. LONG: I move we adjourn and
18 give --

19 COMMISSION MEMBER C. CUMMINGS: Staff can do
20 that.

21 VICE CHAIR A. LONG: Give approval.

22 CHAIRMAN D. CRUEA: Then I will go for the
23 adjournment, except we have one member that
24 probably doesn't have a signature stamp.

25 MS. K. ROBERTSON: We do have a stamp for her.

1 CHAIRMAN D. CRUEA: Oh, you do, good. Then
2 you'll have a say, how about that?

3 COMMISSION MEMBER C. CUMMINGS: Oh, do I
4 have...

5 CHAIRMAN D. CRUEA: No, they'll -- they'll put
6 a signature on everything you approved, okay.
7 That's what I asked for.

8 (At this time the proceedings were adjourned.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25