

Indiana Election Commission
Minutes
September 29, 2011

Members Present: Daniel A. Dumezich, Chairman of the Indiana Election Commission (“Commission”); S. Anthony Long, Vice Chairman of the Commission; Sarah Steele Riordan, member; Bryce Bennett, member.

Members Absent: None

Staff Attending: Trent Deckard, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); J. Bradley King, Co-Director of the Election Division; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Abbey Taylor, Campaign Finance Election Division staff; Michelle Thompson, Campaign Finance Election Division staff; Michelle Brzycki, Precincts and Special Projects.

Also Attending: Mr. Nick Gasparovic; The Honorable Sue Landske; Dr. Joseph Losco; The Honorable Thomas McDermott, Jr; Mr. Mark Manganaro; Mr. Bob Morris; Mr. Elijah Neal, Jr,; Ms. Linda Pence; Mr. Jeremy Reidy; The Honorable Kathy Richardson; The Honorable Earline Rogers; Dr. Raymond Scheele; Mr. Kevin Smith.

1. Call to Order

The Chair called the September 29, 2011 meeting of the Commission to order at 10:00 a.m. in Room 404 of the State House, at 200 West Washington Street, Indianapolis, Indiana.

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

2. Transaction of Business

The Commission transacted the business set forth in the Transcript of Proceedings prepared by Ms. Rhonda J. Hobbs, RPR, of Connor+Associates Reporting. With the exception of page 58, line 1 through page 81, line 7 of this document, which concern the proceedings of the Lake County Redistricting Commission, a copy of this document is incorporated by reference in these minutes.

The following corrections of scrivener’s errors in this document are approved by the Commission:

Page 4, line 5, replace “, August 19, 2011” with “.”

Page 4, delete line 6.

Page 12, line 1, replace “order” with “order signed”.

Page 21, line 24, replace “scribbler’s” with “scrivener’s”.

Page 26, line 9, replace “their” with “their contribution”.

Page 32, line 11, delete “(Phonetic)”.

Page 46, line 1, replace “judge” with “a judge”.

Page 88, line 14, replace “state wise” with “statewide”.

Page 97, line 4, replace “Systems” with “Assistance”.

Page 103, line 21, replace “Mangamaro, M-A-N-G-A-M-A-R-O” with “Manganaro, M-A-N-G-A-N-A-R-O”.

Page 108, line 3, replace “3-12-17” with “3-12-1-7”.

Page 108, line 11, replace “county” with “counting”.

Page 110, line 5, replace “Caroll” with “Carroll”.

Page 116, line 10, replace “two-chair” with “two-tiered”.

Page 117, line 6, delete “(Phonetic)”.

Page 118, line 10, delete “the”.

Page 119, line 25, replace “1996” with “1986”.

Page 122, line 16, replace “issue with the process” with “issue of process”.

Page 123, line 1, replace “issue with process” with “issuance of process”.

Page 123, line 6, replace “issue” with “issue of”.

3. Adjournment

There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Mr. Long moved, seconded by Mr. Bennett, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting "aye" (Mr. Dumezich, Mr. Long, Ms. Riordan, and Mr. Bennett), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 12:49 p.m.

Respectfully submitted,



Trent Deckard
Co-Director



J. Bradley King
Co-Director

APPROVED:



Daniel A. Dumezich
Chairman

Lake County Redistricting Commission
Minutes
September 29, 2011

Members Present: Daniel A. Dumezich, Chairman of the Commission (“Commission”); S. Anthony Long, Vice Chairman of the Commission; Sarah Steele Riordan, member; Bryce Bennett, member; The Honorable Sue Landske, Indiana State Senator; The Honorable Kathy Richardson, Indiana State Representative; The Honorable Earline Rogers, Indiana State Senator.

Members Absent: The Honorable Earl Harris, Indiana State Representative.

Staff Attending: Trent Deckard, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); J. Bradley King, Co-Director of the Election Division; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division; Abbey Taylor, Campaign Finance Election Division staff; Michelle Thompson, Campaign Finance Election Division staff; Michelle Brzycki, Precincts and Special Projects.

Also Attending: Mr. Nick Gasparovic; The Honorable Thomas McDermott, Jr; Mr. Kevin Smith.

1. Call to Order

The Chair called the September 29, 2011 meeting of the Commission to order at 10:00 a.m. in Room 404 of the State House, at 200 West Washington Street, Indianapolis, Indiana.

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

2. Transaction of Business

The Commission transacted the business set forth on page 58, line 1 through page 81, line 7, in the Transcript of Proceedings prepared by Ms. Rhonda J. Hobbs, RPR, of Connor+Associates Reporting. A copy of this document is incorporated by reference in these minutes.

The following corrections of scrivener’s errors in this document are approved by the Commission:

- Page 59, line 9, replace “K.G. Fox (Phonetic)” with “media who keep boxes”.
- Page 59, line 21, replace “print the” with “printed”.
- Page 60, line 8, replace “substitution” with “submission”.

Page 61, line 6, replace "districts' map" with "district maps".
Page 68, line 21, replace "JS" with "GIS".
Page 69, line 13, replace "UNIDENTIFIED SPEAKER" with
"REPRESENTATIVE RICHARDSON".
Page 70, line 10, replace "UNIDENTIFIED SPEAKER" with
"REPRESENTATIVE RICHARDSON".
Page 70, line 17, replace "trust" with "trusted".
Page 70, line 19, replace "UNIDENTIFIED SPEAKER" with
"REPRESENTATIVE RICHARDSON".
Page 72, line 25, replace "RICHIARDSON" with "RICHARDSON".
Page 73, line 14, replace "RICHIARDSON" with "RICHARDSON".
Page 73, line 19, replace "RICHIARDSON" with "RICHARDSON".
Page 76, line 2, replace "the American" with "African-American".

3. Adjournment

There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Mr. Long moved, seconded by Mr. Bennett, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting "aye" (Mr. Dumezich, Mr. Long, Ms. Riordan, and Mr. Bennett), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 11:45 a.m.

Respectfully submitted,

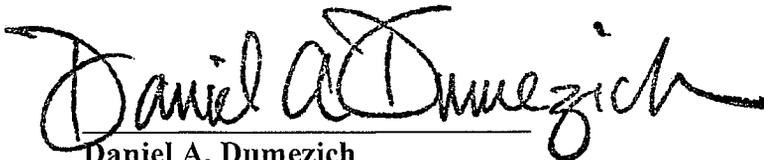


Trent DeCard
Co-Director



J. Bradley King
Co-Director

APPROVED:



Daniel A. Dumezich
Chairman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDIANA ELECTION COMMISSION
PUBLIC SESSION AGENDA

Conducted On: Thursday, September 29, 2011

Location: Indiana Statehouse
200 West Washington Street
Room 404
Indianapolis, Indiana 46204

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

Connor + Associates, Inc.
1650 One American Square
Indianapolis, IN 46282
(317) 236-6022

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

INDIANA ELECTION COMMISSION:

- Mr. Daniel Domezich - Chairman
- Mr. Anthony Long - Vice Chairman
- Ms. Sarah Riordan - Commission Member
- Mr. Bryce Bennett - Commission Member

INDIANA ELECTION DIVISION STAFF:

- Mr. Dale Simmons - Co-Legal Counsel
- Ms. Leslie Barnes - Co-Legal Counsel
- Mr. Bradley King - Co-Director
- Mr. Trent Deckard - Co-Director
- Ms. Michelle Thompson - Campaign Finance
- Ms. Abbey Taylor - Campaign Finance

1 CHAIRMAN D. DUMEZICH: This meeting of the
2 Indiana Election Commission is called to order.
3 All four members of the commission is present.
4 My name is Dan Dumezich, and to my left is Vice
5 Chairman Anthony Long, and the member to his
6 left is Sarah Riordan. To my right is Member
7 Bryce Bennett.

8 The Indiana election staff are represented by
9 Co-Directors Trent Deckard and Brad King. The
10 Co-General Counsel, Leslie Barnes and Dale Simmons,
11 and the campaign finance staff, Abbey Taylor and
12 Michelle Thompson. The court reporter is Rhonda
13 Hobbs from Connor & Associates.

14 I want to remind everyone on behalf of the
15 court reporter to identify yourself when you begin
16 to speak, spell your name when you identify
17 yourself, and speak clearly. Do not speak at the
18 same time others are speaking because it makes it
19 almost impossible for the court reporter to hear
20 you and it's always better if I turn on my mike.

21 I request Mr. Deckard and Mr. King to confirm
22 that the commission meeting has been properly
23 noticed as required under the Indiana Open Door
24 Law.

25 MR. B. KING: Mr. Chairman and Members of

1 the Commission, this meeting was properly
2 noticed in accordance with the Open Door Law.

3 CHAIRMAN D. DUMEZICH: I recognize Mr.
4 Deckard and Mr. King to present minutes of the
5 August 19th commission meeting, August 19, 2011
6 commission meeting.

7 MR. B. KING: Mr. Chairman and Members of
8 the Commission, the minutes of the August 19th
9 meeting have been reviewed and approved by Mr.
10 Deckard and myself and are submitted for your
11 approval.

12 CHAIRMAN D. DUMEZICH: Is there a motion to
13 approve these minutes as presented?

14 COMMISSION MEMBER B. BENNETT: So moved.

15 VICE CHAIR A. LONG: Second.

16 CHAIRMAN D. DUMEZICH: Hearing a second, is
17 there any discussion?

18 (No response.)

19 CHAIRMAN D. DUMEZICH: Hearing none, all in
20 favor say aye; opposed say nay?

21 THE COMMISSION: Aye.

22 CHAIRMAN D. DUMEZICH: 4-0, the ayes have
23 it, and the motion to approve the minutes is
24 adopted. I appreciate the work that the court
25 reporter and the election division staff have

1 done to complete the minutes of our recent
2 meetings for their prompt approval. However, I
3 have been advised that we have more than a dozen
4 meetings that occurred between 2001 and 2008,
5 which still require the minutes to be prepared
6 for approval by commission.

7 I believe it's important that the commission
8 and the members of the public have access to these
9 documents and fully review our proceedings and make
10 these records available on the web as soon as
11 possible.

12 To accomplish this, I'd like to ask the
13 co-directors to work with the court reporter to get
14 the minutes for these meetings ready for commission
15 approval by a year and a half. Is there any
16 discussion on this by commission members or by the
17 co-directors?

18 (No discussion.)

19 MR. B. KING: Mr. Chairman, and Members of
20 the Commission, for myself, we'll certainly work
21 on our side, and staff to do everything
22 necessary to achieve this goal and satisfy your
23 expectations.

24 MR. T. DECKARD: Mr. Chairman, on behalf of
25 our staff, it's certainly the wishes of the

1 commission to move on that. I would ask, is it
2 the commission's pleasure that we get a price
3 estimate on that many minutes before the
4 commission makes a final decision or is that...

5 CHAIRMAN D. DUMEZICH: I think we can
6 probably delegate that to you to make a
7 determination of whether or not we should call
8 for an independent bid. I've been exceptionally
9 happy with the pricing and the accuracy of the
10 work by the current provider, but if we feel
11 that would be necessary, then it's something we
12 should do. We always want to protect the
13 State's funds.

14 So with that in mind, as long -- as long as we
15 get that done and get these minutes prepared,
16 that's my primary thrust, and we don't have to wait
17 until the last meeting to do it. We can get this
18 process under way, as we have meetings coming up
19 over the next month, month and a half for the Lake
20 County issue and other issues, if we can get them
21 done piecemeal like that, I don't have any problem
22 with that. Any thoughts from anybody else on that?

23 VICE CHAIR A. LONG: I think that's a good
24 idea. As they get them done, you can circulate
25 them, because it's going to take some review

1 time so I'd just as soon get them piecemealed as
2 they get done.

3 COMMISSION MEMBER B. BENNETT: Okay.

4 CHAIRMAN D. DUMEZICH: Let's go to approval
5 of forms. I recognize Mr. Deckard and Mr. King
6 to present Order 2011-417 for approval of
7 election forms.

8 MR. B. KING: Mr. Chairman and Members of
9 the Commission, in the binders is a copy of
10 Order No. 2011-417. This order calls for the
11 approval of a number of different forms. The
12 first set are absentee related applications and
13 other forms, including the special ABS-15
14 application for use by military and overseas
15 voters and other documents that have been
16 updated to reflect the 2012 election dates.

17 The order also includes the IEC-21, which is
18 for next year's certification for political party
19 and presidential and vice presidential tickets.
20 There are three forms concerning provisional ballot
21 labels and affidavits, which were updated to
22 reflect changes in the voter identification law
23 definition approved by the end of this year.

24 The last set is a proof of voter registration
25 forms. This group includes the Spanish language

1 form that the Commission discussed in its previous
2 meeting which has been updated to correct a
3 numerical typo containing the proper language. It
4 also includes several forms designated VRG-6.
5 These are the forms which are used for individuals
6 to submit applications at full service voter
7 registration agencies, ranging from the Bureau of
8 Motor Vehicles, public assistance offices, and the
9 Department of Workforce Development.

10 There are a couple of forms that I'd like to
11 make particular remarks about to get them on the
12 record. The VRG-6, the form concerning the
13 registration of public assistance agencies has a
14 change concerning the voter identification number.
15 The Republican staff were advised that plaintiff's
16 attorneys and NAACP versus Gargano had expressed a
17 view that the existing VRG-6 form did not comply
18 with -- did not comply with federal or state law.

19 We heard nothing further directly, but wanted
20 to make clear that the Republican staff does not
21 share that view and does not propose adoption of
22 this form for that reason. Instead, we recommend
23 adoption because the change is a sensible one and
24 will help counties, voters, and the agencies to
25 administer the statute.

1 The final comment that I have was on the form
2 used for the Bureau of Motor Vehicles' offices. We
3 checked with our contractor, Quest Information
4 Systems, and were advised, at least the Democratic
5 staff were advised that the change would result in
6 no cost to the State and so I had asked Mr. Deckard
7 to confirm that. Thank you, Mr. Chairman.

8 CHAIRMAN D. DUMEZICH: For purposes of
9 discussion, is there a motion to approve the
10 order as presented?

11 VICE CHAIR A. LONG: Can we -- just so long
12 as we're -- it's open for discussion, I'll
13 approve the order.

14 MR. T. DECKARD: Mr. Chairman...

15 CHAIRMAN D. DUMEZICH: Just a second. We
16 need a second and then discussion.

17 COMMISSION MEMBER B. BENNETT: Second.

18 CHAIRMAN D. DUMEZICH: Okay. We have a
19 second, let's have a discussion on the forms.

20 VICE CHAIR A. LONG: I'd prefer that Mr. --
21 I'd ask him a question off the record, and
22 Brad -- Mr. King presented the Republican
23 staff's position and I would just as soon the
24 record reflect the other side before we vote on
25 it.

1 CHAIRMAN D. DUMEZICH: Certainly.

2 MR. T. DECKARD: Thank you, Mr. Chairman
3 and Mr. Vice Chair. We were very happy to work
4 in this formal process in a bipartisan way with
5 our Republican counterparts for full compliance.
6 All of these forms have met the scrutiny of both
7 myself and my staff and find them to be
8 acceptable and within the law.

9 We are particularly pleased to see the
10 implementation of changes for the VRG-6,
11 particularly, as the State continues to work to
12 make sure it's in full compliance with the National
13 Voter Registration Act, which I know is important
14 to both the commission and members of the general
15 assembly that's passing the code. So with that, I
16 would offer full support.

17 I would disagree with Mr. King but glad that
18 we still got to an end result of the VRG-6 and the
19 voter identification number, so I think we're there
20 and we appreciate it.

21 CHAIRMAN D. DUMEZICH: So based on the
22 Democratic position, I don't hear a motion to
23 amend or anything; is that correct?

24 VICE CHAIR A. LONG: I just wanted the
25 record to reflect that it was a bipartisan

1 effort, and as I understood it, it was not one
2 side or the other and that they reached an
3 accord, and maybe for different reasons, but the
4 language says the same and the reason for them
5 going there so let's -- I'm pleased with both
6 sides working together on this.

7 CHAIRMAN D. DUMEZICH: Is the discussion
8 complete, does anybody else have anything to say
9 for the record?

10 VICE CHAIR A. LONG: I have nothing
11 further.

12 CHAIRMAN D. DUMEZICH: Hearing no further
13 discussion, all in favor of the motion -- all in
14 favor of the adoption of Order 2011-417, say
15 aye?

16 THE COMMISSION: Aye.

17 CHAIRMAN D. DUMEZICH: Opposed?

18 (No response.)

19 CHAIRMAN D. DUMEZICH: The ayes have it 4-0
20 and the order is approved. Use of signature
21 stamps, is there a motion to authorize the
22 election staff to affix each members' signature
23 stamp to the final copy of this order and any
24 other documents approved by the commission at
25 this meeting and for Mr. Bennett to sign the

1 order on his behalf until he has a stamp, since
2 he's a new member; do I hear a motion on that, a
3 motion to use signature stamps?

4 VICE CHAIR A. LONG: I'll make that motion.

5 CHAIRMAN D. DUMEZICH: Okay. Is there a
6 second?

7 COMMISSION MEMBER B. BENNETT: Second.

8 CHAIRMAN D. DUMEZICH: Any discussion?

9 (No response.)

10 CHAIRMAN D. DUMEZICH: Hearing none, all in
11 the favor of the motion to use signature stamps
12 for the three of us and to sign Mr. Bennett's
13 name, indicate by saying aye?

14 THE COMMISSION: Aye.

15 CHAIRMAN D. DUMEZICH: All opposed?

16 (No response.)

17 CHAIRMAN D. DUMEZICH: 4-0, the ayes have
18 it. Campaign Finance, I recognize Michelle
19 Thompson and Abbey Taylor to present information
20 regarding Order No. 2011-48 through 2011-435
21 which adopts the campaign finance orders in
22 accordance with the enforcement actions approved
23 at the August 19th, 2011 commission meeting.

24 Because of their number and size, there are
25 not coast of these orders in our binders, but

1 Michelle and Abbey can answer any questions,
2 hopefully. Would you care to make a presentation
3 with respect to those?

4 MS. M. THOMPSON: Yes. Mr. Chairman and
5 Members of the Commission, Order No. 2011-418
6 through 2011-435 have been prepared from the
7 actions taken at the August 19th meeting and
8 these orders are ready for adoption.

9 CHAIRMAN D. DUMEZICH: Is there a motion to
10 approve 2011-418 through 435 as presented?

11 VICE CHAIR A. LONG: I apologize, Mr.
12 Chairman. Are you asking for a motion?

13 CHAIRMAN D. DUMEZICH: Yeah.

14 VICE CHAIR A. LONG: So moved.

15 CHAIRMAN D. DUMEZICH: Is there a second?

16 MR. B. BENNETT: Second.

17 CHAIRMAN D. DUMEZICH: Any discussion?

18 (No response.)

19 CHAIRMAN D. DUMEZICH: Hearing none, all in
20 favor say aye?

21 THE COMMISSION: Aye.

22 CHAIRMAN D. DUMEZICH: All opposed, nay?

23 (No response.)

24 CHAIRMAN D. DUMEZICH: 4-0, the ayes have
25 it. The motion is adopted. The administration

1 of the oath to individuals testifying before the
2 commission. I would ask Mr. Simmons to
3 administrate the oath to anyone that's going to
4 testify before the commission today. Mr.
5 Simmons.

6 MR. D. SIMMONS: All those who will testify
7 at today's commission meeting, please stand,
8 raise your right hand, say I do after the
9 administration of the oath?

10 (Participants complied.)

11 MR. D. SIMMONS: Do you assembly swear or
12 affirm under the penalties of perjury that the
13 testimony you are about to give the Indiana
14 Election Commission is the truth, the whole
15 truth and nothing but the truth, say I do?

16 THE PARTICIPANTS: I do.

17 CHAIRMAN D. DUMEZICH: You will have the
18 opportunity for committees with representatives
19 present today to accept reduced penalties.
20 Those of you that are not here before, this is
21 the procedure taken from the Schererville Town
22 Court.

23 We want to give any committee present a final
24 opportunity to pay the reduced civil penalty by
25 waiving the right to present evidence and arguments

1 to the commission. Any committee is welcomed to
2 present evidence and arguments for the proposed
3 penalty to be waived, but this is solely an
4 opportunity for those who want to waive that
5 presentation and accept a reduced penalty.

6 In short, if you come up here, you're taking
7 the penalty, you're not telling your story. We
8 don't want to hear the story. If you want to tell
9 your story, this is not your opportunity to speak.

10 The arrangement is as follows: If it is the
11 committee's first violation, the arrangement is for
12 the committee to agree to pay 25 percent of the
13 proposed fine, plus mailing costs. If it is the
14 committee's second violation, the arrangement is
15 for the committee to agree to pay 50 percent of the
16 proposed fine, plus mailing costs. If it is the
17 committee's third violation, the committee would
18 agree to pay 75 percent of the proposed fine, plus
19 mailing costs.

20 Are there any committees present who want to
21 accept this arrangement -- first -- first
22 offenders, first offenders, any committees that are
23 first offender that would like to accept this
24 arrangement, please come forward -- come forward
25 and state your name and the committee's name.

1 (No response.)

2 CHAIRMAN D. DUMEZICH: So no first
3 offenders. Second offenders? Any second
4 offenders that want to take 50 percent? Going
5 once, twice, gone.

6 (No response.)

7 CHAIRMAN D. DUMEZICH: Anybody that's a
8 third-time offender, this is your last chance to
9 pay 75 percent?

10 (No response.)

11 CHAIRMAN D. DUMEZICH: Let the record
12 reflect that no one came forward to accept the
13 percentage arrangements and everyone here is
14 putting themselves at the whim of this committee
15 with respect to fines and violations.

16 The remaining committees will be called to
17 present evidence in these matters. Before doing
18 so, I want to note the procedures. In the past the
19 Commission has followed certain procedures for
20 conducting campaign finance hearings, and I would
21 propose the Commission use the following procedures
22 today:

23 A) when each campaign matter is called, the
24 Commission will recognize the campaign finance
25 staff to provide information about the documents in

1 a manner provided to the commission members,
2 including letters from the committee and notice
3 given to the campaign committee.

4 B) Unless there is an objection, the documents
5 provided to the Commission by the Election Division
6 are entered into the record of this meeting; C) the
7 campaign finance staff completes the presentation,
8 and after they complete the presentation, a
9 representative of the committee will be recognized
10 first and may present their case for no more than
11 five minutes. Commission members may ask questions
12 during that presentation, but the time spent
13 answering these questions will not be counted
14 against the presenter's time. The Election
15 Division may signal the Chair when the presenter's
16 time is up.

17 E) if the presenter offers additional
18 documents or other physical evidence not previously
19 received by the Commission, then the original must
20 be provided to the Election Division, given to Dale
21 to preserve for the record.

22 F) if the Commission finds that a committee
23 has violated the campaign finance statute, the
24 state law requires a unanimous vote of all four
25 commissioners to waive or reduce the amount of

1 penalties set by state law.

2 G) if the Commission makes a decision at this
3 meeting to either fine a committee or dismiss the
4 case against the committee, then the Election
5 Division will prepare a final order for the
6 Commission to approve at a later meeting.

7 If a committee is fined today, the committee
8 will receive notice from the Election Division
9 after the Commission adopts the final order. So it
10 may be a month or so or longer before you actually
11 get notice to pay the fine.

12 H) the Commission generally begins at the
13 front of the room and ask those persons present to
14 come forward and have their matter heard. It is
15 very helpful if you speak up and say the cause
16 number on your hearing material so the commission
17 staff can quickly look up the spreadsheet.
18 Remember, identify yourself when you start
19 speaking. Are there any questions or objections
20 from commission members or any committee to these
21 procedures?

22 (No response.)

23 CHAIRMAN D. DUMEZICH: Hearing none, is
24 there a motion from a commission member or the
25 commission to adopt these procedures for today's

1 hearings?

2 VICE CHAIR A. LONG: For the campaign
3 finance hearing under Item 5 on the agenda, I
4 would move that we adopt those procedures.

5 CHAIRMAN D. DUMEZICH: Is there a second?

6 COMMISSION MEMBER B. BENNETT: Second.

7 CHAIRMAN D. DUMEZICH: Any discussion?

8 (No response.)

9 CHAIRMAN D. DUMEZICH: Since there's no
10 discussion, the question of the adoption of the
11 motion, all in favor of the motion to adopt
12 these procedures, indicate by saying aye?

13 THE COMMISSION: Aye.

14 CHAIRMAN D. DUMEZICH: All oppose?

15 (No response.)

16 CHAIRMAN D. DUMEZICH: The ayes have it.
17 The motion is approved. Campaign finance
18 enforcement actions. The Commission will
19 proceed to open its hearing on campaign finance
20 enforcement actions. Your binders include a
21 campaign finance spreadsheet prepared by Abbey
22 and Michelle.

23 Is there anyone in the first row who is here
24 on campaign finance enforcement actions today?

25 Please step forward, state your name, and spell it,

1 and give the cause number, please?

2 MR. B. MORRIS: Bob Morris, B-O-B,
3 M-O-R-R-I-S.

4 MR. J. REIDY: Good morning, Chairman and
5 commission members, Jeremy Reidy, R-E-I-D-Y, and
6 I apologize, I don't have the cause number with
7 me.

8 MS. M. THOMPSON: Mr. Chairman, that's on
9 Page 5 of the spreadsheet.

10 CHAIRMAN D. DUMEZICH: Please read into the
11 record the name and the number and we'll proceed
12 with the presentation, please?

13 MS. M. THOMPSON: Mr. Chairman, this is Bob
14 Morris for State Rep. This is Cause No.
15 2011-6124-382; and this is for a large
16 contribution. His proposed civil penalty is
17 \$1,000.44.

18 CHAIRMAN D. DUMEZICH: Do they have any
19 other violations?

20 MS. M. THOMPSON: No, but I'm sorry, this
21 committee has never been before the commission.

22 CHAIRMAN D. DUMEZICH: What would you like
23 to say about your case, sir?

24 MR. J. REIDY: Yes. Thank you, Mr.
25 Chairman.

1 VICE CHAIR A. LONG: Would you restate your
2 name? I don't know if your mike's on or not. I
3 didn't hear you.

4 MR. J. REIDY: Yeah. My name is Jeremy
5 Reidy. The last name is R-E-I-D-Y. I'm an
6 attorney in Fort Wayne and has volunteered as
7 treasurer of Mr. Morris's campaign. And I've
8 got an affidavit that I'd like to submit, but
9 I'll go ahead and summarize.

10 We received a large contribution in the amount
11 of \$1,000 by an individual named Dennis Wright and
12 we received a check on November 2nd. The check was
13 dated on October 28th. The deadline, the large
14 contribution deadline was October 31st.

15 So when I received the check, I thought in my
16 mind that we do not have to file a large
17 contribution supplement. At the end of the year,
18 on January 19th, when I went to fill out the CFA-1
19 for year end, I recorded the date on the check,
20 which is 10/28, rather than the date we actually
21 received the check, which was 11/2.

22 So I mean, I guess -- I guess what I'm asking
23 the Commission is to see my error. It's basically
24 a scribbler's error -- I recorded the wrong date
25 based on the date of the check, and take that into

1 consideration and maybe not make this contributor
2 lose his entire contribution to public service.

3 CHAIRMAN D. DUMEZICH: Do you understand
4 that you could have come up earlier and taken
5 the 25 percent fine; correct?

6 MR. J. REIDY: Yes, sir.

7 CHAIRMAN D. DUMEZICH: If in fact -- I
8 guess we should follow the statute, if in fact
9 he was under no obligation to record the check
10 in terms of the large contribution as to the
11 point of receiving it and his affidavit is
12 truthful, should we...

13 VICE CHAIR A. LONG: That's the question I
14 want answered, except for the faith value of the
15 affidavit that they received it on November 2nd,
16 would he have still been required to file?

17 MS. M. THOMPSON: No.

18 MS. A. TAYLOR: No.

19 VICE CHAIR A. LONG: Okay.

20 CHAIRMAN D. DUMEZICH: All right.

21 MR. D. SIMMONS: Mr. Chairman and Members
22 of the Commission, we have Code Citation
23 3-9-1-25, that that applies to when a
24 contribution is considered to be received and
25 accepted, and under Subsection B of that

1 statute, it indicates that that occurs when the
2 committee has physical possession of the
3 contribution and manifests an intent to keep the
4 contribution by depositing the contribution, so
5 it would be that later date.

6 CHAIRMAN D. DUMEZICH: So he would be under
7 obligation if he filed the forms on large
8 contribution if he had, in fact, received it on
9 the 2nd?

10 VICE CHAIR A. LONG: Or deposited on the
11 3rd...

12 CHAIRMAN D. DUMEZICH: You're an attorney,
13 did you look at the law in this regard?

14 MR. J. REIDY: I did.

15 CHAIRMAN D. DUMEZICH: And your position is
16 that...

17 MR. J. REIDY: My position is that we
18 received it on -- well, it's not real clear, the
19 statute is not exactly clear, but my
20 determination is I received it either the date
21 that it came into my hands or the date that I
22 deposited the check, one of the two.

23 CHAIRMAN D. DUMEZICH: And if you heard the
24 cite to the statute, it would indicate that you
25 had an obligation at that point to file the

1 large contribution form?

2 MR. J. REIDY: I don't think that's
3 determined by statute, by order of the
4 Commission, the dates.

5 MS. L. BARNES: Mr. Chairman.

6 CHAIRMAN D. DUMEZICH: It's determined by
7 statute.

8 MR. D. SIMMONS: Yeah. The statute would
9 require the one large contribution period. And
10 I don't recall exactly in November, the 2010
11 election date, but I think it was November...

12 CHAIRMAN D. DUMEZICH: 2nd.

13 MR. D. SIMMONS: Oh, it was the 2nd.

14 CHAIRMAN D. DUMEZICH: Yeah, he said he got
15 the thing on election day.

16 MR. D. SIMMONS: Okay. And then the large
17 contribution would have already passed. It
18 actually ended 48 hours before November 2nd,
19 2010.

20 VICE CHAIR A. LONG: Do you concur with
21 that?

22 MS. L. BARNES: I do, Mr. Chairman.

23 VICE CHAIR A. LONG: I recognize we close
24 the hearing out and go to the motion.

25 CHAIRMAN D. DUMEZICH: Any other

1 discussion?

2 (No response.)

3 CHAIRMAN D. DUMEZICH: Hearing none, close
4 the hearing. Do I hear a motion?

5 VICE CHAIR A. LONG: I move we dismiss the
6 complaint.

7 CHAIRMAN D. DUMEZICH: Do I hear a second
8 on the motion to dismiss?

9 COMMISSION MEMBER S. RIORDAN: Second.

10 CHAIRMAN D. DUMEZICH: Hearing a second,
11 all in favor of the motion to dismiss, please
12 indicate by saying aye?

13 THE COMMISSION: Aye.

14 CHAIRMAN D. DUMEZICH: All opposed,
15 indicate by nay?

16 VICE CHAIR A. LONG: I voted aye, I'm
17 sorry. It was very silent. It's typical of me.

18 CHAIRMAN D. DUMEZICH: I felt your presence
19 indicating an aye. 4-0, the motion carries.
20 There is no fine associated with this large
21 contribution.

22 MS. L. BARNES: Mr. Chairman, do you want
23 to advise the committee to amend their report to
24 reflect the report that they received and
25 deposited the check, and then that will indicate

1 why no fine was necessary?

2 VICE CHAIR A. LONG: Good idea.

3 CHAIRMAN D. DUMEZICH: Do I hear a motion?

4 VICE CHAIR A. LONG: So moved.

5 CHAIRMAN D. DUMEZICH: Second?

6 COMMISSION MEMBER B. BENNETT: Second.

7 CHAIRMAN D. DUMEZICH: Motion on the floor

8 for the committee to amend the report to

9 indicate the correct date when their was

10 received, all in favor, indicate by saying aye?

11 THE COMMISSION: Aye.

12 CHAIRMAN D. DUMEZICH: All oppose?

13 (No response.)

14 CHAIRMAN D. DUMEZICH: 4-0, the ayes have

15 it.. Amend your report.

16 MR. J. REIDY: Thank you, Mr. Chairman and

17 the Commission.

18 CHAIRMAN D. DUMEZICH: Row 2, anybody else

19 in Row 1 -- oh, we've got another one in Row 1.

20 Please state your name and give us the cause

21 number, please.

22 MS. L. PENCE: Mr. Chairman, my name is

23 Linda Pence. I'm here on behalf of

24 Infrastrutture Engineering, under Administrative

25 Cause No. 11-372.

1 MS. M. THOMPSON: Mr. Chairman, under your
2 blue tab in your folder there, this is
3 Infrastructure Engineering, Inc., Cause No.
4 11-372, contributed to the Marion County
5 Republican Central Committee in the amount of
6 \$5,000. This committee has never been before
7 the -- this corporation has never been before
8 the Commission before and the Marion County
9 Republican Central Committee did refund 3,000.
10 The proposed civil penalty is three times the
11 amount of the excess contribution.

12 MS. L. PENCE: May I proceed?

13 CHAIRMAN D. DUMEZICH: Yes, you may.

14 MS. L. PENCE: Mr. Chairman, and Members of
15 the Commission, before I proceed on this, I do
16 want you to know I've only been here before you
17 one other time, so in preparing for this and
18 representing this client, I interacted with your
19 staff, co-chairs, the attorneys, they are
20 remarkable, and I could tell you as a
21 first -- as a lawyer that's experienced the
22 patience that they used with me, and I know that
23 they deal with others, it's remarkable, and I
24 want you to recognize that. I want to do make
25 sure I said that.

1 VICE CHAIR A. LONG: They do the same with
2 us. They show a lot of patience.

3 CHAIRMAN D. DUMEZICH: As good as they are,
4 they make up for the deficiencies of the
5 chairman.

6 MS. L. PENCE: Hopefully, I will get
7 through this today because of their patience and
8 their assistance so I wanted to thank them
9 first. Infrastructure is a Chicago firm, a
10 engineering firm. This is its first time that
11 it has been cited for any improper conduct.

12 We filed a motion to dismiss, however, and
13 memoranda because the contribution was made in
14 September 2008, and this action was not commenced
15 until June 13, 2008, so I think two and a half
16 years thereafter --

17 VICE CHAIR A. LONG: Wait a minute. You
18 said it wasn't commenced until June 13, 2008?

19 MS. L. PENCE: 2011, sorry.

20 VICE CHAIR A. LONG: '11.

21 MS. L. PENCE: Thank you. So it's well
22 over the two-year statute of limitations which
23 is something that we should all be vigilant
24 about because this company, as an Illinois
25 company, was not thoroughly aware of the Indiana

1 laws. They did not come to me and were not
2 aware of even the pending action, or they
3 received an letter, I think it was May of this
4 year, so we went in and did an audit and have
5 been working with them to make sure going
6 forward that all of their procedures are in
7 place so that this will not occur again.

8 The quicker you can get an action or be
9 advised that you have committed some error is
10 helpful to the client. It's helpful to any person
11 that's dealing with the State of Indiana. So I
12 would request that you dismiss this because of the
13 two-year statute of limitations.

14 CHAIRMAN D. DUMEZICH: You start the
15 statute -- first of all, I don't know if two
16 years is appropriate. The second thing is you
17 start your statute from the point that the check
18 is received. In all fairness, whether you --
19 the statute commenced from the point that the
20 report was filed.

21 MS. L. PENCE: No, this is -- I would think
22 this is the statute -- whoever is giving a
23 contribution has no obligation to file a report.
24 They're writing a check on that date. I don't
25 think if you're the person making the

1 contribution, you would look when you make it
2 and you would presume that the people collecting
3 the money would know the law and would advise
4 you quickly if you made a mistake. So I would
5 suggest that the payment of the check would be
6 the starting point.

7 CHAIRMAN D. DUMEZICH: How would this
8 commission be on notice that the payment was
9 made until we received the report then? See,
10 the statute is working against your argument.
11 If your statute is appropriate, your argument
12 would be that the statute is working against the
13 ability of this commission.

14 If this commission is not put on notice, why
15 would a statute of limitations commence, and I
16 would cite just the common tax return in this
17 regard?

18 MS. L. PENCE: Well, sir, our common tax
19 return, once you file your common tax return,
20 statute of limitations seems to run from the
21 date of filing.

22 CHAIRMAN D. DUMEZICH: Date of filing of
23 the return; correct?

24 MS. L. PENCE: Yes, sir, but that --

25 CHAIRMAN D. DUMEZICH: Then it's the

1 three-year statute's fault.

2 MS. L. PENCE: But as the taxpayer, I'm the
3 one that has return over when that tax return is
4 filed. What you're suggesting from the
5 commission's standpoint is that somehow someone
6 who makes a campaign contribution is supposed to
7 also -- who has no control over when any of the
8 filings are made by the various committees, how
9 can you be responsible for that?

10 CHAIRMAN D. DUMEZICH: Well, the fact of
11 the matter is you chose to make a contribution.
12 If they never filed the return, you're saying
13 that this commission would have no recourse to
14 people who have violated the law. I don't think
15 that works on any level. I think, though, when
16 was this return -- excuse me, when would this
17 filing have been made by the corporation?

18 VICE CHAIR A. LONG: That was my question.
19 I suspect the filing is over two years so it may
20 be an academic issue, so the filing should have
21 been before June 13th, 2009.

22 MS. L. PENCE: No, I think this was
23 returned. I have one letter that was undated,
24 unfortunately, that came from the Marion County
25 Republican Central Committee saying that we're

1 returning the \$3,000 to you. It says the
2 individual tasked with managing contribution
3 collections is no longer employed by the Marion
4 County Republican Party so we're returning it to
5 you.

6 So I know that there is a letter -- oh, you
7 know what, I apologize, because on June 3rd, 2009
8 there was a letter from Michelle Thompson, campaign
9 finance coordinator, to the Marion County
10 Republican Central Committee, Lisa Dietrick
11 (Phonetic), stating before me an audit was
12 performed, and we have learned, and they name -- I
13 won't mention all the different companies, but
14 Infrastructure was one, had made an excess
15 donation, and so this commission knew as of 2009,
16 June 2009, that there was an excess. They didn't
17 even file their until June 2011.

18 VICE CHAIR A. LONG: I would suggest you
19 put that letter in. Is it already in, I'm
20 sorry?

21 MS. L. PENCE: I do not have a clean copy,
22 but I could --

23 MS. M. THOMPSON: We have it.

24 MS. L. PENCE: Is it in the file?

25 MS. M. THOMPSON: We have it in the file.

1 CHAIRMAN D. DUMEZICH: I believe it's
2 already in the record.

3 MS. L. PENCE: All right. Thank you so
4 much.

5 CHAIRMAN D. DUMEZICH: You cited to a two-
6 year statute of limitations. I'm baffled to see
7 where that's going to go.

8 MS. L. PENCE: Your Honor, the attorney
9 that prepared this motion is no longer with me
10 and left for another job and I apologize. I
11 should have brought that statute with me and I
12 just presumed that it was correctly cited.

13 VICE CHAIR A. LONG: You cited the Civil
14 Code, Title 34, the general statute of
15 limitations, and I think the issue that the
16 gentleman raised what's the nexus between our
17 enforcement actions and the statute of
18 limitations and how are those provisions
19 governed, Title 3 enforcement to be governed by
20 Title 34 civil statutes and limitations, and I
21 think that's the issue at hand.

22 CHAIRMAN D. DUMEZICH: If you can let me do
23 this correctly.

24 MS. L. PENCE: Well, my only question would
25 be, does that mean that you yourself with this

1 statute doesn't have its own statute of
2 limitations, and if it doesn't, would you have
3 to turn -- you know, turn to some other
4 statute -- I mean, you couldn't have the
5 ability, I would think, to come back after
6 somebody ten years later.

7 For example, in your -- in your example about
8 what would we do if somebody doesn't file, what if
9 they've never filed and you learn about it 15 years
10 from now, do you still have the right to come back?
11 I mean, there has to be --

12 CHAIRMAN D. DUMEZICH: Oh, yeah, they do.

13 MS. L. PENCE: I bet -- I bet people would
14 take issue with that.

15 CHAIRMAN D. DUMEZICH: Then I guess the
16 question is what's the statute of limitations
17 that applies here in Indiana, and what I would
18 suggest is that we ask our attorney general to
19 give us an opinion on this.

20 VICE CHAIR A. LONG: And I don't dispute --
21 disagree with you at all. I'm curious if our,
22 if our house counsel could weigh in on the
23 issue, and if they haven't, I don't mean to
24 embarrass anybody, but I think this is an
25 interesting question that we've just started

1 . recently having some issues raised on this, and
2 I think we need to form a determination so that
3 we're hopefully correct.

4 CHAIRMAN D. DUMEZICH: Mr. Deckard.

5 MR. T. DECKARD: Mr. Chairman, Mr. Vice
6 Chair, thank you. We -- in the past, earlier
7 this year, we have made mention to the
8 Commission that certainly the statute of
9 limitations issue would have to be examined and
10 looked at, how does that apply? Mr. -- I would
11 let Mr. King talk about any inquiry that has
12 made to the attorney general office. Now my
13 staff has not done that, but certainly, I would
14 ask counsel, our counsel to maybe discuss some
15 essential statutes that we have looked at and
16 where the question is, although we have not
17 received to my knowledge anything definitive
18 either from the commission or the attorney
19 general.

20 MS. L. BARNES: Thank you, Mr. Chairman.

21 As Mr. Deckard said, we had looked at this issue
22 in an earlier case earlier this year, not
23 applying it particularly to this instance, but
24 we felt that the statute in Title 34, 34-11-2-4
25 would apply to the Commission, and that was our

1 opinion, and I --

2 CHAIRMAN D. DUMEZICH: That's the two-year
3 statute?

4 MS. L. BARNES: Yes, it is a two-year
5 statute for any forfeiture of a penalty, and as
6 Mr. Deckard said, I think Mr. King can speak to
7 the inquiry that we made to the attorney
8 general's office and whether we've received a
9 reply.

10 MR. B. KING: Thank you, Mr. Chairman,
11 Members of the Commission, before doing so, I
12 defer to my counsel, Dale Simmons, to present
13 his view regarding the applicable statutes.

14 MR. D. SIMMONS: Mr. Chairman, Members of
15 the Commission, I searched for the statute of
16 limitations and ran across the same statute as
17 the only one I could find potentially applicable.
18 was 34-11-2-4, which is -- applies to actions
19 for a forfeiture of penalty given by statute,
20 and so I thought that if any statute applied,
21 that one probably would.

22 So I searched for cases that applied that to
23 agency actions, and I could find none, except one
24 that they attempted to apply it to a BMV statute
25 that would take a license away from a habitual

1 traffic offender. There, the court said we aren't
2 going to apply the statute here because it's not --
3 it doesn't meet that definition of forfeiture of
4 penalty given by the statutes. This statute was
5 enacted for the protection of the public.

6 Now while they distinguish it on that grounds,
7 I sort of took it that they probably would have
8 accepted it, and we're talking about monetary
9 penalties, but I wasn't sure, and that's why we
10 made the inquiry to the attorney general setting
11 out that particular argument, that case, and saying
12 hey, what do you guys think?

13 In addition, some of the issues you discussed
14 today, does a discovery rule -- clearly, the
15 discovery rule does apply, and we found cases that
16 apply to another subsection in this section, injury
17 to person. There is a discovery rule out there
18 that applies to that particular subsection.

19 I couldn't find a case that applied the
20 discovery rule to forfeiture of penalty given by a
21 statute, but it seems to me logically that there
22 would be a discovery rule that would apply, but
23 those are -- and then -- and then you get into
24 question when does the discovery rule apply, when
25 the report is filed, that seemed logical to me as

1 well.

2 But these are the questions I posed to the
3 Attorney General just to see if they had any
4 additional resources that they could bring that
5 bear on that question.

6 CHAIRMAN D. DUMEZICH: How did we depose of
7 the case earlier, the case that started this;
8 does anyone remember?

9 VICE CHAIR A. LONG: I think we took
10 (indiscernible) proper arrangements, as I
11 understood it, and waived the fines. Was
12 that --

13 CHAIRMAN D. DUMEZICH: Mr. Tew.

14 VICE CHAIR A. LONG: -- Mr. Tew's case? I
15 thought that's the one where it had been raised
16 once before.

17 CHAIRMAN D. DUMEZICH: That was SEIU.

18 MR. T. DECKARD: Mr. Chairman, as I recall,
19 there was a proposed penalty that the Commission
20 entered.

21 CHAIRMAN D. DUMEZICH: Well...

22 MS. L. PENCE: Mr. Chairman, one of the --
23 I apologize.

24 CHAIRMAN D. DUMEZICH: No, go right ahead.

25 MS. L. PENCE: Mr. Chairman, one other date

1 that I neglected to tell you was the report was
2 filed on October 17th, 2008, but the Marion
3 County Republican Party filed this report to
4 seek some expenditures, so that was
5 approximately, two years and several months.

6 CHAIRMAN D. DUMEZICH: Yeah, we think that
7 report would put them on notice, put us on
8 notice as of that date. The question is, I
9 guess, since we've asked the attorney general,
10 we have to renew our efforts to get that ruling,
11 but I don't particularly think that if we do
12 something here in light of the fact that we're
13 asking for that, if he comes back with a
14 different interpretation, we can adopt it from
15 that point forward.

16 VICE CHAIR A. LONG: I would be inclined,
17 Miss Pence, someone invoke Trial Rule 41(E),
18 that she move for a continuance with this matter
19 until we get a unified position and issue an
20 advisory to our counsel and the attorney general
21 can uniformly come up -- if they don't have --
22 I'm not suggesting an official opinion, if we
23 can get exhaustive resources, which I think
24 everyone has tried to do, we can come up with an
25 opinion to get a uniformed decision.

1 CHAIRMAN D. DUMEZICH: Does that work for
2 you?

3 MS. L. PENCE: I'm not sure I understood.

4 CHAIRMAN D. DUMEZICH: Move to continue.

5 MS. L. PENCE: Move to continue until we
6 hear an opinion from the attorney general?

7 CHAIRMAN D. DUMEZICH: Yeah.

8 VICE CHAIR A. LONG: Not a formal opinion.
9 It's just until we get to the point that we can
10 make a decision based on the maximum amount of
11 legal advice that we can get, and Dale, I -- I
12 have to tell you that I concur. I think
13 discovery is probably not something we have to
14 address in this issue because it's not germane
15 to this one, but I agree with your assessment on
16 discovery, that we have to have some vehicle to
17 know about it before we start -- beyond that, I
18 think we're clearly past the two years under any
19 scenario, and if it applies in this case, it
20 should be dismissed, and if it does not, then it
21 should not.

22 COMMISSION MEMBER B. BENNETT: Is there a
23 procedure for us to take the matter under
24 advisement? I don't think we need any more
25 evidence or testimony in a subsequent hearing.

1 We just need to make a decision based on the
2 statute of limitations.

3 VICE CHAIR A. LONG: Other than the delay
4 on our part. My only suggestion is that should
5 be at the instance of the individual before the
6 commission, and that way, we're not tagged with
7 any delays or procedural issues of failure to
8 decide the case that we're -- that they've asked
9 us to do this so we'll have a uniformed policy
10 that applies with respect to that, but I agree,
11 we don't need any more evidence.

12 MS. L. PENCE: Obviously, it's my hope that
13 the attorney general would agree with our
14 position and there would be a dismissal. If the
15 attorney general did not, I would want to be
16 approaching you regarding the first time
17 offense, etc., so I would like to have that
18 option.

19 CHAIRMAN D. DUMEZICH: Absolutely.

20 MS. L. PENCE: The only other concern that
21 I have, though, is I was advised coming in here
22 that this opinion had been requested of the
23 attorney general and it had not been
24 forthcoming. What happens if we don't have an
25 opinion within six months -- I mean, is it still

1 open or...

2 CHAIRMAN D. DUMEZICH: We'll dismiss it.

3 VICE CHAIR A. LONG: We'll make a decision.

4 MS. L. PENCE: Oh, okay.

5 VICE CHAIR A. LONG: We just want to make
6 the best decision we can, at least I do, and I'm
7 sure everyone else does, too. That's an
8 interesting point -- I mean, we've not ever
9 taken into -- we had one other issue that was
10 raised, and that one was resolved by settlement,
11 and I mean, this is something that we need to
12 take a unified position on -- right or wrong, we
13 need to be square with it, I think.

14 MS. L. PENCE: Well, I do understand your
15 obligations and responsibilities, and you know,
16 there's got to be mechanisms to bring it to your
17 attention as soon as possible, but it's also
18 important, I think, for people that are dealing
19 and making contributions to have a clear -- to
20 know if they're violating the laws, from a
21 practical -- you know, they're -- so they can
22 make sure that they're following the law
23 correctly moving forward so...

24 CHAIRMAN D. DUMEZICH: Agreed.

25 MS. L. PENCE: So I'm requesting a

1 continuance.

2 COMMISSION MEMBER S. RIORDAN: Before you
3 do that, I have a question. This is for all the
4 lawyers up here, what if we don't agree with
5 what the attorney general says?

6 VICE CHAIR A. LONG: I think we have to
7 agree with it. I would like to have some input
8 on it -- I mean, I have some thoughts on it
9 myself, and I think counsel isn't too far apart,
10 from what I've heard, with my interpretation.
11 They pretty much seem to be on the same book and
12 page, and I'm not uncomfortable with their
13 assessment, but again, this is an issue that has
14 some far reaching concerns in my mind and beyond
15 the committee's interpretation.

16 COMMISSION MEMBER S. RIORDAN: Will the
17 corporation at issue have an opportunity to make
18 its case to the attorney general about the
19 answer to that question, what's the statute of
20 limitations?

21 CHAIRMAN D. DUMEZICH: If they have a legal
22 memorandum, they certainly should provide that
23 legal memorandum to the attorney general.

24 VICE CHAIR A. LONG: I would make a
25 recommendation as to members of this commission

1 and Ms. Pence to speak with whoever they're
2 dealing with so that -- you know, I just want it
3 totally vetted by our staff and the AG, because
4 if we're wrong, the attorney general is going to
5 have to defend us, I guess.

6 MS. L. PENCE: So I would agree -- what I'm
7 understanding is that I would contact the staff
8 and find out who within the attorney general's
9 office is making this and perhaps I forward my
10 motion and memorandum to them for their
11 consideration?

12 CHAIRMAN D. DUMEZICH: We will forward that
13 to them, and we will tell you who's handling it,
14 and give you the number so you can call.

15 MR. T. DECKARD: Mr. Chairman?

16 CHAIRMAN D. DUMEZICH: Yeah.

17 MR. T. DECKARD: If I may, sir, I want to
18 recommend, since at this time, the only request
19 has come from Mr. King, that maybe for official
20 action, the commission adopt -- take a vote on
21 the motion to have the division in a bipartisan
22 way renew the request with the attorney general
23 and also offer the memorandum from Ms. Pence.

24 VICE CHAIR A. LONG: So moved.

25 CHAIRMAN D. DUMEZICH: Second?

1 COMMISSION MEMBER S. RIORDAN: I just -- I
2 just have another procedural question for you.
3 If we get advice from the attorney general about
4 what he believes the appropriate statute of
5 limitations is and we come back and make that
6 decision and someone else in the future decides
7 that they want to challenge it, that still
8 doesn't make this under the law -- a court will
9 have to make this law; right, so what's wrong
10 with us making a decision right now about what's
11 the applicable statute of limitations, and then
12 if the corporation doesn't like that ruling,
13 then they can start the process, and if the
14 State doesn't like that process or whoever the
15 proper party would be, then they can start the
16 process, why can't we do that right now?

17 CHAIRMAN D. DUMEZICH: I would like to have
18 it resolved without litigation just to save
19 costs on everybody's part.

20 COMMISSION MEMBER S. RIORDAN: I think what
21 we're saying, even if we get the advice of the
22 court, either way, the court has to decide, and
23 I've not done the research -- I mean, I know
24 enough about the statute of limitations to have
25 a pretty strong feeling about what would apply

1 here, but I'm not judge. So if the attorney
2 general gives us advice and we make that
3 decision and that's not a set law, then it has
4 to go to the court; right?

5 CHAIRMAN D. DUMEZICH: Well, why don't you
6 make a motion and see if we get a second --
7 let's take a vote -- and if that's not the case,
8 then we'll hear her motion for a continuance,
9 how's that?

10 COMMISSION MEMBER S. RIORDAN: Fair enough.
11 I move that we grant the motion to dismiss the
12 case based on the failure of the Division to
13 take action within the applicable two-year
14 statute of limitations set forth in 34-11-2-4.

15 CHAIRMAN D. DUMEZICH: Motion on the floor
16 that says the two-year statute of limitations
17 applies to this violation, do I hear a second?

18 VICE CHAIR A. LONG: I'll second it.

19 CHAIRMAN D. DUMEZICH: Hearing a second,
20 any discussion?

21 (No response.)

22 CHAIRMAN D. DUMEZICH: Hearing none --

23 COMMISSION MEMBER B. BENNETT: I guess this
24 goes to the procedural aspect. As a commission
25 member, I would prefer to make a decision

1 informed by the opinion of the attorney general.

2 CHAIRMAN D. DUMEZICH: So we have --
3 hearing no more discussion, all in favor of the
4 motion to apply the two-year statute to remove
5 the penalty in this case, indicate by saying
6 aye?

7 COMMISSION MEMBER S. RIORDAN: Aye.

8 CHAIRMAN D. DUMEZICH: Aye.

9 VICE CHAIR A. LONG: Aye.

10 CHAIRMAN D. DUMEZICH: Opposed?

11 COMMISSION MEMBER B. BENNETT: Abstain.

12 CHAIRMAN D. DUMEZICH: (Indiscernible) so
13 we don't need an extra vote?

14 VICE CHAIR A. LONG: That's true.

15 COMMISSION MEMBER S. RIORDAN: That's true.

16 CHAIRMAN D. DUMEZICH: With that in mind,
17 the vote is 3-0, and the penalty does not apply
18 to you, but I would still ask that we get the
19 ruling from the attorney general. Okay, do I
20 have a motion with respect to that?

21 VICE CHAIR A. LONG: As I understand it,
22 right now, we've set a precedent believing that
23 the two-year statute applies, and I don't have
24 any problem with that -- I mean, I think this,
25 too, and this case that's before us now is over,

1 I then renew the motion I made earlier for the
2 co-directors, the Division, actually, seek input
3 from the attorney general so that we might
4 review this for the future. I think this one is
5 clear enough in my mind, because of the timing
6 involved, that it's a clear issue, as far as I'm
7 concerned.

8 CHAIRMAN D. DUMEZICH: Motion on the floor
9 to instruct the Division to work with the
10 attorney general to come up with a
11 recommendation regarding the two-year statute,
12 there's a motion on the floor, do I hear a
13 second?

14 COMMISSION MEMBER B. BENNETT: I second
15 that.

16 CHAIRMAN D. DUMEZICH: Hearing a second,
17 all in favor of the motion, indicate by saying
18 aye?

19 THE COMMISSION: Aye.

20 CHAIRMAN D. DUMEZICH: Opposed?

21 (No response.)

22 CHAIRMAN D. DUMEZICH: 4-0s have it.

23 MS. L. PENCE: Thank you very much.

24 CHAIRMAN D. DUMEZICH: Row 2 -- anyone else
25 in Row 1 -- I'm sorry?

1 (No response.)

2 CHAIRMAN D. DUMEZICH: Row 2, please state
3 your name, spell it, and give us a cause number,
4 please?

5 MR. E. NEAL, JR.: Elijah Neal, Jr. That's
6 E-L-I-J-A-H, last name Neal, N-E-A-L, and then
7 Jr., and I do not have a cause number.

8 MS. M. THOMPSON: Mr. Chairman, this is
9 Ethnic Republican Council on Page 1, 3, 4 and 5.
10 These are all motions to reconsider previous
11 fines. First one is Cause No. 2011-5546-11 for
12 a proposed civil penalty of \$954.36; the next
13 one is 2011-5546-91 for a proposed civil
14 penalty -- actually, the fines were \$1,004.36;
15 Cause No. 2011-5546-40 with a fine of \$1,004.36;
16 and on Page 4, 2011-5546-63 with a fine of
17 \$1,004.36; and again on Page 5, 2011-5546-356 of
18 a fine of \$1,004.36.

19 CHAIRMAN D. DUMEZICH: There's four.

20 VICE CHAIR A. LONG: Five.

21 MS. M. THOMPSON: There's five.

22 CHAIRMAN D. DUMEZICH: Okay. Do you have
23 anything else for the record?

24 MS. M. THOMPSON: No.

25 CHAIRMAN D. DUMEZICH: Was that the motion

1 to reconsider?

2 VICE CHAIR A. LONG: Does that indicate we
3 previously had this before us, so we assessed
4 the fines?

5 MS. M. THOMPSON: Correct.

6 VICE CHAIR A. LONG: And the order has been
7 entered?

8 MS. M. THOMPSON: Yes.

9 VICE CHAIR A. LONG: And they have filed a
10 motion to reconsider?

11 MS. M. THOMPSON: Yes.

12 VICE CHAIR A. LONG: As to all five of
13 them?

14 MS. M. THOMPSON: All five of them.

15 MR. E. NEAL, JR.: Mr. Chairman and Board
16 Members, I just wanted to state that I wanted to
17 take personal responsibility for these late
18 filings. I let my personal issues, there was
19 two, pending divorce, I filed everything late
20 and basically that reflected on the PAC and also
21 some of the notices that were sent out were to
22 the Meridian address, and we did not receive the
23 previous notices, we are in the works of doing
24 that to save our organization to get a correct
25 address.

1 CHAIRMAN D. DUMEZICH: Does the PAC have
2 any money in it?

3 MR. E. NEAL, JR.: Approximately, 2,500.

4 CHAIRMAN D. DUMEZICH: Do you want to get
5 this PAC active?

6 MR. E. NEAL, JR.: Yes.

7 CHAIRMAN D. DUMEZICH: Or do you want to
8 close the PAC?

9 MR. E. NEAL, JR.: We'd like to keep it
10 active and...

11 VICE CHAIR A. LONG: They have been
12 filed -- everything's filed now?

13 MS. M. THOMPSON: Everything's up to date.

14 VICE CHAIR A. LONG: As of yesterday or the
15 day before?

16 MS. M. THOMPSON: Right.

17 VICE CHAIR A. LONG: When did we impose the
18 penalties, were they at various times?

19 MS. M. THOMPSON: Yes.

20 VICE CHAIR A. LONG: Okay. If you'll close
21 the hearing, I'll...

22 CHAIRMAN D. DUMEZICH: Do I hear any
23 discussion or questions for Ethnic for
24 Republican Council?

25 (No response.)

1 CHAIRMAN D. DUMEZICH: Hearing none, I'll
2 close the hearing.

3 VICE CHAIR A. LONG: I would move -- for
4 simplicity sake, I guess, if I could just use
5 the last two digits, is that going to help you
6 all?

7 MS. M. THOMPSON: Yes.

8 VICE CHAIR A. LONG: Cause No. 11, 91 on
9 Page 1, and No. 40 on Page 3, and No. 63 on Page
10 4, that we grant the motion to reconsider and
11 reduce the fine to a dollar, plus the mailing
12 costs, and in Cause No. 356, that we deny
13 that -- on Page 5, that we deny it.

14 CHAIRMAN D. DUMEZICH: There's a motion on
15 the floor to reconsider the annual fees for
16 2009's return and impose, what was the last
17 cause number?

18 VICE CHAIR A. LONG: The last one would be
19 356.

20 CHAIRMAN D. DUMEZICH: To impose a fine, a
21 proposed fine of \$1,000, plus mailing costs, do
22 I hear a second to that motion?

23 COMMISSION MEMBER S. RIORDAN: Second.

24 CHAIRMAN D. DUMEZICH: Hearing a second,
25 any discussion?

1 (No response.)

2 CHAIRMAN D. DUMEZICH: Hearing no
3 discussion, all in favor of the motion to
4 reconsider and impose a fine of \$1,000 plus
5 mailing costs, indicate by saying aye?

6 THE COMMISSION: Aye.

7 CHAIRMAN D. DUMEZICH: All opposed?

8 (No response.)

9 CHAIRMAN D. DUMEZICH: 4-0, the ayes have
10 it. So it's been reduced to \$1,000, plus
11 mailing costs.

12 MR. E. NEAL, JR.: From the...

13 CHAIRMAN D. DUMEZICH: Yes, from the
14 \$5,000. Stay current, or the next time, we'll
15 bankrupt you. Thank you.

16 MR. E. NEAL, JR.: Thank you.

17 CHAIRMAN D. DUMEZICH: Row 2, anyone
18 else -- Row 2?

19 (No response.)

20 CHAIRMAN D. DUMEZICH: Row 3, anyone
21 else -- Row 3?

22 (No response.)

23 CHAIRMAN D. DUMEZICH: Is there anyone that
24 is here for campaign finance enforcement actions
25 that have not spoken, that have not had their

1 case heard?

2 (No response.)

3 CHAIRMAN D. DUMEZICH: Are there any other
4 motions for continuance of campaign finance?

5 (No response.)

6 CHAIRMAN D. DUMEZICH: There are none. I
7 note that no one is present and testifying in
8 any remaining campaign finance matters scheduled
9 for 10:00 a.m. and declare all hearings on such
10 matters scheduled at 10:00 a.m. closed. Is
11 there a motion to impose the entire amount,
12 proposed penalty, plus mailing costs, in all
13 remaining campaign finance enforcement actions?

14 VICE CHAIR A. LONG: So moved.

15 CHAIRMAN D. DUMEZICH: Is there a second?

16 COMMISSION MEMBER B. BENNETT: Second.

17 CHAIRMAN D. DUMEZICH: Further discussion?

18 (No response.)

19 CHAIRMAN D. DUMEZICH: If not, all in favor
20 of the motion, indicate by saying aye?

21 THE COMMISSION: Aye.

22 CHAIRMAN D. DUMEZICH: Opposed?

23 (No response.)

24 CHAIRMAN D. DUMEZICH: Motion carries 4-0,
25 and it is adopted. Okay, we have a campaign

1 finance complaint filed by Mr. Dean Nelson. The
2 item is a campaign finance matter which is not
3 an enforcement action but instead a complaint.

4 VICE CHAIR A. LONG: Mr. Chairman, can I
5 make a motion?

6 CHAIRMAN D. DUMEZICH: Yes.

7 VICE CHAIR A. LONG: I would move and
8 request a matter of courtesy that Item No. 6 be
9 delegated down to 8 and 9, and we deal with the
10 VSTOP issues and the Lake County Redistricting
11 commission because those are, I believe, actions
12 that are being taken, official actions of the
13 election commission that have been properly
14 before and are before the commission, and I do
15 not believe that item No. 6 is.

16 And until that matter is defined more properly
17 based on our last meeting, it's my belief that
18 since I don't know who the -- for sure who the
19 party or parties are that Mr. Nelson is complaining
20 of, I can't determine my status as a member and do
21 not intend to participate and actually intend on
22 not being present during the participation of Item
23 No. 6.

24 And that my absence, as I would tell you, is
25 in no way the Chair's statement at the last meeting

1 indicated, that you felt that you could go ahead on
2 that, and I don't take exception on that, and you
3 can do as you wish, but I think that's an inquiry
4 that you're undertaking based on your statement
5 that an individual on the commission can do that,
6 and the other items are without question, in my
7 mind, official actions of the election commission,
8 and item No. 6 is not.

9 And the reason I'm requesting to move it is
10 because if it's moved down to after the Lake County
11 redistricting issue. I believe that's the last
12 item on the agenda, that I can simply quietly
13 excuse myself and leave and you all can stay here
14 until the cows come home, as far as I'm concerned
15 and do what you feel that you need to do and that I
16 could go about my business and head back south and
17 prepare for a jury trial on Monday.

18 CHAIRMAN D. DUMEZICH: I understand that
19 you don't believe that the commission has the
20 authority, or I, as the chairman of the
21 commission, has the authority to proceed forward
22 with this, and I think what we had instructed
23 was that we should have our counsel take a look
24 at this and give us a memorandum.

25 I would suggest that we hear what they say

1 about the memorandum, and at that point, make a
2 determination whether we need to move it to the end
3 because they may come back and say I don't have the
4 authority and we can be done with it.

5 COMMISSION MEMBER S. RIORDAN: Maybe as a
6 matter of courtesy to the mayor sitting here,
7 who's got to sit through the agenda, maybe we
8 can move them up on the agenda so they can get
9 home and back to work, that would be my
10 suggestion.

11 CHAIRMAN D. DUMEZICH: If we would like to
12 take Mayor McDermott, and then if we agree to
13 come back to Item 6 after we do that, then
14 that's something that I would entertain. Do we
15 have that agreement, so we can get Mayor
16 McDermott out of here.

17 MAYOR T. McDERMOTT, JR.: Thank you, Mr.
18 Chairman.

19 VICE CHAIR A. LONG: Let's get the Mayor
20 McDermott out of here.

21 MAYOR T. McDERMOTT, JR.: Thank you,
22 Mr. Vice Chair.

23 CHAIRMAN D. DUMEZICH: Do you have a
24 problem with that?

25 COMMISSION MEMBER B. BENNETT: No problem.

1 CHAIRMAN D. DUMEZICH: Let's go to Lake
2 County Redistricting. I'd like to recognize the
3 legislative advisory members, Senators Landske,
4 Rogers and Representative Richardson are present
5 and would like them to join us in the Lake
6 County Redistricting. Representative Harris is
7 absent.

8 VICE CHAIR A. LONG: Rogers is here.

9 CHAIRMAN D. DUMEZICH: She's right here.

10 VICE CHAIR A. LONG: Oh, I thought I had --
11 I knew I saw her.

12 CHAIRMAN D. DUMEZICH: Senator, you are
13 uncharacteristically quiet, and that's what
14 confused him.

15 SENATOR E. ROGERS: Just wait.

16 CHAIRMAN D. DUMEZICH: Reminds me of ten
17 years ago.

18 SENATOR E. ROGERS: Yeah, I know, Dan.

19 CHAIRMAN D. DUMEZICH: At our last meeting,
20 the commission members discussed the Lake County
21 Redistricting process and asked the election
22 division to adopt, to provide notice of this
23 meeting to the legislative advisory members, the
24 Lake County commissioners, the Lake County
25 Council and the Lake County Board of Elections

1 and Registration, and the county chairs of both
2 parties and the Libertarian Party, as well as
3 the Lake County media, so any interested party,
4 you would be on notice that we were going to
5 hold these hearings.

6 In your binders will be copies of the letters
7 we sent to these individuals, and I understand that
8 the copies of this letter were provided to all
9 media in the state, including K.G. Fox (Phonetic)
10 for a press release in the governor's office.

11 For the purpose of beginning our discussion
12 today, I make the following motion concerning the
13 procedures we'll follow in this process. One, that
14 we set a deadline at noon Indianapolis time on
15 Friday, November 14th -- excuse me, October 14th
16 for any individual to submit proposed commissioner
17 and council maps to the Election Division.
18 However, we would receive them today, if you have
19 them.

20 These maps must be in electronic format that
21 can be print the out by the Division for
22 distribution to the members and public. The maps
23 must be accompanied by a census population data and
24 may include a narrative setting for any additional
25 information that explains why the proposed

1 boundaries were drawn as they were.

2 If the map is submitted after this deadline,
3 it is not acceptable, and the deadline again is
4 October 14th, if the map is submitted after this
5 deadline, it is not acceptable or it is not in
6 acceptable electronic format or does not contain
7 census population data, the Election Division will
8 notify us of this substitution so this information
9 may be included in the record, but the proposed map
10 may not be considered further.

11 So you have to have something that complies by
12 October 14th, that as soon as possible after the
13 proposed map is filed with the Election Division,
14 the Division will post the map on its website,
15 along with a notice concerning the opportunity for
16 public comment which can be submitted in written
17 form or in person at our next meeting, that the
18 Election Division advise the Lake County Board of
19 Elections and Registrations to complete the process
20 of certifying any decisions or corrections to its
21 precinct boundaries, or any proposed precinct
22 boundary changes no later than October 14, 2011, to
23 reduce any uncertainty regarding the precinct
24 boundaries that final maps must follow. So
25 Mr. Gasarovic, can you take the message back to the

1 chairman that we must have, must have those
2 precincts done?

3 MR. N. GASAROVIC: I will.

4 CHAIRMAN D. DUMEZICH: Since the Commission
5 is acting as a legislative body to establish
6 these districts' map, they may also be submitted
7 by commission members. The proposed maps
8 submitted by any individual may be modified by
9 the Commission in the final order adopting the
10 final maps, that the Commission schedule a
11 meeting on or about Friday, October 28 to
12 receive public comment and discuss the proposed
13 maps, that the Commission schedule a meeting on
14 Monday, November 14th to adopt final orders
15 establishing the commissioner and council
16 districts that the individuals and media have
17 received written notice of this meeting receive
18 notice of the procedures adopted today, okay.
19 Do I have a second for this motion?

20 COMMISSION MEMBER B. BENNETT: I second the
21 motion.

22 CHAIRMAN D. DUMEZICH: Do the commission
23 members or legislative advisory members have any
24 comments or questions regarding the time -- at
25 this time regarding the motion?

1 VICE CHAIR A. LONG: Can I have just a
2 second, you put some dates in here?

3 CHAIRMAN D. DUMEZICH: Sure.

4 VICE CHAIR A. LONG: The first date was
5 October...

6 CHAIRMAN D. DUMEZICH: 14th, but we're not
7 doing anything, that's just what other people
8 have to do.

9 VICE CHAIR A. LONG: And the then next date
10 is?

11 CHAIRMAN D. DUMEZICH: October 28th.

12 VICE CHAIR A. LONG: October 28th.

13 CHAIRMAN D. DUMEZICH: October 28th for
14 public comment. You'll notice that we did not
15 set the location for this. If anybody would
16 consider wanting to hold the hearing in Lake
17 County, that would be a good time to discuss it,
18 during the discussion period, if we feel that
19 that would be appropriate -- in light of the
20 fact that's where we're redistricting, we would
21 certainly consider that. I know that's a
22 inconvenience to you guys. I will treat you to
23 dinner the night before.

24 VICE CHAIR A. LONG: My God, I wish. I
25 have a jury trial scheduled presently on

1 November the 14th.

2 CHAIRMAN D. DUMEZICH: We'll change that
3 date then. Well, the 11th is the Friday before,
4 isn't that Veterans Day, so we can't go that
5 way, so do you want to go, if we go -- does your
6 jury trial last a week?

7 VICE CHAIR A. LONG: No.

8 CHAIRMAN D. DUMEZICH: When will it be
9 certainly done that week?

10 VICE CHAIR A. LONG: You've already hit
11 my -- an old guy like me don't work on Fridays
12 anymore, so not Friday. You're going to be
13 right in the middle of deer season.

14 CHAIRMAN D. DUMEZICH: Not if you're born
15 in Hammond, Indiana.

16 VICE CHAIR A. LONG: Lake County is not a
17 bad county in Indiana, so that's why the -- the
18 17th or 18th.

19 CHAIRMAN D. DUMEZICH: Let's go with the
20 18th, November 18th, for the commission
21 scheduled to adopt the final order establishing
22 the commissioner and council districts. I don't
23 believe that should be in Lake County, but the
24 testimony on that should probably be in Lake
25 County.

1 VICE CHAIR A. LONG: 28th in Lake County,
2 that would be fine.

3 CHAIRMAN D. DUMEZICH: So the dates that
4 the Commission would schedule a meeting on
5 October 28th in Lake County, and I would ask
6 Democratic Chairman, Mayor McDermott, and
7 campaign staff, Mr. Gasarovic, to arrange a room
8 for us in Lake County that would be suitable for
9 a large crowd because I'm sure we'll have plenty
10 of fun, plenty of people showing up.

11 VICE CHAIR A. LONG: We have one input
12 on -- you raise something about precincts, and I
13 know they track a different time parameter than
14 redistricting, but one of our precinct people
15 weigh in on if that works with their proposed
16 schedule, works with their abilities to get done
17 what you scheduled, and I assume it does, but I
18 would like to hear from who's here.

19 MS. M. BRZYCKI: I apologize. I didn't
20 take the oath. I wasn't plan on testifying.

21 CHAIRMAN D. DUMEZICH: Is she testifying or
22 is this part of the discussion -- give her the
23 oath, Dale.

24 MR. D. SIMMONS: Raise your right hand?

25 (Ms. Brzycki complied.)

1 MR. D. SIMMONS: Do you solemnly swear and
2 affirm under the penalty of perjury that the
3 testimony to the commission is the truth, the
4 whole truth and nothing but the truth, say I do?

5 MS. M. BRZYCKI: I do. I have a couple of
6 concerns. The first one is the October 15th
7 deadline for precincts, the Election Division
8 has previously sent them a guideline regarding
9 the precincts by November the 10th, and I know
10 that that's what their current goal is.

11 They've been diligently working on it. Over
12 the summer, they have been working with both the
13 vendor and myself, and I believe I can say I do not
14 think there's any way that we can possibly be
15 finished by October 14th with the whole precinct
16 process.

17 Their goal is still for the November 10th
18 guideline that we gave, and that would probably be
19 a more suitable deadline for the precinct process.
20 My second concern with having them -- having the
21 maps submitted by anybody who's an interested party
22 by October 14th, we're advising all of our counties
23 to hold off on the commission council districts
24 because they should go on precinct lines until
25 after the precincts are set, the precincts that

1 would be used in our elections in 2012.

2 And so for that reason, any submissions that
3 come on should be the new precinct lines which
4 won't be set until the county is done with the
5 precinct portion of the process.

6 VICE CHAIR A. LONG: How would it impact,
7 Mr. Chairman, just thinking out loud here, if
8 they're not looking to be done until the 10th as
9 the deadline, and is that, the Office of Census
10 Data is that the right term, isn't that you
11 all's date?

12 MS. M. BRZYCKI: No, that is actually just
13 our project deadline. The legal deadline given
14 to us by the legislature is no later than
15 January 1st of 2012. That would be far too
16 late. I was thinking of passing the deadline
17 for these districts. So our office has worked
18 together and sat down and come up with some
19 guidelines. The first one is actually tomorrow
20 for the small counties, who have just small
21 corrections, and then for the larger counties
22 that have more complicated issues, Lake County
23 included, is on November 10th.

24 VICE CHAIR A. LONG: My question, if we go
25 to Lake County on the 28th to have a hearing and

1 the precincts aren't drawn, that would be
2 problematic, and I think your goal on your
3 deadlines -- I'm not taking exception to that at
4 all -- I mean, that's a -- you know, that's an
5 admirable approach to it, at least to the folks
6 that are here --

7 CHAIRMAN D. DUMEZICH: I think everything
8 has got to go back one month. We have to wait
9 until after November 10th because that's the
10 deadline that they gave them because --

11 COMMISSION MEMBER S. RIORDAN: And there's
12 no way that Lake County will be done?

13 MS. M. BRZYCKI: There's no -- I do not
14 believe that there's no way we can be done by
15 October 14th. I could definitely -- you know, a
16 few of the counties do have top priority
17 contracts by the commission of October 1st, but
18 I do not think October 14th would be doable,
19 even with that directive.

20 VICE CHAIR A. LONG: What do you think
21 you -- you might weigh in, what do you think
22 would be a realistic time frame?

23 MS. M. BRZYCKI: It's a very very complex
24 county so I would ask -- I would think the --
25 having the whole month of October to do any back

1 and forth that needs to happen between our
2 office and the Office of Census Data and their
3 office and their vendor, I would hope to have it
4 go before -- by the end of October.

5 SENATOR S. LANDSKE: My question was just
6 how many precincts are in play here, is it the
7 whole county or...

8 MS. M. BRZYCKI: (Indiscernible) deal with
9 as many corrections of their entire county.

10 SENATOR S. LANDSKE: It's not
11 (indiscernible).

12 SENATOR E. ROGERS: And the complexities
13 are?

14 MS. M. BRZYCKI: You in Lake County have a
15 whole lot of cities and towns, whereas many
16 other counties just have a small handful, and
17 Lake County drops all their precinct lines on
18 these corporate boundaries. So any annexation
19 has to be dealt with in the area and questioned
20 very closely, and that, combined with the fact
21 that the Lake County JS Department has built a
22 very nice parcel based on parcels and not census
23 blocks, that the map -- their parcel maps and
24 our census block maps are actually meaning the
25 same thing.

1 SENATOR E. ROGERS: Sounds complex to me.

2 CHAIRMAN D. DUMEZICH: I would think that
3 in the discussion that we're having up here is
4 that since the deadline of November 10th has
5 already been given, we probably should move our
6 14th deadline back to November 10th, and then
7 based on that -- because that's what everybody's
8 been working toward, but we would ask you --
9 more ask, plead with you to make sure that it
10 gets done by that date, then I think that we
11 need to have -- people will need to have at
12 least a week to...

13 UNIDENTIFIED SPEAKER: I have a doctor's
14 appointment.

15 VICE CHAIR A. LONG: Why don't we move the
16 18th hearing date, the one we set for the 18th
17 and go to Lake County on the 18th of November so
18 that -- I think everybody is square on that
19 date -- well, somebody -- you have a doctor's
20 appointment, that's -- I'm just thinking out
21 loud and then --

22 CHAIRMAN D. DUMEZICH: The 19th was good
23 for you, though; right?

24 VICE CHAIR A. LONG: That's a Saturday.

25 CHAIRMAN D. DUMEZICH: Oh, okay.

1 VICE CHAIR A. LONG: I don't work on
2 Saturdays.

3 COMMISSION MEMBER S. RIORDAN: Especially,
4 if we're going to...

5 CHAIRMAN D. DUMEZICH: We will.

6 VICE CHAIR A. LONG: I mean, I can -- I'll
7 do that. Could I ask what time the doctor's
8 appointment is or is it something that's going
9 to take all day?

10 UNIDENTIFIED SPEAKER: Well, I'm at 9:00
11 o'clock in Noblesville, and then 10:00 in Lake
12 County is just...

13 VICE CHAIR A. LONG: So if we did it on
14 the -- in the afternoon, set it at 1:00 o'clock,
15 then you can make it?

16 SENATOR E. ROGERS: She just told me she
17 trust me.

18 VICE CHAIR A. LONG: Oh, my goodness.

19 UNIDENTIFIED SPEAKER: The two of you
20 can -- everybody can be there except me. Don't
21 change it.

22 VICE CHAIR A. LONG: The 28th is off. 18th
23 in Lake County, and you all set the time, I
24 don't care.

25 COMMISSION MEMBER S. RIORDAN: And the

1 deadline for submission of the maps is November
2 10th now?

3 CHAIRMAN D. DUMEZICH: Yes.

4 COMMISSION MEMBER S. RIORDAN: Is that
5 feasible? Can you get your map in on the same
6 day? Is that workable with people?

7 MS. M. BRZYCKI: I mean, they would need to
8 receive the maps from Lake County, whether it be
9 from their office or -- and if they go all the
10 way to the November 10th deadline, I mean, just
11 to make their maps conform to ours, with small
12 precinct changes and large precinct changes, I
13 don't think we need a large amount of time after
14 that because I'm assuming that the majority of
15 the work will be done before that and it just
16 needs to be adjusted, the small amounts, but I
17 don't think the same day would be possible.

18 VICE CHAIR A. LONG: So we're -- we're
19 not...

20 COMMISSION MEMBER S. RIORDAN: What are
21 they -- what do the Lake County folks think
22 about that, anything?

23 CHAIRMAN D. DUMEZICH: Well, could we do
24 the 10th -- we do the 10th and then...

25 COMMISSION MEMBER S. RIORDAN: Well, that's

1 what -- that's what Michelle is saying is that
2 if we do the 10th and her work is done on the
3 10th, maps coming in, then it's probably not
4 going to work.

5 MAYOR T. McDERMOTT, JR.: Mr. Chairman.

6 CHAIRMAN D. DUMEZICH: Yes.

7 MAYOR T. McDERMOTT, JR.: Thank you for
8 letting me talk. I just want to say that we're
9 willing to work with the Commission on dates.
10 We've already drawn the commissioner's map and
11 we've got (indiscernible) with a few
12 commissioners and we'll work on the council
13 maps -- I'm sure that they've crossed that river
14 on their maps as well, and our hope is we could
15 all come to some type of agreement locally so
16 that we make your job a lot easier, that's what
17 we're hoping, but we're willing -- we're very
18 open minded on the dates, so whatever works for
19 you works for us.

20 VICE CHAIR A. LONG: I suggest we use the
21 10th, and that's the goal, and you know, if they
22 need -- the Division can grant them a few days
23 to finish them, or a month or a week later, so I
24 think it probably would work.

25 REPRESENTATIVE KATHY RICHARDSON: Thank

1 you, Mr. Chairman. So are you using the maps
2 that they're using, the precinct maps?

3 MAYOR T. McDERMOTT, JR.: Mr. Chairman,
4 again, thank you for letting me speak. We work
5 with the current commissioners' districts and we
6 picked the commissioners, thinking it would be
7 the easiest, and it turned out to be very
8 complex, and I can only imagine the county
9 council districts would more complex, but we
10 face -- the starting point is where we are right
11 now. We didn't want to really change the wheel
12 too much, but obviously, the population has
13 changed in the districts a little bit.

14 REPRESENTATIVE KATHY RICHIARDSON: So
15 you -- but you're using current maps and not
16 precinct districts?

17 MAYOR T. McDERMOTT, JR.: Current maps,
18 yes, ma'am.

19 REPRESENTATIVE KATHY RICHIARDSON: So on
20 November 10th, let's say that's the date they
21 get the new precinct maps, then you're going to
22 get those new precinct maps and align them with
23 your commissioner districts?

24 MAYOR T. McDERMOTT, JR.: Maybe Kevin can
25 answer that. He's a little...

1 MR. K. SMITH: Kevin Smith, a member of the
2 Lake County Election Board. I think we can --
3 as they move forward towards adjusting these
4 boundary lines -- I talked with Patty who works
5 in the map department in the Election Division
6 and I know that she's been working with the
7 Division, so as they're working forward, I'm
8 sure we can adjust our maps as we move
9 forward -- I think that would work, so that
10 hopefully, I assume we're not going to be given
11 the final maps. I think we're going to be
12 exchanging information. As long as that
13 exchange of information is going back and forth,
14 I believe as we both progress forward, our maps
15 of November 10th could probably work and be in
16 sync, hopefully, with the final precinct maps.

17 CHAIRMAN D. DUMEZICH: Just so we're all on
18 the same page with these maps, they have to
19 respect communities of interest. Whereas
20 existing officeholders are not a major
21 consideration, we have to make sure that
22 minority populations are respected, and you
23 know, there's no coffee cups around houses and
24 that sort of stuff. We want to make sure that
25 this thing is squared up as much as possible

1 about. If we all have that and work towards
2 that, certainly, that could happen.

3 I would note that the commissioners'
4 districts, I looked at it for a little bit, and you
5 can do these commissioners' districts and respect
6 the communities of interest, not dividing one
7 school district, and have a margin of error under
8 200 people and have a black district that has well
9 over 50 percent population voting -- 50 percent
10 population and 52 percent voting age.

11 So I would ask, when we do these districts,
12 that we think about those things and make sure that
13 we would, in fact, have a black district and those
14 people are represented and it's all our goal to
15 make sure this is done.

16 MR. K. SMITH: We share that goal and we've
17 already talked about those things and our maps
18 are reflective of those as well.

19 MAYOR T. McDERMOTT, JR.: It's not
20 reinventing the wheel, Mr. Commissioner. The
21 current districts have worked for the better
22 part of the past few decades and we don't
23 reinvent the wheel -- I mean, I hope that's not
24 what we're talking about.

25 CHAIRMAN D. DUMEZICH: Right.

1 MAYOR T. McDERMOTT, JR.: The fact is, you
2 know, we have the American population all across
3 Lake County and...

4 CHAIRMAN D. DUMEZICH: But the vast
5 majority are located in Gary, although you have
6 a representative portion in your community as
7 well?

8 MAYOR T. McDERMOTT, JR.: Yes, sir.

9 CHAIRMAN D. DUMEZICH: As we all know, I
10 mean, the vast majority of people -- if there's
11 been population shift south, that means that
12 those lines actually have to come down in order
13 to capture the right amount in each district.

14 MAYOR T. McDERMOTT, JR.: Our commissioner
15 maps at this point, and they're all incomplete,
16 you know, but at this point, they're very well
17 balanced. I don't know if it's as tight as what
18 you said, but it's pretty tight, but they're all
19 pretty balanced so...

20 CHAIRMAN D. DUMEZICH: And the
21 commissioners' districts, it took about 20
22 minutes to key it on the computer and get it up.

23 MAYOR T. McDERMOTT, JR.: But you're a lot
24 smarter than us. It took us longer than 20
25 minutes but...

1 CHAIRMAN D. DUMEZICH: Not me. It's the
2 fine people that program those -- make those
3 programs, very smart programmers.

4 MAYOR T. McDERMOTT, JR.: Thank you.

5 VICE CHAIR A. LONG: Commission meeting
6 here after the 18th of November; is that
7 correct?

8 CHAIRMAN D. DUMEZICH: Yes, sir. So
9 that's -- let's see what we can do with these
10 dates. So at the deadline of noon Indianapolis
11 time on November 10th.

12 VICE CHAIR A. LONG: Procedurally, Mr.
13 Chairman, would you be moving to amend your
14 motion -- you got a second, I believe, but I
15 think we worked -- one other procedural thing, I
16 believe we're now meeting as the Lake
17 Redistricting Commission and we should have
18 separate minutes in all the things that go along
19 with that, and that motion -- everything else
20 stays the same, except you put the dates on it?

21 CHAIRMAN D. DUMEZICH: Yes, sir.

22 VICE CHAIR A. LONG: Yeah, and that's fine.

23 CHAIRMAN D. DUMEZICH: November 10th is
24 what date -- day?

25 MAYOR T. McDERMOTT, JR.: Thursday.

1 CHAIRMAN D. DUMEZICH: Thursday?

2 MAYOR T. McDERMOTT, JR.: Yes, sir.

3 CHAIRMAN D. DUMEZICH: And No. 1, the
4 deadline will be set noon Indianapolis time on
5 Thursday. It's now November 10th for any
6 individual to submit proposed commissioner and
7 council maps, district maps to the Election
8 Division. These -- so that is November 10th.

9 So 24th, the Election Division advises the
10 Lake County Board Elections and Registration to
11 complete the process of certifying any additions or
12 corrections to its precinct boundaries or any
13 proposed boundary changes no later than November
14 10th, 2011, to reduce any uncertainty regarding the
15 precinct boundaries, that final maps must follow.
16 Then the commission will schedule a meeting on or
17 about November 18th, which is what day?

18 VICE CHAIR A. LONG: Friday.

19 CHAIRMAN D. DUMEZICH: Friday at 10:00 a.m.
20 in Lake County.

21 VICE CHAIR A. LONG: Southern Indiana time,
22 by gosh.

23 CHAIRMAN D. DUMEZICH: Central.

24 VICE CHAIR A. LONG: Earline, you and I are
25 on the same time, by God. We get to come up

1 there on your time.

2 CHAIRMAN D. DUMEZICH: So the first week in
3 November, and then the Commission schedules a
4 meeting on or about Monday, December -- what's
5 the first Monday?

6 MAYOR T. McDERMOTT, JR.: The 5th.

7 VICE CHAIR A. LONG: 5th.

8 CHAIRMAN D. DUMEZICH: December 5th, to
9 adopt the final order establishing the
10 commissioner and council districts.

11 VICE CHAIR A. LONG: Hopefully, that would
12 be one that we can send the proxies to, that
13 works for me; does that work for you?

14 COMMISSION MEMBER S. RIORDAN: Yes.

15 CHAIRMAN D. DUMEZICH: Do I have a second
16 for the motion?

17 VICE CHAIR A. LONG: Second.

18 CHAIRMAN D. DUMEZICH: Okay.

19 VICE CHAIR A. LONG: Oh, I'm sorry, you
20 seconded the first one?

21 COMMISSION MEMBER B. BENNETT: I seconded
22 the first one. I'll second the amended motion.

23 VICE CHAIR A. LONG: That's fine. And that
24 meeting is ten Indianapolis time, December 5th?

25 CHAIRMAN D. DUMEZICH: Yes, 10:00 a.m.,

1 December 5th. Any public comment with respect
2 to the schedule or the motion that's currently
3 on the floor that sets the schedule and
4 instructs the Lake County Election Division and
5 Board of Elections and Registration to perform
6 certain tasks. Any comment at all?

7 (No response.)

8 CHAIRMAN D. DUMEZICH: Okay. I have a
9 second to amend the motion, all in favor of the
10 motion to amend, indicate by saying aye?

11 THE COMMISSION: Aye.

12 CHAIRMAN D. DUMEZICH: Now the motion in
13 chief, do I hear a position to accept the -- now
14 I got to just take the vote. All in favor of
15 the motion, indicate by saying aye?

16 THE COMMISSION: Aye.

17 CHAIRMAN D. DUMEZICH: Opposed, nay?

18 (No response.)

19 CHAIRMAN D. DUMEZICH: 4-0s, the ayes have
20 it.

21 VICE CHAIR A. LONG: Thank you all for
22 coming. I move to adjourn the meeting for the
23 Lake County Redistricting?

24 COMMISSION MEMBER S. RIORDAN: Second.

25 CHAIRMAN D. DUMEZICH: Hear a motion to

1 adjourn the Lake County Redistricting meeting,
2 all in favor, indicate by saying aye?

3 THE COMMISSION: Aye.

4 CHAIRMAN D. DUMEZICH: All opposed?

5 (No response.)

6 CHAIRMAN D. DUMEZICH: The ayes have it
7 4-0. Let's go back to Item 6 on the agenda.

8 VICE CHAIR A. LONG: Can I make a motion
9 correction?

10 CHAIRMAN D. DUMEZICH: Certainly.

11 VICE CHAIR A. LONG: You indicated that I
12 believed that you didn't have the authority to
13 conduct this inquiry, and I would only say to
14 you, and I'm not challenging that issue at all,
15 but I'm just saying I don't intend to
16 participate because I don't think it's an
17 official commission action and I can't determine
18 whether or not I need to disqualify myself under
19 a conflict of interest, and I'm not the person
20 challenging or making an issue, other than to
21 say that I don't intend to participate in it and
22 will respectfully absent myself. So you can go
23 ahead and do what you feel like you need to do.
24 I would make a couple of observations. I do
25 want to thank you for whatever this -- these

1 surroundings. I'm not used to all these
2 multitiered facilities, and I'm assuming because of
3 all the interference we've had earlier that we're
4 having some sort of electronic and maybe
5 video-graphic recording of what we're doing here
6 today.

7 I would think that just as a matter of
8 observation -- I assume that, I have not been told
9 that by anyone, but if we are going to broadcast
10 our commission meetings, I would think that the
11 members be notified of the agenda so I'm dressed
12 appropriately and wear my -- not wear my hunting
13 clothes.

14 CHAIRMAN D. DUMEZICH: To the best of my
15 knowledge, we are in this room solely because of
16 scheduling issue, and I don't believe that we're
17 being filmed at all.

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

19 COMMISSION MEMBER S. RIORDAN: Oh, yeah,
20 it's live.

21 CHAIRMAN D. DUMEZICH: It is?

22 COMMISSION MEMBER S. RIORDAN: Oh, yeah.

23 CHAIRMAN D. DUMEZICH: Really?

24 COMMISSION MEMBER S. RIORDAN: Yes.

25 VICE CHAIR A. LONG: All I'm saying --

1 CHAIRMAN D. DUMEZICH: I wish I would have
2 known that. I would have sat straighter during
3 this.

4 VICE CHAIR A. LONG: Sarah has told me not
5 to make my typical comments.

6 CHAIRMAN D. DUMEZICH: I wish you would
7 have told me.

8 VICE CHAIR A. LONG: I'm sneaking up on
9 you. I'm not complaining. I'm just requesting
10 as a courtesy that if you want to take 6 up at
11 this point in time, that's certainly up to you,
12 Mr. Chairman, and I don't have a problem doing
13 what you feel is important to do, and I'm a
14 little concerned we're in a legislative hearing
15 room that's under the legislative branch of the
16 government.

17 We're operating as the executives, presumably
18 investigating perhaps a legislative branch of the
19 government, but that's neither here nor there. I
20 just want to state my position. I will be here and
21 hopefully -- well, Item 7, once you see fit to call
22 it.

23 CHAIRMAN D. DUMEZICH: Okay. What I'd like
24 to do is I think the last time that we met on
25 this particular issue, we had instructed the

1 counsel to work together to come up with a memo
2 to sort of delineate what responsibility we have
3 and what authority we have, and I hate to say
4 this, I have not seen a memo.

5 VICE CHAIR A. LONG: I've seen both the
6 memos.

7 COMMISSION MEMBER S. RIORDAN: Maybe I can
8 start with a question, Mr. Chairman. Before we
9 hear from counsel about their legal opinions as
10 to authority, I would be interested in hearing
11 what exactly it is that you want to do? What do
12 you want to do?

13 CHAIRMAN D. DUMEZICH: What do I want to
14 do?

15 COMMISSION MEMBER S. RIORDAN: What is
16 your...

17 CHAIRMAN D. DUMEZICH: I want to find out
18 if there is a campaign violation.

19 COMMISSION MEMBER S. RIORDAN: On who?

20 CHAIRMAN D. DUMEZICH: Well, by the person
21 that the complaint was filed against.

22 COMMISSION MEMBER S. RIORDAN: And who
23 would that be?

24 CHAIRMAN D. DUMEZICH: It was State Rep
25 Battles.

1 VICE CHAIR A. LONG: Battles. Kreg Battles
2 was (indiscernible.)

3 CHAIRMAN D. DUMEZICH: Kreg Battles, and if
4 we determine that the investigation has to go
5 further than that or the hearing has to go
6 further than that, I would like to find out.

7 Now, one of -- here's -- I mean, here's --

8 COMMISSION MEMBER S. RIORDAN: My
9 question -- my question just became a little bit
10 more complicated -- the investigation? I don't
11 know what the investigation is you're talking
12 about and the authority for that.

13 CHAIRMAN D. DUMEZICH: The hearing.

14 COMMISSION MEMBER S. RIORDAN: And then
15 secondly, the hearing. I don't know of a
16 hearing and I don't know if the authority is the
17 same.

18 CHAIRMAN D. DUMEZICH: We heard a
19 complaint; right?

20 COMMISSION MEMBER S. RIORDAN: I don't -- I
21 recall a complaint being stated by a member of
22 the public, but as far as there being -- it
23 being made clear against who the complaint is
24 made, that's still not an obvious answer to me.
25 Anthony and I need to know what it is for

1 preserving the conflicts we have. So you can
2 tell me what is the objective here, what is the
3 objective to Mr. Nelson being on the agenda.

4 CHAIRMAN D. DUMEZICH: Is Representative
5 Battles here by chance?

6 VICE CHAIR A. LONG: I haven't seen him.

7 CHAIRMAN D. DUMEZICH: He has made a
8 complaint and a complaint is that he received
9 funds to stay in Champaign-Urbana.

10 COMMISSION MEMBER S. RIORDAN: Okay. He
11 made a complaint that he received funds -- I --

12 CHAIRMAN D. DUMEZICH: He made --

13 COMMISSION MEMBER S. RIORDAN: -- mean, Mr.
14 Nelson?

15 CHAIRMAN D. DUMEZICH: Mr. Nelson made a
16 complaint that State Representative by the name
17 of Battles received funds to stay in
18 Champaign-Urbana.

19 VICE CHAIR A. LONG: Actually, he said Kreg
20 Battles, as well other state representatives has
21 violated campaign finance statutes, and then
22 that was -- that's what was sent out in his
23 original e-mail directed to Brad King and Trent
24 Deckard on March 24th, 2011.

25 CHAIRMAN D. DUMEZICH: And he came before

1 this commission and gave testimony at that point
2 in time. It is clear to me he would like to
3 know if Representative Battles' report reflected
4 a contribution for funds that he received to
5 stay at the -- whatever it was, to stay in
6 Urbana-Champaign or Champaign-Urbana.

7 COMMISSION MEMBER S. RIORDAN: Is
8 Representative Battles' report a matter of
9 public record?

10 CHAIRMAN D. DUMEZICH: I think so.

11 COMMISSION MEMBER S. RIORDAN: Can you look
12 at that and see what that says?

13 CHAIRMAN D. DUMEZICH: I would think so.

14 COMMISSION MEMBER S. RIORDAN: I would ask
15 the commission to do that or take the time to do
16 that.

17 CHAIRMAN D. DUMEZICH: It seems as if there
18 is consistency. We know that he was there, we
19 know it was paid for, but it is not reflected on
20 his report.

21 VICE CHAIR A. LONG: As to discussion,
22 answer his question.

23 MS. L. BARNES: Mr. Chairman, that report
24 is not due until January. The representatives,
25 the legislative reports are not due until

1 January -- they're not on the ballot this year
2 and so they will file their 2011 report on
3 January 16th or 18th of 2012.

4 CHAIRMAN D. DUMEZICH: Dale, do you...

5 MR. D. SIMMONS: Yeah, in an off election
6 year, annual reports are filed in January of
7 2012.

8 CHAIRMAN D. DUMEZICH: And the large
9 contribution over thousand dollars only applies
10 in...

11 MR. D. SIMMONS: It applies between the end
12 of the reporting period and an election when you
13 have an election coming up. There's another one
14 that applies state wise that is not.

15 CHAIRMAN D. DUMEZICH: Okay.

16 COMMISSION MEMBER S. RIORDAN: So what are
17 we doing?

18 CHAIRMAN D. DUMEZICH: So what are we
19 doing.

20 COMMISSION MEMBER S. RIORDAN: Uh-huh.

21 CHAIRMAN D. DUMEZICH: We're trying to
22 ascertain if there has been an omission on a
23 report, and based on what I'm hearing now, it
24 doesn't appear that there has been. We will
25 have to wait until the report is filed for the

1 period ending -- the statute cited, you want to
2 read it?

3 MR. D. SIMMONS: The statute cited in the
4 complaint was 3-9-2-12, which restricts
5 fundraising activities, including receiving
6 contributions during the -- what's called the
7 long session or the budget session which
8 begins -- I think last year, it began January
9 2011, January 5th, and ended April 29th, 2011.
10 So the complaint actually identifies 3-9-2-12,
11 the written complaint, I'm referring to, as the
12 basis of the complaint.

13 CHAIRMAN D. DUMEZICH: So we wouldn't need
14 to have a report filed with respect to that
15 statute; is that correct?

16 MR. D. SIMMONS: Well, there would be a
17 report filed, I believe, by the state
18 committee -- if the issue is contribution
19 received, you have reports filed by the state
20 committee. I don't -- that's what the
21 allegation is, the state committee.

22 COMMISSION MEMBER S. RIORDAN: I don't know
23 that it is, counsel. That is not clear to me at
24 all, and I need to know, because if it is the
25 state committee, I'm their lawyer and I need to

1 excuse myself on the basis of that conflict.

2 That is very significant.

3 VICE CHAIR A. LONG: I have no conflict
4 against Representative Battles or any other
5 person from the general assembly. We hear cases
6 as legislators all the time. But if
7 Mr. Nelson -- presumably, when he was speaking
8 before us at our last meeting, he was claiming
9 the Indiana Democratic Party verbally, and the
10 only thing I know is the Indiana Democratic
11 Party was brought into his verbal statements at
12 the last meeting, which I was copied and spent a
13 consider amount of time reading the transcript
14 of that, trying to ascertain myself what the
15 subject matter is so I won't waste anybody's
16 time if I needed to conflict myself out of the
17 matter, but I don't see anything before the
18 Division or the Commission that relates to the
19 Indiana Democratic Party, other than a verbal
20 statement made by Mr. Nelson at our last
21 meeting, and what -- that's the issue, big issue
22 in my mind, as far as my personal conflict.

23 CHAIRMAN D. DUMEZICH: It all may be moot
24 based on what the -- what counsel says are the
25 authority of this commission, has to look into

1 these particular matters, so I would suggest
2 that we have a report from counsel on that and
3 maybe we can put this issue to rest today.

4 You were going to do it combined, but I
5 understand you didn't come to a combined result or
6 conclusion, so I guess would you like to report
7 what your findings were, and then we'll have...

8 COMMISSION MEMBER S. RIORDAN: Their
9 findings on what? I still don't understand.

10 CHAIRMAN D. DUMEZICH: What the authority
11 of this commission is to investigate the
12 allegations of wrongdoing with respect to, with
13 respect to campaign finance.

14 COMMISSION MEMBER S. RIORDAN: I don't even
15 know if there are allegations of wrongdoing. I
16 don't know at this further time that this
17 commission's counsel warranted that. Right now,
18 we have an agenda to move onto. A significant
19 amount of time has been spent on this already.

20 CHAIRMAN D. DUMEZICH: And a significant
21 amount of time is going to be spent in the
22 future as well.

23 COMMISSION MEMBER S. RIORDAN: What we are
24 dealing with. It seems to be that we're moving
25 back and forth. There isn't a basis for a

1 complaint. It's not been made clear that there
2 is any basis for a complaint or a complaint was
3 even stated against the Indiana Democratic Party
4 so there's nothing before us so I would suggest
5 that we simply move on.

6 CHAIRMAN D. DUMEZICH: Well, I think there,
7 in fact -- he came upon this money somehow. The
8 question is did he solicit it? He came upon
9 this money to stay in Champaign-Urbana somehow,
10 so unless the Democratic Party, who I
11 understand, paid these amounts, plans on giving
12 the legislators a 1099 or a W-2 for the amount
13 of money that they spent in their -- on their
14 vacation in Champaign-Urbana, unless they plan
15 on doing that, then it had to come from
16 somewhere.

17 COMMISSION MEMBER S. RIORDAN: I'm going to
18 move that all of the chairman's remarks are
19 stricken from the record. Nobody's been sworn
20 and there has --

21 CHAIRMAN D. DUMEZICH: We're having a
22 discussion here amongst us.

23 COMMISSION MEMBER S. RIORDAN: Right, but
24 that doesn't mean that you can throw out
25 allegations that are not even substantiated as

1 much as Mr. Nelson. With all due respect, Mr.
2 Chairman, we don't sit here and ponder whether
3 somebody or some entity has done something
4 wrong, particularly, when we're on camera.
5 There's absolutely no basis for anything to be
6 on the agenda right now, in light of the concept
7 that Representative Battles hasn't committed any
8 campaign finance violation, so for us to sit
9 around and toss around ideas about whether might
10 have done something wrong, particularly, my
11 client, the Indiana Democratic Party, I'm not
12 engaging in those discussions, and it's not
13 properly on the agenda so I suggest that we move
14 on.

15 CHAIRMAN D. DUMEZICH: I believe it is
16 properly on the agenda and it's something we're
17 going to do. We're going to move on to VSTOP
18 and we'll further this discussion, okay.

19 VICE CHAIR A. LONG: VSTOP. While they're
20 coming up, I have one more question?

21 CHAIRMAN D. DUMEZICH: Let's let them get
22 done.

23 VICE CHAIR A. LONG: I just don't
24 (indiscernible.)

25 CHAIRMAN D. DUMEZICH: I went over to the

1 other building this morning to find the room,
2 okay, and I looked at it and so I mean...

3 VICE CHAIR A. LONG: I've been from one end
4 of this hall to the other and these folks from
5 Ball State has got to be in here. I've never --
6 I mean, I'm just curious, you didn't direct us
7 to be live or simulcast so who arranged for
8 us -- this to be done differently than any other
9 meeting that I've ever had in the 13 years that
10 I've been on this commission, who undertook that
11 authority?

12 MR. B. KING: Mr. Chairman, Mr. Vice Chair,
13 my understanding is the policy for the use of
14 House Ways and Means committee rooms for
15 official bodies is to web cast, that unless the
16 web cast is in some way disabled because of a
17 problem, as it was about a month ago, it's a
18 matter of public policy that all meetings
19 conducted in this room are web cast.

20 MR. T. DECKARD: Mr. Chairman, Mr. Vice
21 Chair, if I may. I did inquire shortly before
22 this meeting began with what I believe to be
23 House staff anecdotally, and I'm told that this
24 archive or transcript, video transcript of this
25 will be available on the Indiana House Majority

1 Web Page. That might be something this
2 commission would or should be concerned about
3 and may direct the Division to try to rectify
4 with House staff. Thank you.

5 VICE CHAIR A. LONG: I sure don't have any
6 problem with publicity of our meetings. I
7 just -- I think this seems to have taken on a
8 rather unique tone and procedure and I don't see
9 anything in particularly unique other than Item
10 6 that we dealt with and the Lake County
11 Redistricting -- I guess that's an issue, but...

12 CHAIRMAN D. DUMEZICH: It certainly was not
13 my intent to use this room to get us up on the
14 web, believe me. It was not my intent. I
15 didn't even think about it. I had no...

16 VICE CHAIR A. LONG: Your word is good
17 enough for me and I make no challenge to that at
18 all. I was taken back when you said you didn't
19 know it was going on either and I assume
20 somebody took the authority to see that that was
21 done.

22 CHAIRMAN D. DUMEZICH: I think it was the
23 matter of this room being open. Let's go to
24 VSTOP and move on to the next one.

25 MR. R. SCHEELE: Thank you, Mr. Chairman

1 and Commissioners. I'm Ray Scheele with the
2 Bowman Center in the VSTOP Program, and with me
3 is Joe Losco. Jay Bagga, who is our third
4 member of the problems with the VSTOP Program
5 had to teach college today, so he's not with us,
6 but we have a few quick items on the agenda.

7 Something that has been pending for the last
8 two IEC meetings are the engineering change orders.
9 These are orders that come to us to modify our
10 change of voting systems that's been certified in
11 the State of Indiana. We have before you, and it
12 should be in your booklet from ES&S, we have a
13 listing of engineering change orders. With us
14 today also and is in the audience is a
15 representative of ES&S, Mr. Mark Manganaro, who is
16 in charge of their ECO program in the State of
17 Indiana.

18 The ECOs have been evaluated that are on this
19 list from ES&S by the protocol that you, the IEC,
20 adopted in June of this year, by which we evaluate
21 each change that a manufacturer adds to a certified
22 voting system in the State of Indiana. These
23 changes can either be de minimis, which are minor,
24 such as a cord having to be changed because it's no
25 longer available or it could be a major

1 modification which go to the core functioning of
2 the equipment.

3 We consequently take a look at that and the
4 EAC, which is the Federal Election Systems
5 Commission, also evaluates these. We take a look
6 at all of the test reports that come from the
7 certified federal labs on each of these ECOs.

8 The listing that's before you from the ES&S
9 vendor is two -- actually, it's three pages, and we
10 have provided under the product column a quick
11 description of what the change order is and also
12 the voting system that is certified in the State of
13 Indiana that it applies to.

14 Part of our protocol is that we do not
15 recommend an ECO, a change order to a voting system
16 carte blanche. It has to be tied to a certified
17 voting system in the State of Indiana, and you'll
18 see in the right-hand column, the voting systems
19 are 3.2.0.0 -- almost all of them are 3.2.0.0 which
20 are currently certified in the State of Indiana.

21 On the last page you will see under, or in the
22 chart additional ECOs with an accompanying
23 affidavit. What we have done is that some of these
24 ECOs go back a long time -- in time to what we call
25 legacy equipment. It's still being used in the

1 State of Indiana. Some of these we do not have
2 test results for. So we asked the vendor, ES&S,
3 and Mr. Manganaro is here, if you would like to
4 talk to him about this, to give us an affidavit, a
5 sworn affidavit concerning these ECOs and the
6 system to which they apply and that they have been
7 tested at that particular time before VSTOP came
8 into existence.

9 So those are the ones that we have and also
10 have gone through those sworn affidavits from ES&S
11 and are satisfied that they are tied to the
12 certifying machines here in the State of Indiana.
13 So we would recommend that these ECOs be approved
14 by the IEC after -- on the basis of our testing and
15 recommendation.

16 VICE CHAIR A. LONG: That's all of them?

17 MR. R. SCHEELE: Yes.

18 VICE CHAIR A. LONG: There's multiple ECOs?

19 MR. R. SCHEELE: Yes. There's still a few
20 pending that we are still testing, that we are
21 still evaluating, but they are not on this list.

22 CHAIRMAN D. DUMEZICH: They're not on this
23 list?

24 MR. R. SCHEELE: Correct, they're not on
25 this list.

1 VICE CHAIR A. LONG: But I'm looking at
2 multiple lists, is this multiple copies of the
3 same list?

4 COMMISSION MEMBER S. RIORDAN: It's a long
5 list.

6 CHAIRMAN D. DUMEZICH: There's change
7 orders for two different vendors?

8 MR. R. SCHEELE: Yes, there's two different
9 vendors. We'll get to the next vendor in a
10 moment. That's the Unisyn, the voting system
11 for Unisyn which has one page of ECOs. They're
12 kind of worded the same way. Do you want to
13 do -- if you want to do deal with them all at
14 once, that's fine with us.

15 CHAIRMAN D. DUMEZICH: No, take it in the
16 order of presentation. I just want to make sure
17 that we cover both of them.

18 MR. R. SCHEELE: Sure.

19 MR. T. DECKARD: Mr. Chairman, a question,
20 if I may?

21 CHAIRMAN D. DUMEZICH: Certainly.

22 MR. T. DECKARD: I would just ask VSTOP, as
23 I did in writing earlier this week, that just
24 because the Commission has had some discussions
25 last year about the 3.2.0.0, these ECOs are not

1 directly related to any of the issues that the
2 Commission has been talking and/or discussed.
3 With that, I just think that that clarification
4 for the commissioners might be helpful.

5 MR. J. LOSCO: Mr. Chairman and Members of
6 the Commission, the 3.2.0.0 is still undergoing
7 formal investigation by the EAC and these
8 themselves do not correct or remove those
9 concerns. The investigation is not completed
10 yet and we understand it's ongoing with
11 discussions between Wyle Lab and the EAC, in
12 terms of continuing testing of reported
13 problems.

14 VICE CHAIR A. LONG: In my language, does
15 that mean all the issues that we've been dealing
16 with, these counties that have these systems out
17 there that aren't certified, this doesn't affect
18 them at all? These are existing systems that
19 are properly certified? These are technical
20 changes that they've done with them?

21 MR. R. SCHEELE: That's correct.

22 VICE CHAIR A. LONG: That's what I
23 understood.

24 MR. J. LOSCO: That's correct.

25 CHAIRMAN D. DUMEZICH: Thank you for that

1 clarification.

2 MR. R. SCHEELE: So that's the list of the
3 ES&S ECOs. We have a shorter --

4 VICE CHAIR A. LONG: Do you want to deal
5 with those separately -- I mean, I'm prepared
6 to...

7 CHAIRMAN D. DUMEZICH: Yeah, make a motion.

8 VICE CHAIR A. LONG: I move to approve, as
9 long as I -- ES&S submitted the ECOs on the
10 three, or two and a half pages that are
11 reflected by your report dated September 29th,
12 2011; is that correct?

13 MR. R. SCHEELE: Correct.

14 CHAIRMAN D. DUMEZICH: There's a motion to
15 approve the ECOs, engineering change orders
16 recommended.

17 COMMISSION MEMBER S. RIORDAN: Second.

18 CHAIRMAN D. DUMEZICH: Got a second, all in
19 favor, indicate by say aye?

20 THE COMMISSION: Aye.

21 CHAIRMAN D. DUMEZICH: All oppose?

22 (No response.)

23 CHAIRMAN D. DUMEZICH: 4-0, the ayes have
24 it. Now do Unisyn.

25 MR. R. SCHEELE: Thank you. Moving on to

1 the Unisyn report, another vendor with that
2 shorter list of ECOs that pertain to the
3 OpenElect 1.0 System that's been certified in
4 the State of Indiana, these have been tested.

5 You'll be seeing probably more lists like this
6 in the future as change orders come through,
7 request from vendors to update equipment and keep
8 it up-to-date, but these are the ones from Unisyn
9 that have been tested, and we recommend their
10 approval.

11 VICE CHAIR A. LONG: I would move that we
12 approve the Unisyn submission of the engineering
13 change orders, the ECOs, as reported to us by
14 the Ball State report dated September 29th,
15 2011.

16 CHAIRMAN D. DUMEZICH: We have a motion on
17 the floor to approve the ECOs for Unisyn, do I
18 hear a second?

19 COMMISSION MEMBER B. BENNETT: Second.

20 CHAIRMAN D. DUMEZICH: Hearing a second,
21 any discussion?

22 (No response.)

23 CHAIRMAN D. DUMEZICH: Hearing none, all in
24 favor, say aye?

25 THE COMMISSION: Aye.

1 CHAIRMAN D. DUMEZICH: The motion is
2 adopted. Can you give us an update on the
3 application of ES&S for the Unity 3.2.1.0 Voting
4 System and the status of related issues, the
5 previously certified Unity 3.2.0.0 System.

6 MR. J. LOSCO: Yes, Mr. Chairman. 3.2.0.0
7 system, that's the one that's under formal
8 investigation by the EAC and Wyle Labs and EAC
9 are in discussion about ways to test the
10 proposed changes from the vendor. The 3.2.1.0,
11 there are still recorded problems, an anomaly,
12 the root cause of which has not yet been finally
13 determined by the EAC and so we're not prepared
14 to move on that application.

15 CHAIRMAN D. DUMEZICH: Is there a
16 representative from ES&S here to speak?

17 MR. M. MANGANARO: Yes.

18 CHAIRMAN D. DUMEZICH: Please come up,
19 sir -- sir, did you take the oath?

20 MR. M. MANGANARO: Yes, I did. My name is
21 Mark, MARK, Mangamaro, M-A-N-G-A-M-A-R-O, and
22 basically in relation to the Unity 3.2.1.0, we
23 would just ask the commission to table it until
24 further reports can be provided to VSTOP from
25 the EAC. I, unfortunately, at this time don't

1 have any time frames on when those reports will
2 be complete. There's pretty much conversations
3 going on between ourselves and Wyle Labs and the
4 EAC on what that test plan would actually look
5 like.

6 CHAIRMAN D. DUMEZICH: Okay. Any other
7 public comment?

8 VICE CHAIR A. LONG: I have a question.

9 CHAIRMAN D. DUMEZICH: Absolutely.

10 VICE CHAIR A. LONG: What's the status of
11 your contract relationships that are affected by
12 the machines that you use, what's going on with
13 that?

14 MR. M. MANGANARO: I have no updates on
15 those from the last time we were here.

16 VICE CHAIR A. LONG: It seems to me there's
17 going to be a point that we're going to say, and
18 I don't mean to speak for everybody, but myself,
19 you all have the opportunity to fix this problem
20 and you've not and we're going to say enough is
21 enough and drop the hammer on this thing.

22 We have a pending motion to decertify, as I
23 understand, and take affirmative action with regard
24 to it, and it seems to me -- I'm really concerned
25 about these counties that are sitting out there

1 with major investments and clerks are going crazy
2 not knowing what to do, and as I understand, you
3 all are offering other alternatives and other
4 machines, and at some point in time it's got to be
5 fixed.

6 MR. M. MANGANARO: That's correct.

7 VICE CHAIR A. LONG: And if I understand,
8 from what you're telling us, that the Wyle
9 testing and the EAC investigation indicated a
10 problem with this equipment that's got to be
11 fixed that would require some sort of retooling,
12 reprogramming or something to make them
13 operational within the bounds of what they're
14 supposed to be doing, and I think somebody
15 dealt -- at least in my mind, we're going to
16 have -- I'm going to have to have an answer
17 pretty soon to where I'm going to be willing to
18 say let's continue this open ended with these
19 counties out there not knowing what they're
20 going to do.

21 MR. M. MANGANARO: Understood, and
22 hopefully, by the next time we have a commission
23 meeting, we can have some consensus between Wyle
24 and the EAC on what that test pilot would look
25 like and give you guys a better idea of the time

1 frames on approval.

2 VICE CHAIR A. LONG: I would suggest -- we
3 got a meeting December 5th, and I think that the
4 commission discussion here that we consider -- I
5 mean, that's the drop dead date in my mind.
6 We're going to start into a general election
7 year 27 days after that, or 6.

8 If this thing is not substantially ready and
9 operational, then I think we need to -- my position
10 is that we need to take some affirmative action to
11 have this put behind us.

12 MR. M. MANGANARO: Sounds agreeable.

13 CHAIRMAN D. DUMEZICH: I agree with you.

14 VICE CHAIR A. LONG: Can I move to table
15 this until the December 5th meeting and at least
16 get a discussion on it as to whether -- for an
17 idea that we will get definitive answers -- with
18 the idea that we will get definitive answers to
19 this issue at this time.

20 CHAIRMAN D. DUMEZICH: Move to table it,
21 second?

22 COMMISSION MEMBER B. BENNETT: Second.

23 CHAIRMAN D. DUMEZICH: Hearing a second,
24 all in favor of tabling this issue until
25 December 5th, please indicate by saying aye?

1 THE COMMISSION: Aye.

2 CHAIRMAN D. DUMEZICH: Opposed?

3 (No response.)

4 CHAIRMAN D. DUMEZICH: Hearing none, 4-0,
5 the ayes have it.

6 MR. R. SCHEELE: Mr. Chairman and
7 Commissioners, we have also in your packet just
8 a couple of memos. This is just FYI for your
9 information in talking with the Election
10 Division, these two issues have come up dealing
11 with the interpretation of the straight party
12 vote and the way in which it's counted in
13 interpretation of state law, and the Election
14 Division has provided us with a string of
15 e-mails that now you have in your packet as
16 background on this.

17 I think if that situation is basically been
18 resolved in our discussions with the Election
19 Division, that that ruling had been made sometime
20 back, and apparently, is still in place. Mr. King
21 would probably fill us in more on that.

22 MR. B. KING: Mr. Chairman and Members of
23 the Commission, Dr. Scheele is referring to a
24 particular scenario, when a person casts a
25 straight party vote and then votes on individual

1 candidates.

2 In 2007, the then co-directors worked through
3 the particular subsections of Indiana Code 3-12-17
4 and answered an inquiry from ES&S explaining how
5 the votes should be counted in each of those split
6 ticket scenarios.

7 The staff reviewed that letter from 2007. I
8 believe I can speak for Mr. Deckard and say we
9 confirm that yes, that is the Election Division's
10 interpretation of the statute's order requirements
11 for county votes in that scenario.

12 MR. T. DECKARD: I would --

13 MR. B. KING: I'm sorry, just to add, and I
14 have advised ES&S in response to an e-mail
15 inquiry that their voting systems should be
16 programmed to conform to that interpretation of
17 the State's code.

18 MR. T. DECKARD: Thank you, Mr. Chairman
19 and Members of the Commission. In this case, I
20 would defer to Miss Barnes who was on the staff
21 at that time and assisted with a little bit of
22 research on it to speak on our position.

23 MS. L. BARNES: Thank you, Mr. Chairman.
24 As Trent said, I did work with Mr. Simmons and
25 then co-director Pam Potesta to work through the

1 scenario. ES&S provided us five different
2 scenarios under a straight party split ticket
3 voting examples, and the Election Division, we
4 were in agreement on the way those ballots
5 should be counted, and hopefully, those voting
6 systems are programmed to count the ballots that
7 way.

8 And our decision -- ES&S asked us this week if
9 we still agreed with that interpretation and I
10 think we all agreed among the Division that we did
11 still agree with that scoring scenario.

12 MR. R. SCHEELE: The second memo, again,
13 for your information is also regarding ES&S
14 equipment. It was generated by a letter from
15 Marsha Dobbs, who's the customer service
16 manager, you have that in your packet of ES&S.

17 This concerns a tabulation problem between two
18 components of the system, which is the Eagle and
19 the iVotronic Voting System. This problem of
20 tabulating the results, particularly, from the
21 iVotronic occurred also prior to VSTOP even, back
22 in 2007, and it's still existing in Clark County
23 now in 2011.

24 Where they are, they are going to manually do
25 a workaround as they tabulate the votes coming out

1 of the iVotronic system, and consequently, this is
2 for your information, and it was -- that's all we
3 really know about it, but it worked before, in
4 terms of this workaround, that ES&S provided, and I
5 think it was at that time Carroll County, if I
6 recall properly, and now it's Clark County that's
7 encountering this problem.

8 The iVotronic is used primarily by -- as the
9 accessibility machine for disabled individuals. So
10 there won't be nearly as many votes on that as
11 there would be on the other machine, the Eagle, but
12 nonetheless, it would -- it's going to take the
13 workaround to manually take the votes off the
14 iVotronic in order to get one report coming out of
15 Clark County that is comprehensive.

16 That's the problem, as we understand it, and
17 again, Mr. King, you may have the history of how
18 that workaround worked four years ago, but
19 apparently, it worked, from what we are told.

20 VICE CHAIR A. LONG: What do we -- how do
21 we know it worked?

22 MR. R. SCHEELE: Pardon?

23 VICE CHAIR A. LONG: I'm not sure if any of
24 it worked.

25 MR. R. SCHEELE: Right. I understand.

1 VICE CHAIR A. LONG: We don't use

2 (indiscernible) up here on our votes.

3 MR. R. SCHEELE: Yeah. The vendors told us

4 that the workaround worked last time.

5 VICE CHAIR A. LONG: The vendors, what

6 about the customers, did they tell you that it

7 worked?

8 MR. R. SCHEELE: I don't know.

9 VICE CHAIR A. LONG: The vendors have told

10 us things in the past that hasn't always born

11 fruit.

12 MR. R. SCHEELE: We haven't talked directly

13 about Carroll County's experience four years

14 ago.

15 VICE CHAIR A. LONG: Could we -- I'd ask

16 you to do that.

17 MR. R. SCHEELE: Oh, we can do that.

18 VICE CHAIR A. LONG: Give them a call and

19 say I think...

20 MR. R. SCHEELE: Find out if this

21 workaround went well?

22 VICE CHAIR A. LONG: I'm not sure what a

23 workaround is. It may be a runaround that...

24 MR. R. SCHEELE: We'll check.

25 VICE CHAIR A. LONG: You've seen the movie.

1 MR. R. SCHEELE: We'll also talk with the
2 Election Division, in terms of talking with
3 Clark County and make sure they understand the
4 situation as well. Will be glad to do that.

5 VICE CHAIR A. LONG: Thank you all for
6 being here. I just feel better every time you
7 come to report to us. If I understand 10
8 percent of what you said, it would be a
9 successful day.

10 MR. R. SCHEELE: If I can say one thing, we
11 just returned last week from a -- the first
12 get-together of other state certification teams
13 around the country. We convened at Kennesaw
14 State University just outside of Atlanta. There
15 were about a dozen states represented. I
16 informed Brad King of this just this morning
17 before this meeting.

18 We presented our protocols that we use in
19 Indiana, particularly, the ECO protocol. It was
20 very well received by the other state certification
21 teams that were there. We learned a lot from the
22 experiences of other states.

23 They have asked us, the convenors, including
24 the EAC in Washington, to host the second national
25 get-together sometime next year, and we are working

1 with the university, that we would like to do that.

2 It'll bring some coverage to what we are doing
3 in Indiana, insofar as keeping our systems
4 up-to-date and certified properly. So I just
5 wanted to mention that in closing.

6 VICE CHAIR A. LONG: Good deal. Glad to
7 hear that.

8 MR. R. SCHEELE: Thank you.

9 MR. J. LOSCO: Thank you.

10 CHAIRMAN D. DUMEZICH: Let's go back to No.
11 6. I've had some time to ponder the situation,
12 and let me tell you where I'm coming from and
13 what I'm thinking. It seems to me an allegation
14 is made whether or not he solicited
15 contribution -- he being Representative Battles,
16 solicited a contribution during the long session
17 to finance his stay at Champaign-Urbana, and I
18 assume this would also apply to state reps,
19 although right now, the person who the complaint
20 has been filed against is Representative
21 Battles.

22 At this point he would have no obligation to
23 file any paperwork to indicate whether or not that
24 was a contribution. His obligation to report that
25 contribution would only be after the end of the

1 year, so that would be premature. If he did not
2 report that contribution, if he did not report it
3 as a contribution, it could in fact be something
4 else. It could be a payment for services. It
5 could be a payment for his personal expenses.

6 In any event, only after he files that report
7 would we have the opportunity to look at it, and
8 let me tell you why I don't think that that
9 complaint would be appropriate at this time, but
10 let me tell you what I do think, this particular
11 complaint -- okay, the money came from somewhere
12 that went to Representative Battles and went
13 from -- to the other state representatives who were
14 in Champaign-Urbana. Let's -- it had to come from
15 somewhere.

16 Did it come from your central committee? I
17 don't know. I don't know. That's not the subject
18 of this complaint. What is also not the subject of
19 this complaint is how that money was solicited from
20 the donors who gave the money to the conduit that
21 passed it to the Democratic State Representatives
22 who were in Urbana.

23 So I don't think that you would have to recuse
24 yourself, at least in my mind, but you have to make
25 this choice yourself, only when complaints were

1 filed against the Democratic Central Committee, and
2 whoever -- if other state representatives solicited
3 that money -- I mean, it wasn't solicited by other
4 state representatives, but I think all of those
5 things would be within the jurisdiction of this
6 commission to look at because they would be a
7 violation of the solicitation during a long
8 session.

9 Now that's -- that's what I think right now.
10 At that point in time, when those complaints would
11 be filed, I think we would have jurisdiction and we
12 can look at it. I also think that at that point in
13 time, you would probably consider recusing yourself
14 from it, because I know this is a very important
15 thing for both of you.

16 So with that in mind, that would be -- that
17 would be where I think this is procedurally with
18 respect to Representative Battles -- I mean, what
19 your obligations are, as I see them -- obviously,
20 you'll have to determine your own obligations. So
21 with that in mind, I think we had asked counsel,
22 both of our counsels to work together to come up
23 with a memo to tell us what our authority are, and
24 at this time I would like to ask them to report on
25 that, and I would ask Dale to go first and report

1 on what your findings are?

2 MR. D. SIMMONS: Well, Mr. Chairman, Member
3 of the Commission, as you mentioned, Leslie and
4 I did try to come up with a joint memo, and I
5 certainly have reviewed that and agree with
6 certain -- the way a certain statute operates,
7 and mentioned in that memo is 3-6-4.1-21.

8 I think where we disagree, and this is a
9 statute that the commission has applied in the past
10 to engage in a two-chair process finding a
11 substantial likelihood that a election law
12 violation occurred and the remedy under that
13 statute includes referring the matter to
14 prosecutor, a county prosecutor.

15 So I would agree the way that statute
16 operates, but then that has been used for criminal
17 violations, and I didn't read the allegation made
18 by Mr. Nelson as alleging any criminal conduct. I
19 would certainly be open to revisiting that, if that
20 was the case, and I certainly would -- with my
21 explanation of how that section works, that I made
22 previously in the minutes that were cited at the
23 last meeting.

24 CHAIRMAN D. DUMEZICH: I don't believe
25 there would be any circumstances where

1 solicitation during the long session would be
2 considered criminal; is that -- is that
3 accurate?

4 MR. D. SIMMONS: Yeah. The way I read the
5 complaint, it's strictly a violation, as I
6 mentioned, 3-9-2-12 (Phonetic), and the
7 commission enforces -- just like any other
8 campaign finance case, under the same section,
9 you would enforce a late report filing, which is
10 3-9-4-16.

11 CHAIRMAN D. DUMEZICH: So that action, that
12 action in no way could lead to a criminal
13 charge. If a person did not report it and it
14 was found that it was fraudulent, that they
15 determined -- made a determination that they
16 weren't going to report it, they were going to
17 mislead and file a report without that
18 contribution on there, that could be a criminal
19 violation, couldn't it?

20 MR. D. SIMMONS: Fraudulent reports are
21 listed in Article 14 of the Code -- one of those
22 is fraudulent report would be a criminal
23 violation, but the way the commission typically
24 is enforced, the civil side of this, imposing
25 civil fines for things like late reports, and

1 then the same applies here under 3-9-2-12, just
2 as a civil finding an offense under 3-9-4-16, is
3 simply that the AOPA, the Administrative Orders
4 & Procedures Act applies to acts to be taken
5 under 3-9-4-16.

6 And that's what we typically have done with
7 respect to campaign finance enforcement. The
8 notices and the orders issued by the commission for
9 campaign finance, civil finance enforcement. I
10 don't believe the commission ever used the
11 3-6-4.1-21 for campaign finance enforcement.

12 Regardless there, with respect to campaign
13 finance enforcement, it's going to take the
14 affirmative vote of three commission members
15 imposing fines. Actually, the section that applies
16 there is 3-6-4.1-7, would apply to all official
17 actions of the commission fines. Subpoenas, when
18 adopted, and advisory opinions, all of those
19 official actions take an affirmative vote of three.

20 Now I think where Leslie and I also disagree,
21 with respect to the interpretation of another
22 section, which is 3-9-4-15, and then throw
23 3-6-4.1-7 together -- again, I read them both
24 together, and whether there's less of a majority of
25 the commission or less than three members can do

1 anything at all, I read 3-9-4-15 to say that a
2 member can investigate, take evidence, and report
3 back to this commission their finding.

4 And in coming to that conclusion, I relied on
5 several things. One is a case that I realize
6 there's a qualifying phrase in there, that says
7 with the authority of the commission, and I think
8 where I differ with Leslie, I would only apply that
9 to the most immediate antecedent to that qualifying
10 phrase relying on a case setting forth that rule,
11 that it applies to the co-directors of the election
12 commission. It doesn't apply to a member of the
13 election commission.

14 And I also base that conclusion on how I read
15 3-9-4-15. There wasn't any such limitation, this
16 sort of pre-approval before a county election board
17 member could do the same thing -- investigate,
18 report back and may engage in the same campaign
19 finance enforcement at the local level for
20 candidates to file them as the Indiana Election
21 Commission.

22 Finally, I looked at the history of the
23 adoption of that qualifying phrase, when did that
24 come into being? When the election code was
25 recodified in 1996, that qualifying clause was not

1 there. Actually, it just simply read at that time
2 a member of the election board, that the executive
3 director -- we had one person running the
4 equivalent of what the election division is today
5 and an election board member may engage in
6 investigation, take testimony, report back.

7 The qualifying phrase with the authority of
8 the commission was added in 1995, with the addition
9 that we substituted one executive director with two
10 co-directors with co-equal authority, that's when
11 that phrase was added, and so I take those two
12 things to be related. That's why I think that's
13 just simply related to the co-directors.

14 And then finally, if nothing else, 3-6-4.1-7
15 contemplates that lest the majority of the
16 commission can meet for a limited purpose. Now
17 again, it repeats the rule that an affirmative vote
18 of least three members of the commission is
19 necessary for the commission to take official
20 action other than to meet and take testimony. I
21 think the last part of that is other than meet to
22 take testimony, indicates in with this other
23 section, means that the commission can engage in
24 that limited activity.

25 I think it is simply just sort of an

1 expression of what we believe, I think, in America.
2 While certainly, the majority of rules, if the
3 minority can't get their way, they can get their
4 say, and they get their say through doing their
5 own -- engaging in their own activity and then
6 reporting that result of that activity.

7 CHAIRMAN D. DUMEZICH: Leslie.

8 MS. L. BARNES: I think --

9 COMMISSION MEMBER S. RIORDAN: If I may? I
10 don't know that these issues are relevant to --
11 that's coming before the board. I don't know --
12 we're getting into a very fine legal analysis,
13 and the hard work done to put those two together
14 is most certainly appreciated, but I don't know
15 what the agenda item is.

16 I know that we have Mr. Nelson's complaint,
17 which we have discussed, and he says that Indiana
18 Code 3-9-2-12 prohibits Indiana state
19 representatives from receiving contributions during
20 the long session of the general assembly, and the
21 next line is this appears to be an obvious campaign
22 violation.

23 The believe that the Chairman has said because
24 he -- he, Representative Battles, the report is not
25 due yet and this does not appear to be an obvious

1 campaign law violation, so there is no substantial
2 likelihood to believe that a violation has occurred
3 and so we're done.

4 CHAIRMAN D. DUMEZICH: The question is
5 whether it was solicited, but I don't know
6 whether they're going to say a campaign
7 contribution at this point in time, and I think
8 you're right as to -- as to Representative
9 Battles, because his report is not filed as
10 yet -- I believe you are correct.

11 COMMISSION MEMBER S. RIORDAN: So I think
12 we're done, and as far as the opinions of
13 counsel, which we recognize are different about
14 the authority of an individual member of this
15 commission to proceed with an investigation, an
16 issue with the process, but there's going to be
17 a difference of opinion, and I would hope that
18 Mrs. Barnes' legal memoranda is made a part of
19 the record today, but I do not understand what
20 we are doing right now.

21 I think we have -- there's been an affirmative
22 statement that there's a substantial likelihood
23 that a violation has occurred, and is not the case
24 and we are done.

25 CHAIRMAN D. DUMEZICH: First of all, no one

1 has mentioned an issue with the process.

2 COMMISSION MEMBER S. RIORDAN: Well,
3 that -- I think that's part of this discussion,
4 what the authority of members of this commission
5 to do an investigation, I -- maybe I'm wrong,
6 but the issue process is part of that.

7 But even so, we can hear their opinions on
8 many many topics today, and they would have been
9 certainly informative and I would love to do that,
10 but I don't think that there is a substantial
11 likelihood to believe that a violation has occurred
12 with respect to the complaint so I think we're
13 done.

14 CHAIRMAN D. DUMEZICH: Well, I don't
15 believe we are done and I consider to go forward
16 and ask her to report. If you want to leave,
17 that's fine.

18 COMMISSION MEMBER S. RIORDAN: Okay.

19 CHAIRMAN D. DUMEZICH: And if you want to
20 instruct her to leave as well, that's fine, too.

21 VICE CHAIR A. LONG: She doesn't work for
22 us. She works for Trent.

23 CHAIRMAN D. DUMEZICH: I would ask that you
24 give your report because it's my understanding
25 that you could be -- that it could possibly be a

1 criminal violation if we investigate -- an
2 investigation was held and we do not have the
3 authority to do so, so I'd like to hear that
4 analysis because I certainly wouldn't want to
5 engage in -- unknowingly engage in criminal
6 activity. Of course, now, it would be knowingly
7 since, you've put me on notice, so I have to ask
8 you what is the basis for you saying that?

9 MS. L. BARNES: Mr. Chairman, and that was
10 just one of the conclusions of the memo.

11 CHAIRMAN D. DUMEZICH: It was the one that
12 caught my attention. I skipped to the
13 conclusion, and I said wow, I've got to ask her
14 about this.

15 MS. L. BARNES: I understand. I would
16 first ask our members of the commission, we have
17 entered my memo into the record, whether they
18 would like me to proceed with an explanation, as
19 Mr. -- as the chairman had asked last meeting,
20 in terms of what does -- whether or not an
21 individual member of the commission has
22 authority to investigate, and so I would ask my
23 members of the commission if they would like me
24 to proceed or just to simply enter the memo into
25 the record?

1 COMMISSION MEMBER S. RIORDAN: Vice
2 Chairman Long just said what he would
3 recommend -- in reference to the chairman, he's
4 asking a question and you should provide an
5 answer, but I will say and ask -- Mr. Simmons
6 provided his opinion, his questions, his
7 judgment, his research, and asked to give an
8 account of his findings, and so I would hope
9 that Mrs. Barnes would afforded the same
10 courtesy. Thank you.

11 CHAIRMAN D. DUMEZICH: Absolutely. She can
12 speak to whoever she wishes, and at that point,
13 then I will just take her comments and memo and
14 make a decision as to how I'm doing to proceed.

15 MS. L. BARNES: Mr. Chairman, would you
16 like me to answer your question that you asked
17 at the last meeting first or the question that
18 you just asked about the criminal violation
19 first?

20 CHAIRMAN D. DUMEZICH: I would like you to
21 answer the question in any order you feel
22 comfortable in answering.

23 MS. L. BARNES: Thank you. Mr. Simmons and
24 I were unable to come to a conclusion on whether
25 or not one individual member of the commission

1 has the authority to investigate.

2 I think there are two statutes in question,
3 and I agree with Dale's pointing out which statutes
4 are in question -- we didn't disagree with that.
5 The one, IC 3-6-4.1-21 reads as follows in
6 Subsection B: If the commission determines that
7 there is a substantial reason to believe an
8 election law violation has occurred, it shall
9 expeditiously make an investigation.

10 And then there's Subsection C, which goes on
11 to talk about, if after giving notice and affording
12 individuals an opportunity to testify, if the
13 commission determines there's an election law
14 violation, they shall issue or conduct an
15 investigation, and that is the commission shall
16 conduct the investigation.

17 Mr. Simmons says that that section only
18 applies to allegations of criminal law violations,
19 but Subsection B, very clearly, states that if the
20 commission believes there's an election law
21 violation, any violation in Title 3, except, and
22 there are some exceptions, an NVRA violation or any
23 voter registration violation Under 3-7, and Chapter
24 7 is voter registration, and that doesn't concern
25 the commission here in this case.

1 So I do believe, and I disagree with Mr.
2 Simmons, Section 21 does apply to this commission,
3 and then the other section that is in campaign
4 finance, 3-9-4-15, as Mr. Simmons says, was amended
5 in 1995, and that reads a member of the commission,
6 the co-directors, with the authorization of the
7 commission, or a member of the county election
8 board may conduct a hearing or an investigation,
9 take evidence, and report -- comma, and report back
10 to the commission or board for its consideration
11 and action.

12 This statute -- this section was written for
13 both the election division -- the election
14 commission which investigates election law
15 violations at the state law, as well as the county
16 election board, which investigates local campaign
17 finance violations.

18 Where Mr. Simmons and I disagree is the
19 interpretation of Section 15, whether or not the
20 restrictive phrase "with the permission" or "with
21 the authorization of the commission" applies to
22 both the co-directors or the commission and even a
23 county election board member.

24 I agree with Mr. Simmons that case law is
25 instructive, as well as past precedent. When I

1 looked back in past commission minutes, I don't
2 have one -- I don't see one instance where an
3 individual member of the commission has instigated
4 an investigation, like the chairman stated he
5 believed he had the authority to do.

6 And then the case law -- I even agree with
7 Mr. Simmons that the Kentucky Home Life Insurance
8 case, as well as several other cases that we cited
9 in the memo, stand for the proposition that is a
10 restrictive phrase that is set off by commas, that
11 restrictive phrase then modifies all items in the
12 series.

13 The case that Mr. Simmons cited, interpreted a
14 life insurance statute, and in that statute, in
15 question, there was no comma, and therefore, the
16 Court of Appeals held that the restrictive phrase
17 only modified the nearest antecedent. That case
18 would not apply here.

19 This statute, Section 15, there is a
20 restrictive phrase set off by commas that clearly
21 applies to both a member of the commission or a the
22 co-directors, so either a member of the commission
23 or the co-directors would need authority --
24 authorization from the full commission in order to
25 instigate an investigation into a campaign finance

1 violation. So that's where Mr. Simmons and I
2 disagree.

3 And then the criminal violation that you made
4 reference to at the end of the memo, and Mr.
5 Simmons and I have also talked about this, this
6 statute has been cited and used and our clerks have
7 been made aware of this section this year, in
8 regards to another statute that was amended this
9 year, and the clerks have also been made aware that
10 if they knowingly, or recklessly fail to disregard
11 a duty, an official duty that they've been charged
12 with under state statute, that it could be a crime
13 and that they could be subject to prosecution.

14 While we were not comfortable with necessarily
15 telling the clerks that they would be prosecuted,
16 Mr. Simmons agreed that it was appropriate to share
17 with elected and appointed officials what statutes
18 do apply, if they do take action. This one would
19 apply to an appointed official, as well as an
20 elected official, and we just pointed out in that
21 memo that that could subject a member to
22 prosecution.

23 We don't have the authority to initiate
24 criminal prosecution in this case. We just wanted
25 to advise the commission and each individual member

1 of the commission that they could open themselves
2 up for prosecution for recklessly disregarding a
3 duty that they had unknowingly undertaken.

4 CHAIRMAN D. DUMEZICH: Thank you. With
5 that in mind, I'm going to do this: One, I
6 think that since we're making a request of the
7 attorney general, I'm also going to ask that we
8 make a request for the interpretation of Section
9 15, whether or not the clause, the modification,
10 breach of the clause is there, whether or not it
11 modifies the preceding antecedent or whether
12 it's discrete, that's No. 1; and No. 2, I think
13 I would also like to know whether or not the
14 attorney general believes that the individual
15 member of this commission could be subject to
16 that criminal prosecution, so I would ask that
17 that move forward. As far as the case against,
18 or the matter regarding Representative Battles,
19 I think we can dispose of that for now.

20 COMMISSION MEMBER S. RIORDAN: I move to
21 dismiss the complaint against Representative
22 Battles.

23 CHAIRMAN D. DUMEZICH: Hearing a motion to
24 dismiss, do I heard a second?

25 VICE CHAIR A. LONG: Second.

1 CHAIRMAN D. DUMEZICH: Hearing a second,
2 all in favor of the motion to dismiss the
3 complaint against Representative Battles,
4 indicate by saying aye?

5 THE COMMISSION: Aye.

6 CHAIRMAN D. DUMEZICH: Opposed?

7 (No response.)

8 CHAIRMAN D. DUMEZICH: The ayes have it
9 4-0.

10 VICE CHAIR A. LONG: Move we adjourn.

11 CHAIRMAN D. DUMEZICH: Do I hear a second?

12 COMMISSION MEMBER S. RIORDAN: Second.

13 CHAIRMAN D. DUMEZICH: Motion to adjourn
14 has been seconded, all in favor say aye?

15 THE COMMISSION: Aye.

16 CHAIRMAN D. DUMEZICH: Opposed?

17 (No response.)

18 CHAIRMAN D. DUMEZICH: 4-0, we're
19 adjourned.

20 (Time noted: 12:49 p.m.)

21
22
23
24
25

1 STATE OF INDIANA)
) SS:
 2 COUNTY OF MARION)

3

4 I, Rhonda J. Hobbs, RPR, and a Notary Public
 5 and Stenographic Reporter within and for the County
 6 of Hendricks, State of Indiana at large, do hereby
 7 certify that on the 29th day of September, 2011, I
 8 took down in stenograph notes the foregoing
 9 proceedings;

10 That the transcript is a full, true and
 11 correct transcript made from my stenograph notes.

12 IN WITNESS WHEREOF, I have hereunto set
 13 my hand and affixed my notarial seal this _____
 14 day of October, 2011.

15

16

17

 N O T A R Y P U B L I C

18

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

21

22

23

24

25