

**Indiana Election Commission**  
**Minutes**  
**February 28, 2006**

**Members Present:** Thomas E. Wheeler, II, Chairman of the Indiana Election Commission ("Commission"); S. Anthony Long, Vice Chairman of the Commission; Sarah Steele Riordan, proxy for Butch Morgan, member; Jennifer Wagner, proxy for Butch Morgan, member; Thomas John., member.

**Members Absent:** Butch Morgan.

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

**Others Attending:** Rosa M. Amaro; Casandra M. Bustamente; Steve A. Clark; Steve Corey; Trevor Foughty; John C. Gomez; John B. "Bart" Herriman; Bruce A. Kotzan; Alicia Lopez-Rodriguez; Mark Manganero; Steve M. Pearson; Anna Karen Pennington; Tom Philpot; Hilda Rodriguez; Patricia L. Rios; Michael Summear; Ed Treacy; Donald C. Wiseman.

**1. Call to Order**

The Chair called the February 28, 2006 meeting of the Commission to order at 1:09 p.m. in the Indiana Government Center South Conference Center, Conference Room 2, at 402 West Washington Street, Indianapolis, Indiana.

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

**2. Approval of Minutes**

The Commission approved the January 17, 2006 minutes as submitted, and corrections to the September 15, 2005 minutes, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no."

**3. Approval of Orders 2006-06 through 2006-91 (Campaign Finance Orders):**

Ms. Potesta and Ms. Thompson presented Orders 2006-06 through 2006-91, which reflected the Commission's decisions in campaign finance enforcement hearings and administrative dissolution hearings conducted at previous Commission meetings.

Mr. John moved, seconded by Mr. Long, that Orders 2006-06 through 2006-91 (with the exception of Order 2006-39) be approved as presented. There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no."

Mr. John noted that during the enforcement hearing, he had recused himself from consideration of the matter addressed by Order 2006-39. Mr. Long, seconded by Ms. Riordan, moved that Order 2006-39 be approved as presented. There being no further discussion, the Chair called the question, and declared the motion adopted, with three members voting "aye" (Mr. Wheeler, Mr. Long, and Ms. Riordan), one member abstaining (Mr. John), and no Commission member voting "no."

#### **4. Order 2006-92 (Approval of Forms):**

Mr. King and Ms. Robertson presented Order 2006-92, which approved the use of revised voter registration forms, including three registration-by-mail forms which were authorized for use during 2006.

Mr. Long moved, seconded by Mr. John, that Order 2006-92 be approved as presented. There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no."

#### **5. May 2, 2006 Primary Election Candidate Challenges:**

Mr. Simmons administered the oath to all persons who indicated that they would offer testimony in the candidate challenge hearings or concerning voting system applications.

##### **A. Cause No. 2006-01: Tony Zirkle for Republican Party nomination for St. Joseph County Prosecuting Attorney.**

Upon receipt of testimony and review of the documents entered into evidence in this matter, the Commission duly considered this matter.

Mr. John moved, seconded by Mr. Long, that the challenge in this cause be sustained, and that the candidate's name not appear on the May 2006 primary ballot for this office. There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no."

##### **B. Cause No. 2006-02: Tony Zirkle for Republican Party nomination for U.S. Representative, District 2.**

Upon receipt of testimony and review of the documents entered into evidence in this matter, the Commission duly considered this matter.

Mr. John moved, seconded by Mr. Long, that the challenge in this cause be denied, and that the candidate's name appear on the May 2006 primary ballot for this office. There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no."

**C. Cause No. 2006-03: Hilda Rodriguez for Democratic Party nomination for Indiana State Representative, District 12.**

Upon receipt of testimony and review of the documents entered into evidence in this matter, the Commission duly considered this matter.

Mr. Long moved, seconded by Mr. John, that the challenge in this cause be denied, and that the candidate's name appear on the May 2006 primary ballot for this office. There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no."

**D. Cause No. 2006-04: Lee F. Baker for Republican Party nomination for Judge of the Circuit Court, Pike County (83<sup>rd</sup> Circuit).**

Upon receipt of testimony and review of the documents entered into evidence in this matter, the Commission duly considered this matter.

Mr. John moved, seconded by Ms. Riordan, that the challenge in this cause be sustained, and that the candidate's name not appear on the May 2006 primary ballot for this office. There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no."

**E. Cause No. 2006-05: M. Brian Jeffries for Democratic Party nomination for Posey County Prosecuting Attorney.**

Upon receipt of testimony and review of the documents entered into evidence in this matter, the Commission duly considered this matter.

Mr. Long moved, seconded by Mr. John, that the challenge in this cause be sustained, and that the candidate's name not appear on the May 2006 primary ballot for this office. There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no."

**F. Cause No. 2006-06: Christopher Guffey for Democratic Party nomination for Indiana State Representative, District 54.**

Upon receipt of testimony and review of the documents entered into evidence in this matter, the Commission duly considered this matter.

Mr. Long moved, seconded by Ms. Riordan, that the challenge in this cause be sustained, and that the candidate's name not appear on the May 2006 primary ballot for this office. There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no.")

**G. Cause No. 2006-07: Carrie J. Dillard-Trammel for Democratic Party nomination for U.S. Representative, District 6.**

Upon receipt of testimony and review of the documents entered into evidence in this matter, the Commission duly considered this matter.

Mr. Long moved, seconded by Ms. John, that the challenge in this cause be sustained, and that the candidate's name not appear on the May 2006 primary ballot for this office. There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no.")

**H. Cause No. 2006-08: David Hennessy for Democratic Party nomination for Marion County Superior Court.**

Upon receipt of testimony and review of the documents entered into evidence in this matter, the Commission duly considered this matter.

Mr. Long moved, seconded by Ms. John, that the challenge in this cause be sustained, and that the candidate's name not appear on the May 2006 primary ballot for this office. There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no.")

**I. Cause No. 2006-09: John Anthony, Malan for Democratic Party nomination for Indiana State Representative, District 15.**

Upon receipt of testimony and review of the documents entered into evidence in this matter, the Commission duly considered this matter.

Mr. Long moved, seconded by Ms. John, that the challenge in this cause be denied, and that the candidate's name appear on the May 2006 primary ballot for this office.

## 6. Voting Systems

### **A. Diebold ACCUVOTE-TSX direct record electronic voting system upgrade, firmware version 4.6.4, GEMS software version 1.18.24:**

Upon review of the recommendation made by the Co-Directors in their memorandum of February 28, 2006, and of documents filed regarding these applications and following consideration of the representations made by the applicants, Mr. Long moved, seconded by Mr. John, that this voting system be approved by the Commission for use in Indiana elections for a term expiring October 1, 2009.

There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no."

### **B. Election Systems & Software Optech 3PE Optical Scan Ballot Card Voting System: Hardware number: not stated; Firmware number: 1.28/1.50; Software system number(s): Unity 3.0.1.0; EDM 7.4.4.0; ESSIM 7.4.2.0; HPM 5.2.4.0; DAM 6.0.0.0; ERM 7.1.2.0; Audit Manager 7.3.0.0; Optech Image Manager 4.0.0.0; iVotronic Image Manager 2.0.1.0.**

## 6. Voting Systems

### **A. Diebold ACCUVOTE-TSX direct record electronic voting system upgrade, firmware version 4.6.4, GEMS software version 1.18.24:**

### **B. Election Systems & Software Model 650 Optical Scan Ballot Card Voting System: Hardware number: not stated; Firmware number: 2.1.0.0; Software number(s): Unity 3.0.1.0; EDM 7.4.4.0; ESSIM 7.4.2.0; HPM 5.2.4.0; DAM 6.0.0.0; ERM 7.1.2.0; Audit Manager 7.3.0.0; Optech Image Manager 4.0.0.0; iVotronic Image Manager 2.0.1.0.**

### **C. Election Systems & Software Model 100 Optical Scan Ballot Card Voting System: Hardware number: not stated; Firmware number: 5.2.0.0/5.2.0.1; Software number(s): Unity 3.0.1.0; EDM 7.4.4.0; ESSIM 7.4.2.0; HPM 5.2.4.0; DAM 6.0.0.0; ERM 7.1.2.0; Audit Manager 7.3.0.0; Optech Image Manager 4.0.0.0; iVotronic Image Manager 2.0.1.0.**

### **D. Election Systems & Software iVotronic w/RTAL Direct Record Electronic Voting System: Hardware number: not stated; Firmware number: 9.1.4.0; (Software number(s): Unity 3.0.1.0; EDM 7.4.4.0; ESSIM 7.4.2.0; HPM 5.2.4.0; DAM 6.0.0.0; ERM 7.1.2.0; Audit Manager 7.3.0.0; Optech Image Manager 4.0.0.0; iVotronic Image Manager 2.0.1.0.**

Upon review of the recommendation made by the Co-Directors in their memorandum of February 28, 2006, and of documents filed regarding these applications and following consideration of the representations made by the applicants, Mr. Long moved, seconded by Mr. John, that these voting system applications be tabled until an ITA report has been

received concerning these voting systems and Election Division staff provides confirmation of previous certifications of these systems by the Commission.

There being no further discussion, the Chair called the question, and declared the motion adopted, with three members voting "aye" (Mr. Wheeler, Mr. Long, and Mr. John, and one member (Ms. Riordan) voting "no."

**7. In re: Office of the Attorney General Advisory Letter No. 05-32 (letter of January 24, 2006 to the Honorable David O. Kelley, Judge, Warrick Circuit Court):**

The Chair recognized Mr. Long, who noted that a letter from himself to Ms. Robertson, dated February 21, 2006, regarding the Attorney General's opinion to the Honorable David O. Kelley had been filed with the Election Division. In this letter, Mr. Long requested that the question of whether Judge Kelley was elected to a six year term or a four year term be placed on the Commission's agenda for this meeting so that the Commission can confirm the Attorney General's opinion and declare that the Warrick Circuit Court judgeship is not open for election in the 2006 election cycle.

Following discussion by Commission members, Mr. Long moved, seconded by Mr. John, that an Advisory Opinion be prepared for consideration at the next Commission meeting.

There being no further discussion, the Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John, and no Commission member voting "no."

**8. Adjournment**

There being no further items on the Commission's agenda, Ms. Riordan moved, seconded by Mr. John, that the Commission do now adjourn. The Chair called the question, and declared the motion adopted, with four members voting "aye" (Mr. Wheeler, Mr. Long, Ms. Riordan, and Mr. John), and no Commission member voting "no." The Commission meeting then adjourned at 3:16 p.m.

Respectfully submitted,

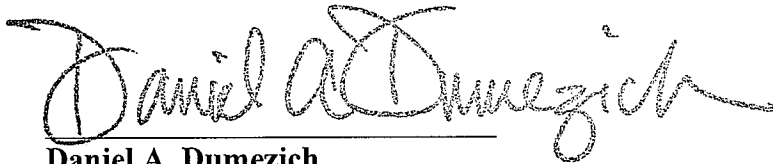


Trent Deckard  
Co-Director



J. Bradley King  
Co-Director

**APPROVED:**



**Daniel A. Dumezich**  
Chairman