

Indiana Election Commission Minutes March 10, 2004

Members Present: Brian Burdick, Chairman of the Indiana Election Commission (the Commission); S. Anthony Long, Vice Chairman of the Commission; Butch Morgan, member of the Commission; Brad Hiller, member of the Commission; and Thomas John as proxy for Chairman Burdick and Commissioner Hiller for part of the meeting.

Members Absent: None

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, Clay Patton, Co-General Counsel of the Election Division, Michelle Thompson, Campaign Finance Co-Director of the Election Division, Pam Potesta, Campaign Finance Co-Director of the Election Division, and Lori Hershberger, Special Projects Coordinator of the Election Division.

Also Attending: Stanley Smith, Joseph Chapelle, John Koenig, Lance Ryskamp, Dan Stevenson, Mary Aguilera, Jennifer H. Lambert, The Honorable John Aguilera, Indiana State Representative; Raymond M. Kirtley, The Honorable Tim Neese, Indiana State Representative; Dianne Bennett, Melissa Durr, Alicia Rodriguez, Mike Rodriguez, Dennis Lee, W.T. McClamroch, M. Hendershot, Meagen Agnew, The Honorable Patricia A. French, Henry County Circuit Court Clerk; Nancy Marcum, The Honorable Sue Anne Lower, Wayne County Circuit Court Clerk; Robert S. Mandresh, Russell Cox.

1. Call to Order; Compliance with Open Door Law

The Chair called the March 10, 2004 meeting of the Commission to order at 1:35 p.m. at the Indiana Government Center South, Conference Center, Training Center Room 5, 302 West Washington Street, Indianapolis, Indiana. He noted that proper notice of the meeting had been given as required by state law, and that all members of the Commission were present. A copy of the meeting notice and agenda is 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 Chair recognized Mr. Long who moved to continue the consideration of the minutes from the November 20, 2003 and the January 20, 2004 Commission meetings until the next Commission meeting since the Commission members had not yet had an opportunity to review these minutes. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting "no," the motion was adopted.

The Chair recognized Mr. Morgan who moved to adopt the minutes from the March 10, 2004 executive session meeting of the Commission. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting "no," the minutes were approved.

3. Order Approving Device under IC 3-5-4-9

The Chair recognized Ms. Robertson who referred to Order 2004-13, an order to approve the ballot device required by IC 3-5-4-9. Ms. Robertson explained that a new statute requires that if a circuit court clerk is a candidate for any office on the ballot, the clerk may not use a version of the clerk's seal and signature that contains the clerk's name on absentee ballots. She stated that instead, the Commission must approve a device that a clerk on the ballot would use in lieu of the clerk's regular seal and signature. Ms. Robertson referred to copies of the devices provided to the Commission for their approval, which included two devices, an electronic version for printing on ballots and a version that will be used as a stamp.

Mr. Morgan moved to approve Order 2004-13: Approval of Ballot Device under IC 3-5-4-9. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting "no," the Order was adopted.

4. County Precinct Boundary Order

The Chair recognized Ms. Hershberger who stated that Bartholomew County had made one precinct change to correct an error. Ms. Hershberger explained that one parcel of land had mistakenly been placed in the wrong congressional district, and the precinct change proposed was to move this parcel to the correct precinct. The Chair asked if Office of Census Data (OCD) had reviewed the precinct change. Ms. Bard from OCD indicated that she had reviewed the precinct change and the boundary correction had been made.

The Chair recognized Mr. Simmons who stated that the general rule on approving precincts states that a precinct approval order may not become effective during the time period January 20, 2004 until November 3, 2004. Mr. Simmons further explained that there is an exception to the rule in statute in IC 3-11-1.5-35 that allows the Commission to issue an order approving a precinct change if there is a precinct that breaches a congressional district line.

Mr. Long moved to adopt Order 2004-14 to approve the precinct change in Bartholomew County. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting "no," the Order was adopted.

5. Campaign Finance Enforcement

The Chair asked individuals that were present to testify on a campaign finance enforcement proceeding to take an oath. Mr. King administered the oath to these individuals.

Mr. John served as proxy for the Chair, Brian Burdick, on the following causes: Cause 03-155 (Parsons Brinckerhoff Quade & Douglas, Inc.); Cause 03-156 (SerVaas Incorporated); Cause 03-141 (E.D.I.S., Inc.); Cause 03-140 (Divinity Funeral Home Corporation); Cause 03-4209-173 (Kindred Healthcare, Inc. PAC); Cause 03-4375-177 (Indiana Citizens for Property Rights, Inc.); Cause 03-4664-180 (Microsoft Corporation PAC); Cause 03-321-163 (Indiana Federation of Republican Women).

Mr. John served as proxy for Mr. Hiller on the following causes: Cause 04-5088-49 (Waltz for State Senate Committee); Cause 04-5084-45 (Montelongo for State Senator); Cause 04-5085-46 (Walker for State Senate Committee); Cause 04-5086-47 (White for State Senator); Cause 04-5087-48 (Kern for State Senator).

A copy of the proxies signed by Mr. Burdick and Mr. Hiller designating Mr. John as their proxies was filed with the Election Division, and is incorporated by reference.

A. Continued Causes from Previous Commission Meetings

i. Cause 03-4982-185: Miller Neese PAC – Pre-2004 General

The Chair opened the hearing on Miller Neese PAC, Cause 03-4982-185, and requested a report from staff. The Chair recognized Michelle Thompson who indicated that this cause was a continuance from a previous Commission meeting. Ms. Thompson stated that the Miller Neese PAC, Cause 03-4982-185, filed its Pre-Election Report for 2003 on October 17, 2003 at 5:54 p.m. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on January 14, 2004. She advised that the proposed penalty for this committee is Fifty Dollars (\$50.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Fifty-Two Dollars and Fifty Cents (\$52.50).

The Chair recognized Tim Neese, representing the Miller Neese PAC. Mr. Neese stated that the Committee was at fault for filing late. Mr. Neese explained that the report had been filed correctly but not submitted it on a timely basis. Mr. Neese further explained that a staff member did not know that she was supposed to fax the report to the Division. Mr. Neese stated that the Division had verbally reminded the PAC the afternoon of the filing date, but the report was not faxed until that afternoon after the noon filing deadline.

The Chair closed the hearing on Cause 04-4982-185. The Chair recognized Mr. Long who moved to impose a civil penalty in the amount of Twelve Dollars and Fifty Cents (\$12.50) plus costs in the amount of Two Dollars and Fifty Cents (\$2.50) for a civil penalty of Fifteen Dollars (\$15.00). Mr. Morgan seconded the motion.

The Chair recognized Mr. Morgan who stated that it might be helpful for the Chair to explain the policy of the Commission in assessing civil penalties for campaign finance violations. The Chair explained that Indiana law provides the Commission with discretion, with a unanimous vote, to reduce a civil penalty for a campaign finance violation. The Chair further explained that it has been the custom of the Commission that if it is the first time a committee has appeared before the Commission, the penalty is reduced to 25% of the proposed civil penalty plus costs; second time before the Commission, penalty is reduced to 50% plus costs; third time before the Commission, penalty is reduced to 75% plus costs; fourth or more times before the Commission, the full penalty plus costs is assessed. The Chair stated that the penalty is Fifty Dollars a day up to One Thousand Dollars for delinquent reports, and for defective reports the penalty is Ten Dollars a day up to One Hundred Dollars.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

ii. Cause 03-155: Parsons Brinckerhoff Quade & Douglas, Inc – Excess corporate contribution

The Chair opened the hearing on Parsons Brinckerhoff Quade & Douglas, Inc, (Parsons), Cause 03-155, and requested a report from staff. The Chair recognized Michelle Thompson who indicated that this cause was continued from a previous Commission meeting. Ms. Thompson stated that Parsons Brinckerhoff Quade & Douglas, Inc., a corporation, contributed to the Indiana Democratic State Central Committee (Democratic Party) in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00). Ms. Thompson explained that the contribution that put the corporation over the Five Thousand Dollar (\$5,000.00) contribution limit threshold was a contribution of Two Thousand Five Hundred Dollars (\$2,500.00) made on November 30, 2001. Ms. Thompson indicated that the Indiana Democratic State Central Committee did refund the amount of the excess of Two Thousand Five Hundred Dollars (\$2,500.00). Ms. Thompson stated that the amount of the maximum civil penalty is three times the amount of the excess contribution.

The Chair recognized Joe Chapelle from the law firm of Barnes & Thornburg, representing Parsons Brinckerhoff Quade & Douglas, Inc., along with John Koenig, also of Barnes & Thornburg. Mr. Chapelle stated that he was also accompanied by Stan Smith, on behalf of Parsons. Mr. Chapelle explained that this case was before the Commission in June 2003, and he had filed a brief at that time along with an affidavit from Katherine A. Cichy, Administrative Manager for Parsons. Mr. Chapelle further explained that Parsons did give an excess contribution, but policed itself, discovering that it had given the excess contribution, and requesting a full refund be made by the Democratic Party. Mr. Chapelle indicated that a full refund was given to Parsons by the Democratic Party.

Mr. Chapelle stated that the significant fact in this case was set forth in Ms. Cichy's affidavit stating that Parsons discovered the excess contribution through its own internal auditing procedures without any prompting from the Division staff, Commission, or the Democratic Party. Mr. Chapelle stated that Parsons brought the excess contribution to the attention of the Democratic Party and secured the refund. Mr. Chapelle stated that part of the problem was a change in management at the local level of Parsons.

Mr. Chapelle explained that this case falls within two prior decisions by this Commission, the *Meijer* case from 1997, Cause 99-033, and the *Kroger* case, Cause 03-145, decided in November 2003. Mr. Chapelle further explained that in both of those cases, the Commission adopted a public policy of not imposing a penalty where a corporation discovered its own error and corrected the situation by receiving a refund. Mr. Chapelle indicated that this is a sound public policy because it encourages corporations to regulate themselves and offers an incentive to correct the situation quickly. Mr. Chapelle stated that as in the *Meijer* and *Kroger* cases, Parsons had discovered and corrected the excess contribution on their own. Mr. Chapelle referred to paragraph 15 of Ms. Cichy's affidavit which states that Parsons independently sought a refund of the excess contribution.

Mr. Koenig submitted to the Commission a chronology of events in the Parsons' case. Mr. Koenig stated that the dates in the chronology are the dates Ms. Cichy swore to in her affidavit. Mr. Koenig indicated that on March 25, 2003, Parsons had secured a refund from the Democratic Party and did not received notice from the Division until April 8, 2003. Mr. Koenig further indicated that the standard that is applied to an excess corporation contribution is different from the standard applied to delinquent or defective campaign finance reports. Mr. Koenig explained that IC 3-9-4-16(e) states that the Commission "may" assess a penalty, not that the Commission "shall" assess the penalty.

Mr. Koenig summarized the *Kroger* case, indicating that he was present at the Commission meeting when that case was decided. Mr. Koenig explained that in the *Kroger* matter in November 2003, Mr. Morgan had made the statement that when a corporation corrected the situation before being notified of the excess by the Commission, the Commission should not assess a penalty. Mr. Koenig further explains that the Commission did not assess a penalty in the *Kroger* case. Mr. Koenig respectfully asked that the Commission not assess a penalty in the Parsons case as well.

Mr. Chapelle stated that assessing a penalty against a corporation like Parsons would have a disproportionate impact upon Parsons in competing for contracts throughout the United States. Mr. Chapelle explained that what may appear to be a minor violation in Indiana, could have far reaching effects on Parsons' business nationwide.

Mr. Chapelle stated that by imposing a fine on a corporation that corrects the situation on their own could have a chilling effect on participation in the political process. Mr. Chapelle asked Mr. Smith to explain his position at Parsons and the effect a penalty would have on his corporation. Mr. Smith stated that he was Vice-President of Area Management of Parsons in Indiana. Mr. Smith stated that Parsons is a 9,000 employee, nationwide corporation, and Parsons' concern is that a fine in Indiana could impact the corporation's ability to pursue work in other cities and states across the country. Mr. Smith further stated that Parsons had instituted a process to ensure that the individuals responsible for writing contribution checks at the corporation had access to the relevant Indiana statutes both at the local level and at the district level. Mr. Chapelle further explained that Parsons now had procedures at the national, district, and local level to prevent excess contributions in the future.

The Chair asked if Parsons had any campaign finance violations in other states. Mr. Chapelle stated that the corporation has not had any other campaign finance violations in Indiana or other states.

The Chair closed the hearing. Mr. Long stated that the corporation catching the problem by their own procedures was persuasive to him. Mr. Morgan stated that, as he had stated in the past, he was comfortable with not assessing a civil penalty against a corporation that has self-policed the problem in a timely and open fashion. Mr. Hiller agreed with Mr. Long and Mr. Morgan. The Chair stated that he would add that new procedures have been initiated by the corporation to help prevent this problem in the future.

The Chair recognized Mr. Long who moved to dismiss Cause 03-155 (Parsons Brinckerhoff Quade & Douglas, Inc.) based upon the facts of this case. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. John, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting "no," the motion was adopted.

iii. Cause 03-156: SerVaas Incorporated – Excess corporate contribution

The Chair opened the hearing on SerVaas Incorporated, Cause 03-156, and requested a report from staff. The Chair recognized Michelle Thompson who indicated that this cause was continued from a previous Commission meeting. Ms. Thompson stated that SerVaas Incorporated, a corporation, contributed to the Indiana Republican State Central Committee (Republican Party) in the amount of Five Thousand Five Hundred Dollars (\$5,500.00). Ms. Thompson explained that the contribution that put the corporation over the Five Thousand Dollar (\$5,000.00) contribution limit threshold by Five Hundred Dollars (\$500.00) was made on August 7, 2001. Ms. Thompson indicated that the Indiana Republican State Central Committee did refund the amount of the excess of Five Hundred Dollars (\$500.00). Ms. Thompson stated that the amount of the maximum civil penalty is three times the amount of the excess contribution.

The Chair recognized Kevin Green, representing SerVaas Incorporated. Mr. Green conveyed the apologies of Dr. SerVaas who was not able to attend. Mr. Green stated that he is an attorney employed by Dr. SerVaas. Mr. Green stated that as soon as the corporation was made aware of the excess contribution, the corporation corrected it by receiving a refund by the Republican Party. Mr. Green further explained that the corporation, a small operation, had instituted procedures to avoid this problem in the future.

The Chair recognized Mr. Long who asked Mr. Green what procedures had been instituted to audit for this problem in the future. Mr. Green indicated that procedures had been instituted to educate the individuals responsible for writing checks about the contribution requirements to ensure that this excess will not be repeated in the future.

The Chair closed the hearing. Mr. Hiller stated that from the records provided to the Commission, the Republican Party refunded the excess contribution prior to the Division's audit, similar to the *Parsons* case, and that he believed that the Commission should be consistent in not assessing a civil penalty on a corporation that corrects the problem on its own.

The Chair recognized Mr. Hiller who moved to dismiss Cause 03-156 (SerVaas Incorporated) based upon the facts of this case. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. John, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting "no," the motion was adopted.

B. Orders From Previous Commission Meetings

i. Order Imposing Civil Penalty in Cause 03-141 (E.D.I.S., Inc.)

The Chair recognized Mr. Hiller who moved to table Order 2004-05: Imposing Civil Penalty in Cause 03-141, since the minutes from the Commission meeting when this case was heard had not yet been adopted by the Commission. Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. John, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting "no," the motion was adopted.

ii. Order Dismissing Cause 03-140 (Divinity Funeral Home Corporation)

The Chair recognized Mr. Hiller who moved to table Order 2004-04: Dismissing Cause 03-140, since the minutes from the Commission meeting when this case was heard had not yet been adopted by the Commission. Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. John, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting “no,” the motion was adopted.

iii. Order Dismissing Cause 03-4209-173 (Kindred Healthcare, Inc. PAC)

The Chair recognized Mr. Hiller who moved to table Order 2004-01: Dismissing Cause 03-4209-173, since the minutes from the Commission meeting when this case was heard had not yet been adopted by the Commission. Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. John, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting “no,” the motion was adopted.

iv. Order Dismissing Cause 03- 4375-177 (Indiana Citizens for Property Rights, Inc.)

The Chair recognized Mr. Hiller who moved to table Order 2004-02: Dismissing Cause 03-4375-177, since the minutes from the Commission meeting when this case was heard had not yet been adopted by the Commission. Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. John, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting “no,” the motion was adopted.

v. Order Dismissing Cause 03-4664-180 (Microsoft Corporation PAC)

The Chair recognized Mr. Hiller who moved to table Order 2004-03: Dismissing Cause 03-4664-180, since the minutes from the Commission meeting when this case was heard had not yet been adopted by the Commission. Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. John, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting “no,” the motion was adopted.

vi. Order Imposing Civil Penalty in Cause 03-321-163 (Indiana Federation of Republican Women)

The Chair recognized Mr. Hiller who moved to table Order 2004-12: Imposing Civil Penalty in Cause 03-321-163, since the minutes from the Commission meeting when this case was heard had not yet been adopted by the Commission. Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. John, Mr. Long, Mr. Morgan, and Mr. Hiller) and no Commission member voting “no,” the motion was adopted.

C. Delinquent Campaign Finance Statement of Organization
i. Cause 04-5088-49 (Waltz for State Senate Committee)

The Chair opened the hearing on Waltz for State Senate Committee, Cause 04-5088-49, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Waltz for State Senate Committee, Cause 04-5088-49, filed its Statement of Organization for 2004 on March 2, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 28, 2004. She advised that the proposed penalty for this committee is Two Hundred Dollars (\$200.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Two Hundred and Two Dollars and Fifty Cents (\$202.50).

The Chair recognized Brent Waltz, representing the Committee, who stated that he is one of eighteen legislative candidates who failed to file a statement of organization. Mr. Waltz stated that it is the responsibility of every campaign to properly file all forms in a timely manner. Mr. Waltz explained that the Committee's statement of organization was completed and filed immediately after the Committee was notified by the Division that it had not yet been filed. Mr. Waltz assured the Commission that the Committee would file all reports on time in the future and would accept any sanction imposed by the Commission.

The Chair stated that he had read in the newspaper that Mr. Waltz did not think he needed to file detailed campaign finance reports. Mr. Waltz stated that he did not make that statement, and that the Committee had filed all required reports including the detailed report of contributions and expenditures with the county clerk, since he is currently a member of the county council. Mr. John asked how much money the Committee had raised. Mr. Waltz replied that he thought the committee had raised approximately \$27,000.

Mr. John asked if the Committee filed a statement of organization at the same time he filed his declaration of candidacy. Mr. Waltz replied that two weeks prior to the end of 2003, he had contacted Mr. King at the Division to find out what paperwork needed to be filed to run for state senate. Mr. Waltz stated that the Committee was under the impression that the Committee only filed campaign finance reports at the county level, which they did. Mr. Waltz continued that the reports were immediately faxed to the Division once the Committee received notice that they had not yet filed at the State level.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of Fifty-Two Dollars and Fifty Cents (\$52.50). Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. John), and no Commission member voting "no," that the motion was adopted.

ii. Cause 04-5084-45 (Montelongo for State Senator)

The Chair opened the hearing on Montelongo for State Senator, Cause 04-5084-45, and requested a report from staff. The Chair recognized Pam Potesta who indicated that staff requested a continuance in this cause because the time period for a possible civil penalty would not run until March 17, 2004, and the Committee still had time to file a statement of organization.

The Chair recognized Mr. Long who moved to continue Montelongo for State Senator, Cause 04-5084-45, until the next Commission meeting. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. John), and no Commission member voting "no," that the motion was adopted.

iii. Cause 04-5085-46 (Walker for State Senate Committee)

The Chair opened the hearing on Walker for State Senate Committee, Cause 04-5085-46, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Walker for State Senate Committee, Cause 04-5085-46, filed its Statement of Organization for 2004 on March 1, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 28, 2004. She advised that the proposed penalty for this committee is One Hundred Fifty Dollars (\$150.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Two Hundred and Fifty-Two Dollars and Fifty Cents (\$152.50).

The Chair recognized Presley Walker, representing the Committee, who stated that on February 19, 2004, he filed his declaration of candidacy with the Secretary of State's Office. Mr. Walker stated that he had read the portion of the declaration of candidacy form that stated that the candidate may be required to file the statement of organization. Mr. Walker explained that it was his intent to not raise any money for his campaign, and was not aware that he was required to file any campaign finance reports. Mr. Walker stated that he received a notice from the Division on February 28, 2004 that he had not filed a statement of organization. Mr. Walker further stated that, upon receipt of this notice, he filed the statement of organization, the CFA-1 form, on the following Monday. Mr. Walker stated that when he filed the CFA-1, the Division gave him a *Campaign Finance Manual*. Mr. Walker stated that when he filed his declaration of candidacy with the Secretary of State's Office, the Office did not give him a *Manual* and did not tell him he needed to file the CFA-1.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of Forty Dollars (\$40.00). Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. John), and no Commission member voting "no," that the motion was adopted.

iv. Cause 04-5086-47 (White for State Senator)

The Chair opened the hearing on White for State Senator, Cause 04-5086-47, and requested a report from staff. The Chair recognized Pam Potesta who indicated that staff requested a continuance in this cause because the time period for a possible civil penalty would not run until March 17, 2004, and the Committee still had time to file a statement of organization.

The Chair recognized Mr. Long who moved to continue White for State Senator, Cause 04-5086-47, until the next Commission meeting. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. John), and no Commission member voting "no," that the motion was adopted.

v. Cause 04-5087-48 (Kern for State Senator)

The Chair opened the hearing on Kern for State Senator, Cause 04-5087-48, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Kern for State Senator Committee, Cause 04-508-48, filed its Statement of Organization for 2004 on March 8, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 28, 2004. She advised that the proposed penalty for this committee is Five Hundred Dollars (\$500.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Five Hundred and Two Dollars and Fifty Cents (\$502.50).

The Chair recognized Ken Kern, representing the Committee, who stated that he was not aware that he needed to file a statement of organization. Mr. Kern stated that the Committee filed the report as soon as they received the notice from the Division. Mr. Kern stated that he is aware of the future campaign finance filing dates.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of One Hundred and Twenty-Seven Dollars and Fifty Cents (\$127.50). Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. John), and no Commission member voting "no," that the motion was adopted.

vi. Cause 04-5089-50 (Pucalik for State Representative)

The Chair opened the hearing on Pucalik for State Representative, Cause 04-5089-50, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Pucalik for State Representative Committee, Cause 04-5089-50, filed its Statement of Organization for 2004 on March 1, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 28, 2004. She advised that the proposed penalty for this committee is One Hundred Fifty Dollars (\$150.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Hundred Fifty-Two Dollars and Fifty Cents (\$152.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of One Hundred Fifty-Two Dollars and Fifty Cents (\$152.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

vii. Cause 04-5090-51 (Baffa for State Representative Committee)

The Chair recognized Mr. Long who moved to table Baffa for State Representative, Cause 04-5090-51, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

viii. Cause 04-5091-52 (Waite for State Representative Committee)

The Chair opened the hearing on Waite for State Representative, Cause 04-5091-52, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Waite for State Representative Committee, Cause 04-5091-52, filed its Statement of Organization for 2004 on March 2, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 28, 2004. She advised that the proposed penalty for this committee is Two Hundred Dollars (\$200.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Two Hundred and Two Dollars and Fifty Cents (\$202.50). She indicated that the committee had submitted correspondence.

The Chair recognized Mike Waite, representing the Committee, who stated that he took responsibility for not timely filing the statement of organization. Mr. Waite explained that he did file his declaration of candidacy but went on a trip and forgot to file the statement of organization until he received the notice from the Division.

The Chair closed the hearing. The Chair recognized Mr. Long who moved to impose a civil penalty plus costs in the amount of Fifty-Two Dollars and Fifty Cents (\$52.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

ix. Cause 04-5092-53 (Blacketor for State Representative Committee)

The Chair recognized Mr. Long who moved to table Blacketor for State Representative, Cause 04-5092-53, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

x. Cause 04-5093-54 (Kirtley for State Representative)

The Chair opened the hearing on Kirtley for State Representative, Cause 04-5093-54, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Kirtley for State Representative Committee, Cause 04-5093-54, filed its Statement of Organization for 2004 on March 1, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 28, 2004. She advised that the proposed penalty for this committee is One Hundred Fifty Dollars (\$150.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Hundred and Fifty-Two Dollars and Fifty Cents (\$152.50).

The Chair recognized Raymond Kirtley, representing the Committee, who stated that he filed his declaration of candidacy on February 17, 2004, and failed to file his statement of organization until he received a notice from the Division. Mr. Kirtley stated that he filed the report promptly after receiving the Division's notice.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of Forty Dollars (\$40.00). Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xi. Cause 04-5094-55 (Hamm for State Representative Committee)

The Chair opened the hearing on Hamm for State Representative, Cause 04-5094-55, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Hamm for State Representative Committee, Cause 04-5094-55, filed its Statement of Organization for 2004 on March 1, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 28, 2004. She advised that the proposed penalty for this committee is One Hundred Fifty Dollars (\$150.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Hundred Fifty-Two Dollars and Fifty Cents (\$152.50).

The Chair recognized Richard Hamm, representing the Committee, who stated that his Committee thought they did not need to file a report until the middle of the month. Mr. Hamm explained that Committee contacted the Division on February 28th, once the Committee had received the notice that the report was due. Mr. Hamm stated that the Committee filed the report immediately, and apologized for the error.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of Forty Dollars (\$40.00). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xii. Cause 04-5095-56 (Wolfe for State Representative)

The Chair opened the hearing on Wolfe for State Representative, Cause 04-5095-56, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Wolfe for State Representative Committee, Cause 04-5095-56, filed its Statement of Organization for 2004 on March 1, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 28, 2004. She advised that the proposed penalty for this committee is One Hundred Fifty Dollars (\$150.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Hundred Fifty-Two Dollars and Fifty Cents (\$152.50).

The Chair recognized Eric Wolfe, representing the Committee, who stated that he did realize that he had filed late. Mr. Wolfe indicated that he faxed his report to the Division upon receiving notice that the report had not been filed. Mr. Long asked Mr. Wolfe where he was going to school. Mr. Wolfe answered DePauw University. Mr. Long jokingly asked if he should disclose that DePauw was his alma mater. The Chair responded that he should disclose that Mr. Wolfe may have a fine reduction problem since he went to Wabash College.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of Forty Dollars (\$40.00). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xiii. Cause 04-5096-57 (Ingermann for State Representative Committee)

The Chair opened the hearing on Ingermann for State Representative Committee, Cause 04-5096-57, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Ingermann for State Representative Committee, Cause 04-5096-57, filed its Statement of Organization for 2004 on March 1, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 28, 2004. She advised that the proposed penalty for this committee is One Hundred Fifty Dollars (\$150.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Hundred Fifty-Two Dollars and Fifty Cents (\$152.50). She indicated that the committee had submitted correspondence.

The Chair recognized Don Ingermann, representing the Committee, who stated that he apologized that his report was late. Mr. Ingermann stated that he now has a Campaign Finance Manual and is aware of the future campaign finance filing dates.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of Forty Dollars (\$40.00). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xiv. Cause 04-5097-58 (Hoy for State Representative)

The Chair recognized Mr. Long who moved to table Hoy for State Representative, Cause 04-5097-58, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xv. Cause 04-5098-59 (Patton for State Representative Committee)

The Chair opened the hearing on Patton for State Representative Committee, Cause 04-5098-59, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Patton for State Representative Committee, Cause 04-5098-59, filed its Statement of Organization for 2004 on March 1, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 28, 2004. She advised that the proposed penalty for this committee is One Hundred Fifty Dollars (\$150.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Hundred Fifty-Two Dollars and Fifty Cents (\$152.50).

The Chair recognized Donald Patton, representing the Committee, who stated that he filed his declaration of candidacy on February 19, 2004. Mr. Patton stated that he filed his report on Monday, and that he thought that weekends should not count towards a civil penalty.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of Forty Dollars (\$40.00). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xvi. Cause 04-5099-60 (Gibson for State Representative Committee)

The Chair recognized Mr. Long who moved to table Gibson for State Representative Committee, Cause 04-5099-60, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xvii. Cause 04-5100-61 (Black for State Representative Committee)

The Chair opened the hearing on Black for State Representative, Cause 04-5100-61, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Black for State Representative Committee, Cause 04-5100-61, filed its Statement of Organization for 2004 on March 5, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on March 2, 2004. She advised that the proposed penalty for this committee is Three Hundred Fifty Dollars (\$350.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Three Hundred Fifty-Two Dollars and Fifty Cents (\$352.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of Three Hundred Fifty-Two Dollars and Fifty Cents (\$352.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xviii. Cause 04-5101-62 (Jessen for State Representative Committee)

The Chair opened the hearing on Jessen for State Representative Committee, Cause 04-5101-62, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Jessen for State Representative Committee, Cause 04-5101-62, filed its Statement of Organization for 2004 on March 8, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 28, 2004. She advised that the proposed penalty for this committee is Five Hundred Dollars (\$500.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Five Hundred and Two Dollars and Fifty Cents (\$502.50).

The Chair recognized Brian Jessen, representing the Committee, who apologized to the Commission. Mr. Jessen stated he filed his statement of organization with the county clerk on February 20, 2004 at 10:00 am, and was not aware he also needed to file with the State. Mr. Jessen presented to the Commission a copy of the statement of organization filed with the county clerk.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of One Hundred Twenty-Seven Dollars and Fifty Cents (\$127.50). Mr. Long seconded the motion.

The Chair recognized Mr. Hiller who asked the Commission members what they had done in the past if a Committee showed that it had timely filed with the county clerk, but neglected to file at the State. Mr. Morgan stated that there had not been too many instances when a civil penalty was not imposed, but there had been times when there had been extreme extenuating circumstances, like weather, or if the Committee presented documentation that the postal service has made a mistake in delivering the reports. Mr. Morgan further stated that these extreme circumstances were not in evidence in this case.

The Chair stated that he agreed with Mr. Morgan. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

D. Delinquent January 2004 Annual Reports

i. Cause 04-1528-2 (Indiana Federation of Teachers Committee on Political Education)

The Chair recognized Mr. Long who moved to table Indiana Federation of Teachers Committee on Political Education, Cause 04-1528-2, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

ii. Cause 04-1587-3 (Johnson for State Senate Committee)

The Chair recognized Mr. Hiller who moved to continue Cause 04-1587-3, Johnson for State Senate, until the next Commission meeting. Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

iii. Cause 04-1728-4 (Jones for State Representative)

The Chair opened the hearing on Jones for State Representative, Cause 04-1728-4, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Jones for State Representative Committee, Cause 04-1728-4, failed to file its Annual Report for 2003. She indicated that the Committee had been appeared before the Commission four times previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is One Thousand Dollars (\$1,000.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Thousand Two Dollars and Fifty Cents (\$1,002.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of One Thousand Dollars and Fifty Cents (\$1,002.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

iv. Cause 04-185-5 (Citizens for Gregg)

The Chair recognized Ms. Robertson who indicated that she had spoken with John Gregg by telephone about this cause. Ms. Robertson stated that Mr. Gregg was under the impression that he had closed his committee, but this committee is still open. Ms. Robertson stated that Mr. Gregg apologized for not being able to attend the Commission hearing, but does intend to close his committee in the future.

The Chair recognized Mr. Long who moved to table Citizens for Gregg, Cause 04-185-5, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

v. Cause 04-3265-6 (George Witwer for State Senate Committee)

The Chair recognized Mr. Long who moved to table George Witwer for State Senate Committee, Cause 04-3265-6, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

vi. Cause 04-3273-7 (Professional Land Surveyors PAC)

The Chair opened the hearing on Professional Land Surveyors PAC, Cause 04-3273-7, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Professional Land Surveyors PAC, Cause 04-3273-7, filed its Annual Report for 2003 on January 26, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is Two Hundred Fifty Dollars (\$250.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Two Hundred Fifty-Two Dollars and Fifty Cents (\$252.50).

The Chair recognized Diane Bennett, representing the Committee, who stated that she was not aware that the report sent by the Division to the Committee had arrived in her office. Ms. Bennett explained that she was out of the office for a week and, upon her return, she found the paperwork and immediately faxed it to the Division.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty of Sixty Two Dollars and Fifty Cents (\$62.50) plus costs in the amount of Two Dollars and Fifty Cents, for a total of Sixty Five Dollars (\$65.00). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

vii. Cause 04-3689-8 (Citizens for Robert D. Green)

The Chair opened the hearing on Citizens for Robert D. Green, Cause 04-3689-8, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Citizens for Robert D. Green Committee, Cause 04-3689-8, failed to file its Annual Report for 2003. She indicated that the Committee had been appeared before the Commission one time previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is One Thousand Dollars (\$1,000.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Thousand Two Dollars and Fifty Cents (\$1,002.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of One Thousand Dollars and Fifty Cents (\$1,002.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

viii. Cause 04-3766-9 (Birk for State Representative)

The Chair recognized Mr. Long who moved to table Birk for State Representative, Cause 04-3766-9, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

ix. Cause 04-3775-10 (Meijer PAC)

The Chair recognized Mr. Long who moved to table Meijer PAC, Cause 04-3775-10, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

x. Cause 04-3777-11 (Sandra Dempsey for Indiana Senate)

The Chair opened the hearing on Sandra Dempsey for Indiana Senate, Cause 04-3777-11, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Sandra Dempsey for Indiana Senate Committee, Cause 04-3777-11, failed to file its Annual Report for 2003. She indicated that the Committee had been appeared before the Commission three times previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is One Thousand Dollars (\$1,000.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Thousand Two Dollars and Fifty Cents (\$1,002.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of One Thousand Dollars and Fifty Cents (\$1,002.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xi. Cause 04-3828-12 (Citizens for Sally)

The Chair opened the hearing on Citizens for Sally, Cause 04-3828-12, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Citizens for Sally Committee, Cause 04-3828-12, filed its Annual Report for 2003 on January 28, 2004. She indicated that the Committee had been appeared before the Commission one time previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is Three Hundred Fifty Dollars (\$1,000.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Three Hundred Fifty-Two Dollars and Fifty Cents (\$352.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of Three Hundred and Fifty-Two Dollars and Fifty Cents (\$352.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xii. Cause 04-3951-13 (Hoosiers for Witwer)

The Chair recognized Mr. Long who moved to table Hoosiers for Witwer, Cause 04-3951-13, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xiii. Cause 04-3979-14 (FOP Lodge 86 PAC)

The Chair opened the hearing on FOP Lodge 86 PAC, Cause 04-3979-14, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the FOP Lodge 86 PAC, Cause 04-3979-14, filed its Annual Report for 2003 on January 23, 2004. She indicated that the Committee had appeared before the Commission two times previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is One Hundred Dollars (\$100.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Hundred and Two Dollars and Fifty Cents (\$102.50).

The Chair recognized Susan Keeley, representing the Committee, who stated that she signed the paperwork on January 16, 2004 and the report was mailed on that day. Ms. Keeley stated that the Division did not receive the report until January 23, 2004, five days after it was mailed. Ms. Keeley stated that the Committee would hand-deliver the report in the future. Ms. Keeley submitted a copy of the Committee's internal record that the report was mailed on January 16th.

The Chair closed the hearing. The Chair recognized Mr. Long who moved to dismiss the cause. Mr. Morgan seconded the motion. Mr. Long stated that this was an instance where the Committee had done everything to comply with the law and relied on the postal service to deliver a letter in the city within five days.

The Chair stated that his concern is that the Committee had appeared before the Commission two times before for late reports. Mr. Morgan asked when the Committee had been late before. Ms. Thompson indicated that the Committee was late on the pre-primary report in 1996 and on the pre-primary report in 2003.

Mr. Long withdrew his motion and Mr. Morgan withdrew his second on the motion. Mr. Morgan then moved to assess a civil penalty of Fifty Dollars plus costs in the amount of Fifty-Two Dollars and Fifty Cents (\$52.50) in order to give the Committee somewhat of a break but still hold the Committee accountable for past violations. Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xiv. Cause 04-3996-15 (Friends for Steve Johnson)

The Chair recognized Mr. Hiller who moved to continue 04-3996-15, Friends for Steve Johnson, until the next Commission meeting. Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xv. Cause 04-4090-16 (Citizens for Anthony Underly)

The Chair opened the hearing on Citizens for Anthony Underly, Cause 04-4090-16, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Citizens for Anthony Underly Committee, Cause 04-4090-16, filed its Annual Report for 2003 on January 22, 2004. She indicated that the Committee had been appeared before the Commission two times previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is Fifty Dollars (\$50.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Fifty-Two Dollars and Fifty Cents (\$52.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of Fifty-Two Dollars and Fifty Cents (\$52.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xvi. Cause 04-4096-17 (Mutual Insurance Companies Association of Indiana PAC)

The Chair recognized Mr. Long who moved to table Mutual Insurance Companies Association of Indiana PAC, Cause 04-4096-17, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xvii. Cause 04-4277-18 (Opportunity Indiana PAC)

The Chair recognized Mr. Long who moved to table Opportunity Indiana PAC, Cause 04-4277-18, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xviii. Cause 04-4317-19 (Citizens for Patty Morgan)

The Chair recognized Mr. Long who moved to table Citizens for Patty Morgan, Cause 04-4317-19, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xix. Cause 04-4367-20 (SAFECO PAC)

The Chair recognized Mr. Long who moved to table SAFECO PAC, Cause 04-4367-20, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xx. Cause 04-4472-21 (Hoosiers Against Crazy Taxes)

The Chair opened the hearing on Hoosiers Against Crazy Taxes, Cause 04-4472-21, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Hoosiers Against Crazy Taxes Committee, Cause 04-4472-21, failed to file its Annual Report for 2003. She indicated that the Committee had been appeared before the Commission four times previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is One Thousand Dollars (\$1,000.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Thousand and Two Dollars and Fifty Cents (\$1,002.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of One Thousand Two Dollars and Fifty Cents (\$1,002.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxi. Cause 04-4527-22 (Citizens for Crabtree)

The Chair opened the hearing on Citizens for Crabtree, Cause 04-4527-22, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Citizens for Crabtree Committee, Cause 04-4527-22, failed to file its Annual Report for 2003. She indicated that the Committee had been appeared before the Commission one time previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is One Thousand Dollars (\$1,000.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Thousand and Two Dollars and Fifty Cents (\$1,002.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of One Thousand Two Dollars and Fifty Cents (\$1,002.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxii. Cause 04-4687-23 (In-Home Services PAC)

The Chair opened the hearing on In-Home Services PAC, Cause 04-4687-23, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the In-Home Services PAC, Cause 04-4687-23, filed its Annual Report for 2003 on January 28, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is Three Hundred Fifty Dollars (\$350.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Three Hundred Fifty-Two Dollars and Fifty Cents (\$352.50). She indicated that the Committee had submitted correspondence.

The Chair recognized Melissa Durham, treasurer of the PAC, who stated that the Committee faxed the report and thought it had been received by the Division. Ms. Durham stated that upon receipt of the Division's notice, she called Ms. Thompson who stated that the Division had not received the faxed report. Ms. Durham presented to the Commission a copy of the Committee's fax activity sheet that indicated that the Division did receive the fax. Mr. Morgan suggested that the Committee call the Division to ensure the receipt of the fax.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of Ninety Dollars (\$90.00). Mr. Hiller seconded the motion. The Chair stated that he would be comfortable in dismissing the fine in this case since the Committee had done everything they could, but the fax did not go through. Mr. Morgan withdrew his motion and Mr. Hiller withdrew his second to the motion.

The Chair then moved to dismiss the cause. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxiii. Cause 04-491-24 (The Indiana Leadership Fund PAC)

The Chair opened the hearing on The Indiana Leadership Fund PAC, Cause 04-491-24, and requested a report from staff. The Chair recognized Pam Potesta who indicated that The Indiana Leadership Fund PAC, Cause 04-491-24, filed its Annual Report for 2003 on January 30, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is Four Hundred Fifty Dollars (\$450.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Four Hundred Fifty-Two Dollars and Fifty Cents (\$452.50).

The Chair recognized Jonathan Pollack, representing the Committee, who stated that he filed the report upon receiving notice from the Division that it had not yet been filed. Mr. Pollack indicated that the Committee was in the process of closing the PAC.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of One Hundred Fifteen Dollars (\$115.00). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxiv. Cause 04-4709-25 (Paul Helmke Committee)

The Chair recognized Mr. Long who moved to table Paul Helmke Committee, Cause 04-4709-25, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxv. Cause 04-4722-26 (Hoosiers for Kent Benson)

The Chair recognized Mr. Long who moved to table Hoosiers for Kent Benson, Cause 04-4722-26, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxvi. Cause 04-4733-27 (Friends of Earl Harris)

The Chair recognized Mr. Long who moved to table Friends of Earl Harris, Cause 04-4733-27, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxvii. Cause 04-4762-28 (Friends of Mike Wallin Committee)

The Chair recognized Mr. Long who moved to table Friends of Mike Wallin Committee, Cause 04-4762-28, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxviii. Cause 04-4764-29 (Friends to Elect Jean Macdonald)

The Chair recognized Mr. Long who moved to table Friends to Elect Jean Macdonald, Cause 04-4764-29, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxix. Cause 04-4766-30 (Committee to Elect Mark Duwe State Representative)

The Chair opened the hearing on Committee to Elect Mark Duwe State Representative, Cause 04-4766-30, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Committee to Elect Mark Duwe State Representative, Cause 04-4766-30, failed to file its Annual Report for 2003. She indicated that the Committee had been appeared before the Commission two times previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is One Thousand Dollars (\$1,000.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Thousand and Two Dollars and Fifty Cents (\$1,002.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of One Thousand Two Dollars and Fifty Cents (\$1,002.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxx. Cause 04-4769-31 (Good & Lawful Christian Men for John Anthony Malan State Representative)

The Chair recognized Mr. Long who moved to table Good & Lawful Christian Men for John Anthony Malan State Representative, Cause 04-4769-31, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxxi. Cause 04-4773-32 (Friends of Pam Roth)

The Chair opened the hearing on Friends of Pam Roth, Cause 04-4773-32, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Friends of Pam Roth Committee, Cause 04-4773-32, filed its Annual Report for 2003 on January 22, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is Fifty Dollars (\$50.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Fifty-Two Dollars and Fifty Cents (\$52.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of Fifty-Two Dollars and Fifty Cents (\$52.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxxii. Cause 04-4775-33 (Committee to Elect Randy Plew State Representative)

The Chair opened the hearing on Committee to Elect Randy Plew State Representative, Cause 04-4775-33, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Committee to Elect Randy Plew State Representative, Cause 04-4775-33, filed its Annual Report for 2003 on January 21, 2004 at 2:47p.m. She indicated that the Committee had appeared before the Commission two times previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is Fifty Dollars (\$50.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Fifty-Two Dollars and Fifty Cents (\$52.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of Fifty-Two Dollars and Fifty Cents (\$52.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxxiii. Cause 04-4783-34 (Committee to Elect Larry Chubb)

The Chair recognized Mr. Long who moved to table Committee to Elect Larry Chubb, Cause 04-4783-34, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxxiv. Cause 04-4792-35 (Sabbagh Election Committee)

The Chair recognized Mr. Long who moved to table Sabbagh Election Committee, Cause 04-4792-35, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxxv. Cause 04-4811-36 (Phipps for State Senate)

The Chair recognized Mr. Long who moved to table Phipps for State Senate, Cause 04-4811-36, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxxvi. Cause 04-4831-37 (Kinser for State Representative 55th)

The Chair opened the hearing on Kinser for State Representative 55th, Cause 04-4831-37, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Kinser for State Representative 55th Committee, Cause 04-4831-37, failed to file its Annual Report for 2003. She indicated that the Committee had been appeared before the Commission three times previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is One Thousand Dollars (\$1,000.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Thousand and Two Dollars and Fifty Cents (\$1,002.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of One Thousand Two Dollars and Fifty Cents (\$1,002.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxxvii. Cause 04-4845-38 (Dann Pecar Newman & Kleiman PAC)

The Chair opened the hearing on The Dann Pecar Newman & Kleiman PAC, Cause 04-4845-38, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Dann Pecar Newman & Kleiman PAC, Cause 04-4845-38, filed its Annual Report for 2003 on January 29, 2004. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is Four Hundred Dollars (\$400.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Four Hundred and Two Dollars and Fifty Cents (\$402.50).

The Chair recognized Jonathan Pollack, representing the Committee, who stated that the law firm's controller, who receives the campaign finance reports, was on vacation when the report came in and the report was not filed until the Committee received notice from the Division that it had not yet been filed.

The Chair closed the hearing. The Chair recognized Mr. Morgan who moved to impose a civil penalty plus costs in the amount of One Hundred and Two Dollars and Fifty Cents (\$102.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxxviii. Cause 04-4864-39 (Smith for Treasurer)

The Chair opened the hearing on Smith for Treasurer, Cause 04-4864-39, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Smith for Treasurer Committee, Cause 04-4864-39, failed to file its Annual Report for 2003. She indicated that the Committee had been appeared before the Commission one time previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is One Thousand Dollars (\$1,000.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Thousand and Two Dollars and Fifty Cents (\$1,002.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of One Thousand Two Dollars and Fifty Cents (\$1,002.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xxxix. Cause 04-4865-40 (Indiana Democrats for Accessibility)

The Chair opened the hearing on Indiana Democrats for Accessibility, Cause 04-4865-40, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Indiana Democrats for Accessibility Committee, Cause 04-4865-40, filed its Annual Report for 2003 on March 5, 2004. She indicated that the Committee had been appeared before the Commission two times previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is One Thousand Dollars (\$1,000.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of One Thousand and Two Dollars and Fifty Cents (\$1,002.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of One Thousand Two Dollars and Fifty Cents (\$1,002.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xi. Cause 04-4933-41 (Frugal Hoosiers for Mitch)

The Chair recognized Mr. Long who moved to table Frugal Hoosiers for Mitch, Cause 04-4933-41, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xli. Cause 04-4953-42 (Proud Republicans Inviting Democratic Endorsement)

The Chair recognized Mr. Long who moved to table Proud Republicans inviting Democratic Endorsement, Cause 04-4953-42, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xlii. Cause 04-4998-43 (Committee to Elect Ron Carrell)

The Chair opened the hearing on Committee to Elect Ron Carrell, Cause 04-4998-43, and requested a report from staff. The Chair recognized Pam Potesta who indicated that the Committee to Elect Ron Carrell, Cause 04-4998-43, filed its Annual Report for 2003 on January 21, 2004 at 2:46p.m. She indicated that the Committee had not appeared before the Commission previously for a campaign finance violation, and that the committee received its notice of hearing on February 24, 2004. She advised that the proposed penalty for this committee is Fifty Dollars (\$50.00) plus costs in the sum of Two Dollars and Fifty Cents (\$2.50) for a total of Fifty-Two Dollars and Fifty Cents (\$52.50). She indicated that the committee had not submitted any correspondence.

The Chair recognized Mr. Long who moved to impose the full civil penalty plus costs in the amount of Fifty-Two Dollars and Fifty Cents (\$52.50). Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

xliii. Cause 04-5012-44 (Thomas Keiser Exploratory Committee)

The Chair recognized Mr. Long who moved to table Thomas Keiser Exploratory Committee, Cause 04-5012-44, until the next Commission meeting. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Burdick, Mr. Long, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

6. Candidate Challenge Hearings

The Chair asked Mr. King to administer an oath to any individuals intending to testify on any candidate challenge hearings. Mr. King administered the oath to these individuals.

A. Cause 04-63: Dwight D. (Ike) Wilkerson, Candidate for the Republican Party Nomination for United States Senator

The Chair opened the hearing in this cause and recognized John Curley who had submitted a challenge to the candidacy of Dwight D. (Ike) Wilkerson. Mr. Curley submitted to the Commission an inventory prepared by the Election Division on the amount of signatures of registered voters certified on Mr. Wilkerson's petitions for ballot placement on the 2004 primary election. Mr. Curley stated that a candidate must have 4,500 signatures of registered voters certified by the county voter registration offices in order to be placed on the primary ballot as a Republican Party candidate for United States Senator. Mr. Curley stated that the candidate did not have enough signatures for ballot placement, and that the candidate should not be placed on the ballot.

The Chair asked the staff to verify the Division document presented to the Commission. Mr. King presented the original of the document to the Commission, along with the petition signatures submitted to the Division by Mr. Wilkerson and with his declaration of candidacy. Mr. King stated that he was also submitting to the Commission the original document prepared by Mr. Patton and Ms. Thompson of the Division staff dated February 25, 2004 certifying that they reviewed the county certifications on the petitions and came up with the total of signatures for each congressional districts and the total number of signatures. Mr. Patton indicated that this document is the one prepared by Mr. Patton and Ms. Thompson. A copy of this document is incorporated by reference in these minutes.

The Chair asked the number of signatures required by statute for ballot placement. Mr. Simmons replied that IC 3-8-2-8 requires a candidate for United States Senate seeking primary ballot placement must submit petition with signatures of the number of registered voters equal to a total amount of 4,500, including at least 500 from each of Indiana's nine congressional districts.

The Chair recognized Russell Cox, representing Dr. Robert Mandresh, who also filed a candidate challenge seeking removal of Mr. Wilkerson from the primary ballot. Mr. Cox stated that the law is clear about the number of signatures required in each congressional district, which Mr. Wilkerson failed to meet in five of the nine districts, and was short by 752 signatures of having the needed 4,500 signatures.

The Chair recognized Todd Tolson, working on Marvin Scott's campaign, who filed a candidate challenge on the issue mentioned above that Mr. Wilkerson did not have enough signatures as required by law.

The Chair asked Mr. Patton how he and Ms. Thompson came up with the number of signatures certified in the Division's document. Ms. Patton replied each county voter registration office certifies the number of signatures in the county by congressional district, and that is the number counted by the Division and set forth in the document.

The Chair recognized Mr. Wilkerson, who stated that he is the candidate being challenged. Mr. Wilkerson stated that he was not contesting the fact that he did not have enough signatures, and that he is aware of the law. Mr. Wilkerson stated that his campaign had hired a company to help collect signatures, and, due to a breach of contract on the company's part, they utterly failed to collect the required signatures. Mr. Wilkerson stated that the campaign filed to preserve their right to challenge the statute in question if there was an argument to be made. Mr. Wilkerson stated that upon research they felt there was not a strong case to be made to have this statute struck down. Mr. Wilkerson stated that they tried to persuade the challengers to allow them to remain on the ballot, but he acknowledged that they are within their rights to challenge his candidacy.

The Chair closed the hearing. The Chair recognized Mr. Long who moved to sustain the challenges in Cause 04-63 and thereby removing Dwight D. (Ike) Wilkerson as a candidate for nomination as United States Senator on the Republican Party Ballot. Mr. Morgan seconded the motion. The Chair asked if that motion was correct under the law. Mr. Simmons replied it was correct under IC 3-8-1-2(g) that specifically indicates that the Commission shall deny a filing if the Commission finds that the candidate fails to comply with the Indiana Election Code or with the candidate requirements in the United States or Indiana Constitutions. The Chair agreed and wished the candidate better luck next time. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

B. Cause 04-64: John Aguilera, Candidate for the Democratic Party Nomination for Indiana State Representative, District 12

The Chair opened the hearing in the cause and recognized Mr. King who stated that the Commission members' binders contained the candidate challenge affidavits and attachments filed in this matter along with the notice of hearing sent to the challengers. The Chair moved to consolidate the two candidate challenges in the matter since they are identical. Mr. Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan, and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

The Chair recognized Nathaniel Ruff who represented the challengers Alicia Rodriguez and Rosalia Fernandez. Mr. Ruff submitted several documents to the Commission including a mortgage certified by the Lake County Recorder for the Munster property owned by the Aguileras, which is outside the legislative district. Mr. Ruff referred the Commission to paragraph 6 of the mortgage document dated February 25, 2002.

Mr. Ruff also submitted certified copies from the Lake County Auditor of a document signed by Mary Aguilera, wife of Representative Aguilera that relates to the Munster property. Mr. Ruff explained that this document states the Munster property is the principal residence of the Aguileras and that it requests an exemption, and states that the East Chicago address is rental property. Mr. Ruff stated that this document also states that there was a homestead exemption taken out on the Munster property. The Chair asked when the homestead exemption was removed. Mr. Ruff replied that it was removed on the Munster property on July 29, 2003.

Mr. Ruff submitted opinions Representative Aguilera submitted to Lake County newspapers, that Mr. Ruff believes admits that he had established residency at the Munster property, which is outside of the district.

Mr. Ruff stated that they had documents indicating that the East Chicago property where Representative Aguilera claims residency was leased to Francisco and Juan Ramirez and first recorded in May 2001.

Mr. Ruff asked Ms. Rodriguez how she obtained the document that indicates that the East Chicago property was leased to Mr. Ramirez. Ms. Rodriguez replied that she obtained that information from the Internet thorough Peopledata.com. She stated that this search engine brings up any property owned by individuals. The Chair asked if Ms. Rodriguez had independently verified this information from any other source. Ms. Rodriguez stated that she did verify that Representative Aguilera owned property in Apollo Beach, Florida. Ms. Rodriguez verified this with Jennifer at the Hillsboro Property Appraisers who stated that Ms. Rodriguez could not obtain a copy of the homestead exemption on the Apollo Beach property, but an attorney could do so. Ms. Rodriguez also stated that she obtained information from Stephen Stiglich, Lake County Auditor, that a homestead exemption cannot be cancelled telephonically, as claimed by the Aguileras.

Ms. Rodriguez stated that when she contacted the Hillsboro Property Appraisers office in Florida, she asked them how to obtain a copy of a homestead exemption. She stated that she was told she could access this information through the Florida Department of Revenue website. She further stated that, according to the information on this website, in order for a person to obtain a homestead exemption, the person must declare the property as the primary home.

Mr. Ruff once again referred to the newspaper articles stating that Representative Aguilera's statements in these articles indicate that he had changed his residency outside of his legislative district.

Mr. Ruff stated that he would challenge Representative Aguilera's representation in some media accounts that Representative Aguilera purchased the Munster property as an investment. Mr. Ruff stated that there is a large mortgage on the property, and that on the mortgage documents signed by the Aguileras, they indicated that the Munster property would be their principal residence. Mr. Ruff stated that if Representative Aguilera had moved from the Munster property back to East Chicago, it was not to make the East Chicago address his residence, but simply to avoid any residency problems with his candidacy.

Mr. Ruff referred to IC 3-5-5-11 which states that the place where the person's immediate family resides is the person's residence unless the family's residence is a temporary location for the person's immediate family. Mr. Ruff also referred to IC 3-5-5-4 which states a person who has a residence in a precinct retains residency in that precinct until the person abandons the residence by having the intent to establish a new residence. Mr. Ruff stated that Representative Aguilera, by enrolling his child into Munster schools and claiming a homestead exemption on the Munster property, had established his residency at the Munster property.

The Chair asked if one child went to Munster schools and two children attended East Chicago schools. Mr. Ruff indicated that was correct, but that the residency is established in Munster.

Mr. Ruff also submitted a verified declaration of Susan Wood, which stated that Representative Aguilera lived at the Munster address in 2003.

The Chair recognized Mr. Long who asked if Mr. Ruff checked the Aguileras' voter registrations. Ms. Rodriguez stated that they are both registered at the East Chicago address. Mr. Hiller asked if the East Chicago property was still leased to Mr. Ramirez. Mr. Ruff stated they did not know if that was the case.

The Chair stated the Commission would allow limited cross-examination. The Chair recognized Lance Ryskamp, attorney for Representative Aguilera, who stated that the evidence collected from the Internet by Ms. Rodriguez is not relevant because there is no way to verify the reliability of the source, and that he had no further questions for the witness.

The Chair explained that he would give Mr. Ryskamp twenty-two minutes to present his case. Mr. Ryskamp presented exhibits to be made part of the record. Mr. Ryskamp explained that the relevant Indiana statute states that the challenger's burden is to prove that Representative Aguilera was not a resident of his district within one year of the election, which is the general election. Mr. Ryskamp indicated that he will present evidence that Representative Aguilera has continuously been a resident of his district.

Mr. Ryskamp referred to the case *State Election Board vs. Bayh* which discusses residency indicating that residency means a domicile or a true, fixed, permanent home and principal establishment to which place he has, whenever absent, the intention of returning. Mr. Ryskamp further stated that this is almost the exact language of the definition of residency in the Indiana Code. Mr. Ryskamp continued to explain that the *Bayh* case held that there must be an intention to abandon the old domicile, an intention to establish a new one, and residence in the new place in order to accomplish a change in domicile.

Mr. Ryskamp referred to the documents provided in his exhibits indicating the residency of Representative Aguilera. Mr. Ryskamp called Representative Aguilera as a witness. Representative Aguilera read from a prepared statement. Representative Aguilera stated that since August 1999 his wife and he had been involved in various real estate transactions. Representative Aguilera explained that in 1999, he received a substantial out-of-court settlement from involvement in a business interest. He stated that he and his wife used this money to invest in real estate. In August 1999, they purchased real estate in Florida close to the location of his wife's parents. Representative Aguilera explained that his wife and children moved to Florida where they remained for the 1999, 2000, and 2001 school years. Representative Aguilera stated that during that time he remained in East Chicago, Indiana.

Representative Aguilera explained that he worked on his residence in East Chicago to split it into two apartments. Representative Aguilera stated that in December 2000, he rented one of the apartments to Mr. Frank Ramirez and his daughter, and that he lived in the other apartment from that time through December 2003. Representative Aguilera stated that in the summer of 2001, his wife and children moved back to East Chicago to live with him in his apartment. He stated that his two youngest children were enrolled in the East Chicago school system.

Representative Aguilera stated that in February 2002 he and his wife purchased a house in Munster, located outside of his legislative district. He explained that this home was purchased as an investment for his family. He further stated that his wife mistakenly filed for a homestead tax credit for both properties, and once discovered, the homestead tax credit was withdrawn on the Munster property.

Representative Aguilera indicated that his wife enrolled his two youngest children in the East Chicago school system for 2002-2003 school year. He stated that his oldest daughter was enrolled in the Munster school system for this school year using the Munster property address. He stated that restitution has been made to the Munster school system for their daughter to be a tuition transfer student.

Representative Aguilera acknowledged that the candidate challenge also involved his signature on a mortgage document for the Munster property. He stated that he inadvertently signed the mortgage document. He did not intend to abandon his East Chicago address as his permanent residence.

Representative Aguilera stated that in October 2003, he and his wife entered into a lease with Jennifer Lambert for rental of the Munster property, and that his residency remained at the East Chicago address, within his legislative district. Representative Aguilera asked that the Commission dismiss the candidate challenges.

The Chair recognized Mr. Ryskamp who referred to the exhibits explaining they included a copy of the lease between the Aguileras and Ms. Lambert as well as other various relevant documents. Mr. Ryskamp asked some questions of Ms. Lambert. Ms. Lambert stated that she has rented the Munster property from the Aguileras since October 2003. She also stated that since she moved in, John Aguilera has not lived at the Munster address.

Mr. Ryskamp indicated that the homestead tax credit for the Munster property is actually a carry-over from the previous owners as shown in the exhibits. He stated that there is no homestead tax credit under the Aguileras' name for the Munster property.

Mr. Ryskamp asked some questions of Mary Aguilera, Representative Aguilera's wife. Ms. Aguilera indicated that she is a flight attendant, a job requiring extensive travel. Ms. Aguilera confirmed that she and her children lived in Florida for a two year period and that Representative Aguilera lived in East Chicago.

Mr. Ryskamp also asked questions of Representative Dan Stevenson. Representative Stevenson explained that he had visited Representative Aguilera several times at his residence in East Chicago. Representative Stevenson recalled one particular visit when he delivered magnetic signs to Representative Aguilera at his East Chicago residence. He stated that in going through his files, he found the invoice for those signs dated September 13, 2003. Representative Stevenson also stated that, in reviewing his bank records, he found a copy of the check to the company that prepared the signs dated September 13, 2003, the date he picked up the signs and delivered them to Representative Aguilera.

Mr. Ryskamp stated that, by the testimony and documents presented as well as the law, they had shown that Representative Aguilera had not abandoned his East Chicago residence and does comply with the residency requirement for a candidate for state representative, and respectfully asked the Commission to dismiss the complaints.

The Chair asked Representative Aguilera if the homestead tax credit had always been in place on the East Chicago residence. The Aguileras answered that it has been in place. The Chair asked about where the oldest child was enrolled in school. Representative Aguilera stated that his daughter has been enrolled in Munster schools since 2002.

The Chair recognized Mr. Hiller who asked if the Aguileras paid tuition for the 2002 school year in the Munster school year. Mrs. Aguilera stated that was correct.

The Chair asked Representative Stevenson if he had ever known Representative Aguilera to live at any other address. Representative Stevenson stated that he had not.

The Chair recognized Mr. Ruff asked if the Aguileras were paying tuition to the Munster schools for the 2003-2004 school year. Mrs. Aguilera indicated that was correct, and that this was her second year in that school. Mr. Ruff asked if the Aguileras had paid tuition for the previous

school year. Mr. Ryskamp referred to the exhibit showing tuition for the previous school year has now been paid.

The Chair closed the hearing. Commissioner Long moved that the candidate challenges be denied and that Representative Aguilera's candidacy remain on the ballot. Commissioner Morgan seconded the motion. Commissioner Long stated that in this case the evidence is overwhelming that Representative Aguilera meets the statutory residency requirements. Commissioner Hiller stated that he believed Representative Aguilera used poor judgment and stretched the law, but the decision should be up to the voters on whether Representative Aguilera met the residency requirements. The Chair stated that there was no question in his mind and that it was a "slam-dunk" that Representative Aguilera does meet the residency requirements for candidacy. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan and Mr. Hiller), and no Commission member voting "no," the motion was adopted.

7. Voting System Certifications: Report by Co-Directors

A. Hart InterCivic direct record electronic voting system Version 3.2 software upgrades BOSS 3.4.0; Tally 3.2; Ballot Now 2.1.10; Rally 1.2.0: JBC 2.0.13, eSlate 2.0.13; SERVO 2.0.10

The Chair recognized Ms. Robertson who referred to the March 8, 2004 memo prepared by the Co-Directors regarding the status of voting system certification applications. Ms. Robertson explained that Hart InterCivic (Hart) applied for an upgrade to their voting equipment software. Ms. Robertson stated that Hart had properly submitted the voting system certification application and fee. She further stated that Hart had successfully completed testing at the independent testing authorities (ITAs), which had certified that the upgrade does meet the 2002 Federal Election Commission (FEC) standards for voting systems. Ms. Robertson explained that Indiana had adopted these standards into state law in July 1, 2003, and that since Hart had applied for the software upgrade after this date, Hart was required to submit ITA reports certifying the upgrade met these new standards. Ms. Robertson stated that the ITA reports documenting that Hart's software upgrade does meet the 2002 standards are included in the Commission members' binders. Ms. Robertson further stated that the Co-Directors recommend approval of Hart's software upgrade.

Mr. Hiller asked Ms. Robertson if approval of the upgrade would mean that Hart could sell this product in Indiana. Ms. Robertson replied that Commission approval of the upgrade would allow Hart to market and sell it in Indiana. Mr. Morgan stated that it was his opinion that the legislature should find funds for the Commission to hire someone with the technical expertise to review the applications of voting systems, since the Commission members and Election Division staff do not have this expertise. Mr. Morgan further stated that the Voting System Advisory Committee used to serve in that capacity to review voting systems and make recommendations for approval to the Commission. Mr. Long agreed and stated that his concern is that the Commission does not know if the voting equipment tested by the ITAs and certified by the Commission is actually the equipment that is sold and used in the counties in elections. The Chair and Mr. Hiller agreed with Mr. Morgan and Mr. Long.

The Chair recognized Mr. Long who moved to certify Hart InterCivic direct record electronic voting system Version 3.2 software upgrades BOSS 3.4.0; Tally 3.2; Ballot Now 2.1.10; Rally 1.2.0: JBC 2.0.13, eSlate 2.0.13; SERVO 2.0.10. Mr. Hiller seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

B. MicroVote direct record electronic Infinity voting panel firmware upgrade (Version 2.13)

The Chair recognized Mr. King who referred to the Co-Directors' voting equipment memo stating that MicroVote submitted the required application and fee on March 2, 2004 for an upgrade to the firmware of the Infinity DRE, a system currently certified in Indiana. Mr. King explained that the firmware had not yet been escrowed, but MicroVote had indicated it is willing to do so. Mr. King further explained that the Election Division had not yet received a letter from Wyle Laboratories (Wyle), the ITA testing the firmware, certifying this upgrade meets the 2002 FEC standards. Mr. King stated that the Co-Directors recommend that the Commission table this application until MicroVote submits a report from the ITA indicating this firmware upgrade does meet the 2002 standards.

The Chair recognized Steve Shamo representing MicroVote who stated that the firmware upgrade had passed federal source code review and was awaiting functionality review, which would take place the following week. Mr. Shamo explained that MicroVote anticipated receiving a letter from Wyle regarding whether the firmware meets the 2002 standards at that time with a detailed report to follow two to three weeks later. Mr. Hiller asked Mr. Shamo when MicroVote submitted the firmware for testing. Mr. Shamo answered that they submitted the firmware's source code in February 2004.

The Chair moved to table this application until MicroVote obtains a letter from Wyle indicating that the firmware upgrade meets the 2002 standards. Commissioner Long seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

C. Voting Technologies International direct record electronic VOTWare software upgrade (Version 3.6.10)

The Chair recognized Ms. Robertson who stated that Voting Technologies International (VTI) had submitted the required application and fee for an upgrade to software for the VOTWare DRE voting system. Ms. Robertson explained that VTI had submitted a report from ITAs, but that these reports indicated that the software upgrade meets the 1990 FEC standards rather than the 2002 standards. Ms. Robertson further explained that VTI is currently awaiting the ITA certification for the upgrade to the 2002 standards, and that VTI is considering supplementing or amending the application to cover some other changes that have been made to the software and are under review by the ITAs. Ms. Robertson stated that the Co-Directors recommended that the Commission table this application until the Election Division receives the appropriate ITA certification that this software upgrade meets the 2002 FEC standards.

Commissioner Long moved to table this application at this time. Commissioner Hiller seconded the motion. Mr. Long asked Ms. Robertson if it is Election Commission policy to allow amendments to voting system certification applications. Ms. Robertson answered that it is the Commission policy to accept amendments to an application for a particular voting system, but that there are Indiana statutes that require voting system vendors to submit a new application for an upgrade to a currently certified system. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

D. Sierra Election Systems optical scan ballot marking device

The Chair recognized Mr. King who stated that Sierra Election Systems (Sierra) submitted an application and fee on September 8, 2003 for certification of an optical scan ballot marking device. Mr. King explained that this application does not contain a detailed description of this device nor a report from the ITAs. Mr. King further explained that the system has not yet been demonstrated to the Commission. Mr. King stated that he left a voicemail message for Rick Vogel of Sierra inquiring into the status of this application and had not yet received a response. Mr. King further stated that, based on this information, the Co-Directors recommend that the Commission table this application at this time.

Mr. Long stated that he thought that the Commission should deny an application if the voting system vendor fails to communicate with the Division before a meeting when the vendor has an application pending before the Commission. Mr. Simmons explained that in IC 3-11-15-9 indicates that an applicant must vigorously and continuously seek approval of an application by promptly responding to inquiries from the Commission and Division. Mr. Simmons further stated that the statute provides that the Commission may, following a hearing, dismiss an application if the Commission determines that the applicant has not complied with the statutory requirements. Mr. Patton further explained that IC 3-11-15-8 provides that an application is valid for one year after the date the application is filed with the Division.

Commissioner Long moved to table the application at this time. Commissioner Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

E. UniLect Corporation "The Patriot" direct recording electronic voting system.

The Chair recognized Ms. Robertson who stated that UniLect submitted an application on December 29, 2003. Ms. Robertson explained that vendor did not submit the required fee or detailed documentation or ITA reports for this new voting system. Ms. Robertson further explained that the system has not been demonstrated to the Commission. Ms. Robertson stated that the Co-Directors recommend that the Commission table this application at this time.

Commissioner Long moved to table the application at this time. Commissioner Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

F. Cause 04-01: In re: Inquiry into the sale and use of uncertified voting systems in Indiana:

The Chair stated that he would take testimony from anyone present who had been involved in Cause 04-01, the inquiry into the sale and use of uncertified voting systems. The Chair recognized Mr. King who administered the oath to individuals testifying in the matter.

The Chair recognized Rob McGinnis, the regional sales manager for Election Systems & Software (ES&S) and Ken Carbullido, senior vice-president of product and software development at ES&S.

The Chair recognized Mr. Morgan who stated it was his opinion that vendors, counties, and the Commission need to do a better job of communicating with each other about the certification process. He stated that he did not like the use of a subpoena by the Commission to ES&S. Mr. Morgan further stated it is also incumbent on the vendors to communicate with the Division and Commission to address issues before we have a problem.

The Chair recognized Mr. King, who explained the items in the Commission members' binders. Mr. King stated that there have been reports of six counties that had purchased uncertified voting equipment, including Henry, Johnson, Marion, Parke, Posey, Vanderburgh and Wayne counties. Mr. King explained that there are different issues with these counties that will need further clarification. The Chair recognized Mr. McGinnis who explained that three counties, Henry, Johnson, and Wayne, had used version 7.4.5.0, the uncertified version of the iVotronic DRE, in the 2003 municipal election.

The Chair recognized Mr. McGinnis who presented copies of the contracts between ES&S and the counties. He stated that the counties did purchase certified equipment from ES&S. Mr. McGinnis explained that the contracts do not specify the version of firmware in the equipment. Mr. McGinnis further explained that ES&S made the mistake of loading the wrong, uncertified, version of firmware on the iVotronic system sold to Indiana counties. Mr. McGinnis apologized to the counties for the mistake and stated that the counties did contract to purchase the certified version of the firmware. Mr. McGinnis further stated that ES&S never intended to mislead the counties, the voters, or the Commission.

The Chair asked Mr. McGinnis if ES&S demonstrated the uncertified version of the firmware for the iVotronic DRE to the counties. Mr. McGinnis answered that ES&S had demonstrated systems with various versions of firmware depending on what version was loaded on the demonstration model. Mr. McGinnis explained that ES&S had changed their policy to ensure this mistake of loading the wrong version on the systems does not happen in the future. Mr. McGinnis stated that he had demonstrated systems with uncertified firmware versions. The Chair stated that from his research that he had not heard that ES&S had had this type of problem in the past, but this is a rather significant mistake in this instance. The Chair asked if any other counties besides Henry, Johnson, and Wayne had purchased the uncertified version of the iVotronic. Mr. McGinnis answered that only Vanderburgh County had done so.

Mr. Carbullido stated that the firmware version 7.4.5.0 is the version that is certified and used in most states, and units with the more common version was mistakenly shipped to the Indiana counties. Mr. McGinnis stated that with all the changes in voting systems, it had become a problem to coordinate changes in firmware, software, certification, etc. The Chair asked what date ES&S and the Division became aware of this problem. Mr. McGinnis explained that they became aware of the problem when Patricia French, the Henry Circuit Court Clerk, inquired about the firmware version on her system as part of the voting system reimbursement application Henry County had submitted to the Election Division. He stated that when they discovered that it was version 7.4.5.0, and it was not yet certified in Indiana, then ES&S became aware of the problem.

The Chair recognized Mr. King who stated that this problem was discovered when the Co-Directors were reviewing Henry County's application for voting system reimbursement, a program to implement the Help America Vote Act. He explained that this review was part of the process to ensure that, before taking a county before the Budget Committee, that the county had purchased a certified voting system. Mr. King stated that it was not clear from Henry County's application what version of firmware the county had purchased. Mr. King indicated that he contacted Clerk French and she stated that the firmware version Henry County purchased was version 7.4.5.0. Mr. King stated that based on that information, the Co-Directors, along with the Secretary of State, did not go forward with Henry County's application for reimbursement. Mr. King stated that this decision was made around December 17, 2003.

Mr. King further explained that there were other counties ready to go before the Budget Committee, namely Johnson, Vanderburgh, and Wayne. Mr. King stated that the same question about firmware was posed to these counties, who responded that the version was 6.1.2.0, the certified version. Mr. King stated that based on this information from the counties, these counties were taken before the Budget Committee and reimbursement funds were released. Mr. King further explained that after the Budget Committee meeting, the Co-Directors discovered that these three counties did not have version 6.1.2.0 at that point, but had version 7.4.5.0. He stated that the Co-Directors advised the Budget Agency of this fact, and the Agency held the money until either the reverse install of the 6.1.2.0 or the purchase of certified voting equipment. Mr. King stated that the Co-Directors became aware that these counties had version 7.4.5.0 in a January 13, 2004 letter from ES&S containing a paragraph stating that version 7.4.5.0 was used by Henry, Johnson, and Wayne Counties in the November 2003 elections.

Mr. Long asked Mr. Carbullido if firmware version 6.1.2.0 would work in the currently certified hardware and software of the iVotronic. Mr. Carbullido answered that firmware version 6.1.2.0 would work with the certified hardware and software versions. Mr. Carbullido further clarified that if the counties use version 6.1.2.0, it would be different from what the counties used in the 2003 elections and on which the poll workers were trained, and there would be downsides to using this version on the certified hardware and software. Mr. Long asked for an explanation about the downsides. Mr. Carbullido explained that the version 7.4.5.0 contains improvements in usability for the voter. Mr. Long stated that he was not concerned about usability, he wanted to know if it would work. Mr. Carbullido answered that the firmware would record votes and no votes.

Mr. Carbullido further explained that version 6.1.2.0 was an early version of the firmware and has been superseded by version 7.4.5.0 that is much easier to use. Mr. McGinnis explained that version 6.1.2.0 was never used in an Indiana election. He further explained that it was the intention of ES&S to receive certification for 7.4.5.0 to replace version 6.1.2.0, but ES&S ran into the problem that the new 2002 FEC standards were adopted in Indiana law in July 2003.

Mr. Carbullido stated ES&S regrets what has occurred in Indiana. He stated that he values their relationship with the counties in Indiana and apologized for past mistakes and that ES&S was committed to correcting the situation. Mr. Carbullido explained that there were three contributing factors that allowed the uncertified version 7.4.5.0 to be used in the 2003 elections. First, ES&S was not aware of the change in Indiana law adopting the 2002 FEC standards. Second, there was a longer than anticipated certification process and internal communication problems within ES&S, specifically that all upgrades must now be compliant with the federal 2002 standards. Mr. Carbullido explained that version 7.4.5.0 has been tested and certified to the 1990 FEC standards, but not to the 2002 federal standards. He stated that ES&S did not formally begin the certification process of version 7.4.5.0 until July 2003, after the 2002 standards went into effect in Indiana. Third, there were breakdowns in internal communication at ES&S that allowed uncertified equipment to be used in Indiana elections. He stated that the people aware of the certification status of the firmware were not aware of the version shipped to Indiana counties

and the people responsible for shipping the equipment were not aware of the certification application status.

Mr. Carbullido stated that ES&S had taken steps to ensure that this situation did not happen again. He stated that they had instituted procedures that require thorough reporting of pending certification status as well as any movement of product from warehouse to the field. He further stated that ES&S had instituted regular audits of the equipment at ES&S and at the customer sites. Mr. Carbullido pointed out that version 7.4.5.0 does meet the 1990 federal standards. He further stated that all equipment used in Indiana elections have only met the 1990 federal standards and not the recently adopted 2002 standards. Mr. Carbullido explained that there is no equipment used in Indiana elections to date that have met the 2002 federal standards.

The Chair asked if the only issue holding up certification of 7.4.5.0 is that it does not meet the 2002 federal standards. Mr. King confirmed that was correct. Mr. Long asked if the system with 7.4.5.0 version was demonstrated to the counties. Mr. McGinnis answered that several different versions were demonstrated including 7.4.5.0 depending on what was loaded on the demonstration model. Mr. Long further asked if training had been provided on the 7.4.5.0 version. Mr. McGinnis indicated that training was provided on 7.4.5.0 and that ES&S was now training on version 6.1.2.0.

Mr. Long asked if this problem was similar to the Marion County's experience with the absentee ballot central tabulating equipment. Mr. McGinnis said it was similar in that the Model 650 had been sold to Marion County but had not yet been certified and had not yet met the 2002 federal standards. Mr. McGinnis indicated that ES&S did submit an application for certification of the Model 650 to the Division. The Chair asked if there was an ITA report stating the Model 650 met the 1990 federal standards prior to the 2002 standards going into effect in July 2003. Ms. Robertson referred to page 8 of the memo prepared by the Co-Directors on voting system certification status that stated the Division received an application for the Model 650 in February 2003. Ms. Robertson further stated that before the June 26, 2003 Commission meeting, ES&S requested that the Co-Directors hold this application until after July 1, 2003 because ES&S was in the process of having a newer version of the system testing by the ITA. Ms. Robertson stated that at the request of ES&S, the application was put on hold and the new 2002 federal standards went into effect in July 2003.

Mr. Hiller asked if the salespeople and trainers knew they were demonstrating and training on systems with version 7.4.5.0. Mr. Carbullido answered that they would know the version, but they may not have been aware of the certification status. Mr. McGinnis stated that he knew he was demonstrating version 7.4.5.0 in anticipation that this version would be certified, but was not aware that Indiana had adopted the 2002 federal standards. Mr. Hiller asked Ms. Jones-Matthews, the former Johnson County Clerk, if she knew the version ES&S demonstrated to her. Ms. Jones-Matthews stated that she did not know the version demonstrated to her county.

Mr. McGinnis stated that version 7.4.5.0 is easier to use by voters than 6.1.2.0, and that he is concerned that voters may not understand how to use 6.1.2.0 and will not properly cast their votes. The Chair asked what version is being used in other states. Mr. Carbullido explained that nine states are using version 7.4.5.0, and that no states are currently using 6.1.2.0. The Chair recognized Ms. Jones-Matthews who stated that Johnson County wanted to use the new system in the smaller municipal election in 2003, and that the election went very well with version 7.4.5.0. She further stated that both voters and poll workers liked it very much. The Chair asked if she thought the county was subject to liability in using uncertified equipment in an election. Ms. Jones-Matthews answered that she did believe they were subject to liability, but there were no problems, recounts or contests with no close elections in 2003.

The Chair stated that everyone wants to have good elections and easy to use equipment, but it also has to be legal and meet the statutory requirements regardless of whether it is a good law or not. The Chair recognized Ms. Abell, Vanderburgh Circuit Court Clerk, who stated that she is concerned about using version 6.1.2.0. Ms. Abell stated that she and Jill Jackson, Johnson Circuit Court Clerk, were on a conference call with ES&S the previous week, and they were told by ES&S that version 6.1.2.0 will not work with the certified hardware and software of the iVotronic system.

Ms. Jackson stated that during that call, ES&S stated that version 6.1.2.0 would not tabulate. Mr. Long vehemently asked if Ms. Jackson heard his earlier question to Mr. Carbullido about whether version 6.1.2.0 would work. Ms. Jackson stated that Mr. Carbullido stated that version 6.1.2.0 would record the vote, but that Mr. Long did not ask whether it would tabulate the vote.

The Chair recognized Mr. Carbullido who explained that ES&S had communicated with the counties during the conference call that, at the time ES&S would be testing version 6.1.2.0 to determine if it would work with the hardware and software. Mr. Carbullido further explained that during the conference call with the counties ES&S stated that they had found an issue with the tabulation and there would be further testing. Mr. Carbullido stated that since that conference call last week, ES&S had discovered a way to make version 6.1.2.0 tabulate correctly with the certified hardware and software. Mr. Carbullido stated that is why he could answer Mr. Long's earlier question that the system with version 6.1.2.0 will work. Mr. Long asked why that had not yet been communicated to the counties. Mr. McGinnis stated that they had communicated this information to the counties. Mr. Long stated that all he wanted to know was if the system with version 6.1.2.0 would work.

The Chair stated that he did not think it was the Commission's job to tell counties what voting equipment to use, but it is the Commission's job to certify equipment that meets the standards of Indiana law. The Chair stated that this equipment purchased was not legally certified.

The Chair recognized Mr. McClamroch, representing ES&S, who stated that he saw three issues. First, whether version 6.1.2.0 works; second, the reliability of version 7.4.5.0; and third, whether the voting system is legal. Mr. McClamroch stated that to the third issue, IC 3-11-15-57 provides a legal mechanism for the Commission to approve the use of modifications to the voting system for the primary election.

The Chair stated that he sympathized with the counties and their situation. The Chair stated that it was time to move on to solutions to the problem. Mr. Morgan stated that there needed to be more communication so counties and vendors know the certification status and any new laws that go into effect. Mr. Morgan further stated that it is unfortunate that this happens to good companies and that vendors need to stay on top of the changes to avoid this kind of problem. He further stated that he did believe that going through this situation would help with communication in the future.

The Chair recognized Mr. Carbullido who referred to a chart he provided to the Commission that lists the compatibility of ES&S systems. He stated that the question on the conference call with the counties was about the integration of version 6.1.2.0 with the reporting software. Mr. Carbullido stated that this integration does now work with version 6.1.2.0.

Mr. Hiller asked about the status of Parke and Posey Counties. Mr. McGinnis stated that ES&S does not currently have contracts with either of these counties. Mr. Hiller asked if ES&S does enter into a contract with them, what version would be provided to the counties. Mr. McGinnis answered that the certified version would be sold to these counties even though version 7.4.5.0 was demonstrated to them. Mr. King stated that in voting system reimbursement applications from Parke and Posey Counties, the counties indicated that they have a contract with ES&S.

Mr. McGinnis stated that these counties had not yet entered into a contract with either county. Mr. King stated that the Co-Directors would not proceed further with reimbursement for voting equipment for Parke and Posey Counties until there is a contract in place.

The Chair recognized Ms. Abell who stated that the problem counties are having is that they do not know the questions to ask. Ms. Abell asked the Commission to compel ES&S to tell the counties if there is any other problems of which the counties are unaware at this time.

Mr. Carbullido stated that there is a challenge with using version 6.1.2.0 when there is no candidate in a contest. He explained the way to work around this problem would be to put "No Candidate" in that place and version 6.1.2.0 works. Mr. Carbullido further stated that version 7.4.5.0 had a better reporting mechanism than version 6.1.2.0 but it could be handled by a change in coding.

Ms. Jackson asked if version 6.1.2.0 would tabulate straight party tickets. Mr. Carbullido stated that they had not tested it for straight party ticket voting since that feature is not used in a primary election, and the primary is the election for which they are currently preparing.

The Chair recognized Sue Anne Lower, Wayne Circuit Court Clerk, who states that her county had no problems with ES&S or the iVotronic system. She stated that she was concerned about the conference call that indicated that version 6.1.2.0 may not tabulate. Ms. Lower further stated that version 7.4.5.0 was demonstrated to the county.

The Chair recognized Patricia French, Henry Circuit Court Clerk, who stated that her county had always had a good relationship with ES&S, but that she is concerned about using version 6.1.2.0 because of the tabulation problems, and that her county's voters liked and are familiar with version 7.4.5.0 that was used in the November 2003 elections. Ms. French asked that the Commission consider allowing the counties to use version 7.4.5.0 in the May 2004 primary election.

The Chair asked if version 7.4.5.0 was pending before an ITA for testing to the 2002 federal standards. Mr. Carbullido replied that version 7.4.5.0 was not pending before an ITA but version 8.0.0.0 was working its way through the ITA review process.

The Chair recognized Ms. Jackson who stated that ES&S had indicated on the conference call with the clerks that version 6.1.2.0 had only been used in three or four elections. Mr. McGinnis stated that was correct and that version 6.1.2.0 was not easy for voters to use, therefore, ES&S began development of other versions like 7.4.5.0 that addressed some of the problems found with version 6.1.2.0.

There being no further discussion, the Chair closed the hearing on Cause 04-01.

- G. Election Systems & Software direct record electronic iVotronic firmware upgrade (Version 7.4.5.0) pending application**
- H. Election Systems & Software optical scan Model 650 (Version 1.1.9.1) pending application**
- I. Election Systems & Software direct record electronic iVotronic firmware upgrade (Version 8.0.0.0) pending application**

The Chair recognized Ms. Robertson who referred to the Co-Directors' voting system certification status memo stating that the application and fee had been properly submitted by ES&S for firmware upgrade to version 7.4.5.0. Ms. Robertson explained that the system has been demonstrated to the Commission. She further stated that the Co-Directors recommend no further Commission action until an ITA report is received indicating that version 7.4.5.0 meets the 2002 federal standards.

The Chair stated that the alternative legal argument that may be permitted by the Indiana Code is an argument properly heard under item K.

Ms. Robertson summarized Items G and I as applications for upgrades to currently certified systems and Item H as an application for a new voting system. She stated that the outstanding issues for items G, H, and I is that the Division had not yet received an ITA report stating that either the upgrades or the new system meet the 2002 federal standards.

Mr. Long suggested that the Commission move on to item K to decide on the possible solution proposed for the current situation of using version 7.4.5.0 in the May primary election.

- J. Election Systems & Software ERM upgrade 6.4.2.0 pending application**
- K. Election Systems & Software IC 3-11-15-57 application re: iVotronic version 7.4.5.0 or 8.0.0.0**
- L. Election Systems & Software IC 3-11-15-57 application re: ERM 6.4.2.0**

The Chair recognized Mr. McClamroch who stated that IC 3-11-15-57 provides for a proposed change to a currently certified voting system. Mr. McClamroch suggested that it is helpful to read that statute in conjunction with IC 3-11-15-52 which provides for an emergency voting system change. Mr. McClamroch stated that you cannot understand the first section of IC 3-11-15-57, which states that statute applies to a change that is not an emergency change without referring to IC 3-11-15-52, which describes an emergency voting system change. Mr. McClamroch stated that the situation with version 7.4.5.0 was not an emergency voting system change. Mr. McClamroch stated that ES&S had filed a written request under IC 3-11-15-57 for a proposed change to an existing voting system asking the Commission to allow ES&S to modify the existing voting system to something like version 7.4.5.0 to be used in the May 2004 primary election. Mr. McClamroch further stated that ES&S is offering a performance bond to ensure that this modification works since it is not currently certified.

Mr. Long asked what the plan would be for the general election. Mr. Carbullido indicated that once version 8.0.0.0 was certified by the ITAs as meeting the 2002 federal standards, that version would be installed in the counties that currently have version 7.4.5.0. Mr. Long asked what would happen if no version had met the 2002 federal standards by the November 2004 election. Mr. McClamroch replied that ES&S was asking for relief that would terminate as of a certain date after the primary but before the general election of 2004. Mr. Long stated that he is concerned that ES&S would be back before the general election asking for further relief to use uncertified equipment in the general election. Mr. McClamroch replied that ES&S would agree to waive any right to argue that any relief received at this meeting would be applicable to the 2004 general election.

Mr. Hiller asked for clarification on the performance bond. Mr. McClamroch stated that the performance bond would come into play if there are nonperformance issues that result from the use of the uncertified version of firmware in the primary election.

Mr. Hiller asked Mr. Simmons if, by allowing the use of the uncertified firmware in a close election, it would allow a losing candidate in the election the ability to sue the county on this issue. Mr. Simmons replied that the Co-Directors and Co-General Counsel of the Division had an opinion about the legal argument made by ES&S under IC 3-11-15-57.

Mr. Simmons stated that IC 3-11-15-52 and 53 describes approval of an emergency voting system change. Mr. Simmons explained that the change pending before the Commission did not meet this definition. Mr. Simmons further explained that IC 3-11-15-57 refers to other statutes that address voting system changes. Mr. Simmons stated that the difference between section 57 and the other statutes is that IC 3-11-15-57 has additional requirements, and that IC 3-11-15-57(c) had not yet been addressed. Mr. Simmons stated that IC 3-11-15-57(c) requires the Commission to approve the change after the Election Division or a competent person designated by the Commission reports to the Commission that the vendor has tested the changes on a simulated mockup version of the approved system. Mr. Simmons further explained that, upon searching the statutes for a standard to perform this review, the Division found IC 3-11-15-13, which states before the Commission can approve the use of voting equipment in Indiana, the system shall meet the 2002 FEC standards. Mr. Simmons referred to the definition of voting system in IC 3-5-2-53 which includes counting and tabulation functions. Mr. Simmons stated that the Division staff came to the conclusion that, based on these statutory standards requiring the system to meet the 2002 federal standards, a voting system change requested under IC 3-11-15-57 would still have to meet the 2002 federal standards.

Mr. Hiller asked if Mr. McClamroch agreed with Ms. Jackson's letter that this change is an emergency voting system change. Mr. McClamroch replied that this change is not an emergency change as defined in IC 3-11-15-52. Mr. McClamroch stated that this change would more properly fit under the change language in IC 3-11-15-57. Mr. Simmons stated that there is a definition of an emergency voting system change in IC 3-5-2-21.5 which states that the modification is to correct a vital but defective part of the voting system, which is not the situation with using version 7.4.5.0. Mr. Simmons explained that using version 7.4.5.0 would be to address voter convenience issues rather than a vital but defective component of the voting system as defined for an emergency voting system change.

Mr. McClamroch stated that ES&S had received feedback from the Division that version 6.1.2.0 was not defective when the Commission originally certified it. Mr. McClamroch stated that the response of ES&S is that 6.1.2.0 as originally certified was not defective, but the combination of using version 7.4.5.0 firmware with the previously certified hardware and software raises issues and meets the statutory standard of being defective.

Mr. Hiller stated that ES&S had earlier stated that it is not defective and would work. Mr. Carbullido stated that it would be defective from the voter's standpoint if the voter meant to vote for one candidate and the system registered a vote for another candidate. Mr. McGinnis further clarified that using version 6.1.2.0 may lead to voter confusion because if a voter touches a candidate's name on the screen, as is done on version 7.4.5.0, rather than using the stylus to touch the button by the candidate's name, as is done on version 6.1.2.0, then the system would not register a vote for that candidate and the voter would not have properly cast a vote, thus making the system defective. The Chair responded that the system would not be defective in that case, but would be voter error and not a problem with the system counting the votes.

Mr. Hiller asked if using the uncertified version 7.4.5.0 would open counties up to legal challenges. Mr. Simmons replied that, unless the Commission approves the use of version 7.4.5.0, the contest statutes allow a party to allege that there was a mistake that occurred in the programming of a voting system that made it impossible to determine the candidate who received the highest number of votes, or if a voting system malfunctioned, making it impossible to determine the candidate who received the highest number of votes. Mr. Simmons stated that if one of these grounds is proven, the result is a special election.

The Chair asked Mr. Simmons if an election can be challenged because it was conducted on uncertified equipment even if the Commission uses IC 3-11-15-57 to approve the use of version 7.4.5.0 in the primary election. Mr. Simmons responded that a party would still have a burden of proof under the contest statutes, but a party certainly could make the argument and it would be up to a judge to determine if the party had met the burden of proof. Mr. McClamroch stated that, based on his experience with recounts and contests, a party would have to prove one of the grounds for a contest to make the determination that the result of the election is unknown because of this problem. Mr. Simmons stated the only other issue he could think of would be that a party might argue that the Commission approved the use of a system that did not meet the 2002 federal standards as required by IC 3-11-15-13. Mr. Patton concurred with Mr. Simmons' comments that the risk may not be that a county would be sued but that the Commission might be sued for certifying a system that does not meet the statutory standards.

Mr. Long stated that there are systems legally being used now that meet the 1990 federal standards. Mr. Long asked if the Commission can receive an application for a change to an existing system that only meets the 1990 standards since the original system only had to meet those standards at the time of its original certification, or does a change to a currently certified system have to meet the 2002 federal standards. Mr. Simmons explained that because of the statutory change made to IC 3-11-15-13, a new voting system or an upgrade to a currently certified system must meet the 2002 FEC standards.

The Chair stated that the problem he was struggling with is that ES&S created this problem, and if the Commission grants relief under this statute, it gives ES&S a competitive advantage over other companies that have made improvements but are not selling it to the counties while these companies struggle to receive ITA certification that they have met the 2002 federal standards. Mr. McGinnis responded that the request had nothing to do with competitive advantage but was instead an attempt to resolve this problem to get the counties through the primary election with equipment that will work well for them. Mr. Long stated that ES&S absolutely had a competitive advantage because the systems with 6.1.2.0 could not have been sold since it would not work well, but ES&S did sell the uncertified version 7.4.5.0. Mr. Long said that he is very sympathetic to the counties and voters who have this purchased this equipment.

The Chair asked Mr. King about the new legislation recently passed by the General Assembly, specifically how the new language will work with the language in IC 3-11-15-57. Mr. King responded that the new language in Senate Enrolled Act 72 makes an identical change throughout the voting system certification statutes to say that, not only is it a violation of the law to use an uncertified voting system in Indiana, it would be a violation for that system to be marketed, sold, leased, installed, or permitted to be used. Mr. King continued that this legislation also amends IC 3-11-15-57 to provide an additional condition requiring the vendor to state that the voting system subject to the change has been certified in Indiana.

Mr. Hiller asked the Co-Directors about their recommendations made in the March 8, 2004 memo to the Commission. Mr. King replied that in regards to the IC 3-11-15-57 applications, that those applications be tabled until ES&S submits documentation that the proposed change would comply with the 2002 FEC standards. Mr. Hiller asked Mr. McClamroch for his response to this recommendation. Mr. McClamroch responded that the recommendation is in effect a denial of the request to use version 7.4.5.0, and the reason ES&S had made the application under IC 3-11-15-57 is for the ability to use version 7.4.5.0 in the primary without the requirement that it meet the 2002 federal standards in order to solve the problems discussed above.

The Chair stated that he met with the CEO of ES&S who told him that version 8.0.0.0 does meet the 2002 FEC standards, but now the Commission received the IC 3-11-15-57 applications stating that version 8.0.0.0 as well as version 7.4.5.0 is not compliant with the 2002 federal standards. Mr. McGinnis stated that portions of the version 8.0.0.0 are compliant with the 2002 standards. Mr. Carbullido explained that testing to comply with the 2002 standards is complex and that version 8.0.0.0 had passed the environmental and source code tests. He further explained that ES&S thought that version 8.0.0.0 had passed the functionality test for the 2002 standards, but subsequently received notice from the ITA that it had not yet met those standards, so version 8.0.0.0 does meet some of the requirements but not all at this time.

Mr. McClamroch stated that ES&S could not represent that either version 7.4.5.0 or 8.0.0.0 will be compliant with the 2002 federal standards by the May 2004 primary election.

The Chair recognized Commissioner Long who moved that the Commission grant the application to approve the request to use version 7.4.5.0 in Henry, Johnson, Vanderburgh, and Wayne Counties for the May 2004 Primary Election with this approval to expire on May 31, 2004 on the following conditions:

- 1) ES&S will post a bond in favor of the four counties named above, collectively and individually, and the State of Indiana in the amount of ten million dollars (\$10 million) that would cover any and all losses occasioned by the use of this system;
- 2) ES&S would pursue approval of a voting system that meets the 2002 FEC standards to be used before the 2004 General Election in November;
- 3) that when this voting system is approved, ES&S will install the voting system in the above-named four counties without additional charge to those counties;
- 4) that if ES&S does not secure a voting system compliant with the 2002 FEC standards by October 1, 2004, ES&S will install a compliant, certified voting system suitable to the above-named four counties to allow these counties to go forward with the 2004 General Election in November; and
- 5) that ES&S perform the test before the Division as required in IC 3-11-15-57, and that the Division approve and establish the language of the bond and certify it to the Chair, and that the Commission authorize the Chair, upon certification of those matters to the Chair by the Division, to approve them on the Commission's behalf.

Mr. Morgan seconded this motion. The Chair asked for discussion. Mr. Long explained that the scope of the bond would be for anything including any expense or loss or damage that the counties experience because they use this system in the 2004 primary election, but that only a fully certified system could be used in the 2004 General Election. Mr. Carbullido stated that ES&S was working with the Chief Financial Officer (CFO) to define a bond to cover the cost of the amount of the contracts with the counties which is around six or seven million dollars. Mr. Long stated that his motion is for the amount of the bond to be ten million dollars to cover the counties costs of potential lawsuits, recounts, etc. Mr. McClamroch stated that, subject to approval by ES&S, that the ten million dollar bond is acceptable, and that they would like to work with the Division on the appropriate language.

The Chair asked the clerks of the four counties involved what they wanted to use in the primary election. Ms. Abell indicated Vanderburgh County would like to use version 7.4.5.0 provided that ES&S does secure a ten million dollar bond. Ms. Jackson indicated that Johnson County would like to use version 7.4.5.0 in the primary. Ms. Lower from Wayne County and Ms. French from Henry County also indicated they would like to use version 7.4.5.0 in the primary election.

Mr. Hiller asked if ES&S could provide other certified equipment to the counties. Mr. McGinnis stated that they could provide the counties with certified optical scan equipment but the counties did not want to use that type but would like to use the electronic systems that they purchased, trained poll workers and voters, and have used in a previous election in some of those counties.

The Chair stated that he found the entire situation distasteful especially after personally meeting with ES&S and being misled about the system meeting the 2002 federal standards. The Chair further stated that he would vote to approve the motion only because all the counties involved stated that they need it to conduct the primary election. Mr. Hiller stated that he was sympathetic to the clerks' situation even though he also was uncomfortable with this situation caused by the actions of ES&S.

There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Burdick, Mr. Long, Mr. Morgan and Mr. Hiller), and no Commission member voting "no," that the motion was adopted.

8. Litigation and Investigative Report

The Chair recognized Mr. Simmons for the litigation report. Mr. Simmons indicated that the Division had nothing new to report.

9. Next Commission Meeting Date

10. Adjournment

The Chair recognized Mr. Hiller who moved that the Commission adjourn and declared that the Commission was adjourned by consent of the Commission members at 9:00 p.m.

Respectfully submitted,

J. Bradley King
Co-Director

Kristi Robertson
Co-Director

Approved,

Brian L. Burdick, Chair