

# **Indiana Election Commission**

## **Minutes**

### **May 5, 2006**

**Members Present:** Thomas E. Wheeler, II, Chairman of the Indiana Election Commission (the Commission); Jennifer Wagner, Proxy for S. Anthony Long, Vice Chairman of the Commission; Thomas E. John, member of the Commission.

**Members Absent:** S. Anthony Long; Butch Morgan

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

**Also Attending:**

#### **1. Call to Order**

The Chair called the May 5, 2006 meeting of the Commission to order at 3:05 p.m. in the Indiana Government Center South Conference Center, Room 4, at 402 West Washington Street Room E-204, Indianapolis, Indiana.

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

#### **2. MicroVote General Corporation; Infinity direct record electronic voting system**

The Chair indicated that this meeting was called to follow-up on the April 19, 2006 Commission meeting at which the Commission received testimony from Mr. Ries and Mr. Shamo, representatives of MicroVote General Corporation (MicroVote) regarding the installation of uncertified firmware and software on the Infinity direct record electronic voting system, specifically the installation of firmware version 3.04 and software version 3.1 in 47 Indiana counties, by representatives of MicroVote. He said that there was also testimony by Mr. Shamo at the Commission's April 19, 2006 meeting that all of these counties were aware that uncertified software was being installed. The Chair then read extracts from a transcript of the April 19, 2006 Indiana Election Commission meeting, which is incorporated by reference in these minutes.

The Chair indicated that he would entertain a motion on this matter.

Commissioner John moved that the Commission determine that there is a substantial reason to believe that an election law violation has occurred under Indiana Code 3-11-7, 3-11-7.5, and 3-11-15, and therefore expeditiously make an investigation as provided under Indiana Code 3-6-4.1-21(b). Commissioner John further moved that the Commission direct that the Co-Directors of the Indiana Election Division assist the Commission in conducting this investigation and that the Commission, by virtue of its authority under Indiana Code 3-6-4.1-19, authorize the Co-Directors to jointly issue subpoenas in conducting the investigation. Commissioner John further moved that the Commission authorize the Co-Directors to jointly take all necessary and proper actions on behalf of the Commission to carry out the decision of the Commission in this matter under Indiana Code 3-6-4.2-3(a). Commissioner Wagner seconded the motion.

The Chair called for discussion on the motion.

Mr. John indicated that the testimony of MicroVote representatives at the Commission's April 19, 2006 meeting left no question in his mind that there is substantial reason to believe that an election law violation has occurred and that the actions of MicroVote unnecessarily introduced a crisis into the primary election by replacing certified software that was being used on many county voting systems with uncertified software.

Chairman Wheeler added that he was also concerned about specific statements contained in the transcript of the April 19, 2006 Commission meeting made by Mr. Shamo when asked if all 47 counties were aware that uncertified software was being installed on their voting systems. The Chair stated that Mr. Shamo had responded "correct." The Chairman indicated that he was very concerned with this allegation and wanted to make clear that his understanding of the motion was that it included an investigation of the claim that all 47 counties were aware that uncertified software was being installed on their voting systems.

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

### **3. Adjournment**

There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Mr. John moved, seconded by Ms. Wagner, that the Commission do now adjourn. The Chair called the question, and declared that with three members voting "aye" (Mr. John, Ms. Wagner, and Mr. Wheeler), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 3:15 p.m.

Respectfully submitted,

J. Bradley King  
Co-Director

Kristi Robertson  
Co-Director

**APPROVED:**

**Thomas E. Wheeler, II**  
**Chairman**