

Indiana Election Commission
Minutes
December 1, 2009

Members Present: Thomas E. Wheeler, II, Chairman of the Indiana Election Commission ("Commission"); Mary Titsworth-Chandler, proxy for S. Anthony Long, Vice Chairman of the Commission; Barbara McClellan, proxy for Daniel A. Dumezich, member of the Commission; Sarah Steele Riordan, member of the Commission.

Members Absent: S. Anthony Long, Vice Chairman of the Commission; Mr. Daniel A. Dumezich, member of the Commission.

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Pamela Potesta, Co-Director of the Election Division; Leslie Barnes, Co-General Counsel of the Election Division; Dale Simmons, Co-General Counsel of the Election Division.

Also Attending: Dr. Raymond Scheele, Co-Director of the Bowen Center for Public Affairs at Ball State University, and Co-Director of the Voting System Technical Oversight Program; Dr. Joseph Losco, Ball State University; Mr. Steve Pearson, Vice-President of Certification, Election Systems & Software; Mr. James Ries, Jr., MicroVote General Corporation; Mr. Steve Shamo, MicroVote General Corporation; Mr. Edward Perez, Hart InterCivic; Mr. Ted Gilkey, Hart InterCivic; The Honorable Sherry Brown, Harrison County Circuit Court Clerk; Mr. Robb McGinnis, Election Systems & Software.

1. Call to Order

The Chair called the December 1, 2009 meeting of the Commission to order at 8:00 a.m. in the Regency Ballroom of the Hyatt Regency at 1 South Capitol Avenue, 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 and Associates, Inc. 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 6, line 8, delete "(CK)".

Page 32, line 17, correct the word "autonomy" to read "authority".

Page 37, line 12, correct the word "king" to read "ring".

Page 42, line 20, correct the word "report" to read "a report".

Page 42, line 21, correct the word "fort" to read "forth".

Page 47, line 22, correct the name "Wiley" to read "Wyle".

Page 49, line 16, correct the word "minutes" to read "minutes ago".

Page 50, line 6, correct "ou" to read "you".

Page 60, line 15, correct the word "taking" to read "am taking".

Page 63, line 1, correct the word "incorrect" to read "incomplete".

Page 64, line 20, correct the word "trial" to read "trail".

Page 81, line 20, correct the name "S. McGINNIS" to read "R. McGINNIS".

Page 81, line 25, correct the name "S. McGINNIS" to read "R. McGINNIS".

Page 85, line 3, correct the name "S. McGINNIS" to read "R. McGINNIS".

Page 85, line 22, correct the name "S. McGINNIS" to read "R. McGINNIS".

Page 89, line 12, delete "(Phonetic)".

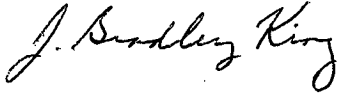
Page 89, line 20, correct the name "S. McGINNIS" to read "R. McGINNIS".

Page 90, line 1, correct the name "S. McGINNIS" to read "R. McGINNIS".

3. Adjournment

There being no further items on the Commission's agenda, the Chair entertained a motion to adjourn. Ms. Riordan moved, seconded by Ms. McClellan, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting "aye" (Mr. Wheeler, Ms. Titsworth-Chandler, Ms. McClellan and Ms. Riordan), and no Commission member voting "no," the motion was adopted. The Commission then adjourned at 9:20 a.m.

Respectfully submitted,

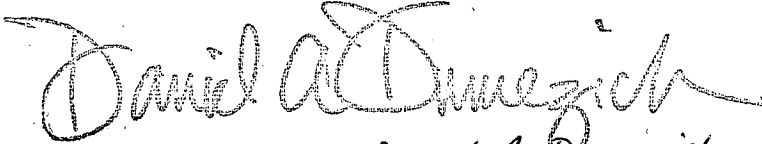


J. Bradley King
Co-Director



Pamela Potesta
Co-Director

APPROVED:



~~Thomas E. Wheeler, H.~~ Daniel A. Dumezich
Chairman

Original

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INDIANA ELECTION COMMISSION
PUBLIC SESSION NOTICE

Date: Tuesday, December 1, 2009

At: The Hyatt Regency
1 South Capitol Avenue
Regency Ballroom
Indianapolis, Indiana 46204

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

Connor + Associates, Inc.
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Indianapolis, IN 46282
(317) 236-6022

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INDIANA ELECTION COMMISSION

Mr. Thomas E. Wheeler, II (Chairman)
Ms. Mary Titsworth-Chandler (Proxy) for Mr. S. Anthony Long, (Vice Chair)
Ms. Barbara McClellan (Proxy) for Mr. Daniel Dumezich, (Commission Member)
Ms. Sarah Steele Riordan, (Commission Member)

INDIANA ELECTION DIVISION

Mr. Dale Simmons - Co-General Counsel
Ms. Leslie Barnes - Co-General Counsel
Mr. Bradley King - Co-Director
Ms. Pamela Potesta - Co Director

1 **CHAIRMAN T. WHEELER:** All right. I'm going
2 to call this meeting of the -- and I have to
3 whack my gavel because I actually have one this
4 time, call the meeting of the Election
5 Commission to order.

6 It has been duly noted that we are meeting
7 in connection with the Clerks Conference and
8 give the clerks an opportunity to see what we
9 do.

10 We are meeting in the Hyatt Regency
11 pursuant -- duly noted in a notice. I note that
12 I have four members of the Election Commission,
13 although at this point we have two proxies.
14 Sitting in for Commission Dumezich is Barb
15 McClellan -- thank you Barb, and sitting in for
16 Commissioner Long, who we wish a speedy
17 recovery, is Mary Chandler -- thank you, Mary.

18 **MS. M. CHANDLER:** You're welcome.

19 **CHAIRMAN T. WHEELER:** I appreciate you guys
20 being willing to serve. As you guys may be
21 aware, we've had -- this is our third meeting in
22 the last month to try to get through these
23 systems, and I appreciate the Ball State
24 participants in this proceeding for their third
25 trip down to Indianapolis for these meetings,

1 and hopefully, we can get through this.

2 We are going to start with Approval of
3 Order 2009-314, it's an approval of forms for
4 the primary and general for next year, and who
5 is doing that?

6 **MR. B. KING:** I am doing that. Mr.
7 Chairman and Members of the Commission, in your
8 packet you should see Order 2009-314. This is
9 the final series of forms orders for this year.
10 It contains absentee forms, candidate forms, and
11 a voter registration form.

12 The changes are of a couple of types, one
13 with the -- the PRE-19, we have a new form, the
14 affidavit of public safety officer or a member
15 of the military returning to the polls to vote
16 after responding to an emergency. This form was
17 prompted by legislation enacted by the General
18 Assembly earlier this year in 2009.

19 We made a conforming change with the
20 Spanish language version, voter registration
21 form to remove an obsolete e-mail address, and I
22 would be happy to answer any questions that any
23 of the commissioners might have.

24 **CHAIRMAN T. WHEELER:** Any questions from
25 the commissioners?

1 *(No response.)*

2 **CHAIRMAN T. WHEELER:** Hearing none, I'll
3 accept a motion to approve Order No. 2009-314,
4 an order approving forms and providing for the
5 continued use of certain forms?

6 **COMMISSIONER S. RIORDAN:** So moved.

7 **CHAIRMAN T. WHEELER:** Do I have a second?

8 **MS. B. McCLELLAN:** Second.

9 **CHAIRMAN T. WHEELER:** The motion's been
10 made and seconded, any further discussion?

11 *(No response.)*

12 **CHAIRMAN T. WHEELER:** Hearing none, all in
13 favor of approving Order No. 2009-314, signify
14 by saying aye?

15 **THE COMMISSION:** Aye.

16 **CHAIRMAN T. WHEELER:** Those opposed, same
17 sign?

18 *(No response.)*

19 **CHAIRMAN T. WHEELER:** Motion carries.

20 **MR. B. KING:** Mr. Chairman, if I could
21 proceed with the next item in your packet. It
22 also concerns forms. You'll see a packet of
23 material with the heading "Application for
24 In-Person Absentee Ballot ABS-1." These forms
25 are drafts that have been developed by several

1 county circuit court clerks over the last
2 several months that call for varying sweeping
3 redesigns in the absentee ballot forms, voter
4 registration forms, and some provisional forms.

5 I wanted to submit these to the commission
6 today with -- with our thanks to the clerks for
7 their work on this draft and to report that
8 we've begun discussions with Quest (CK) and
9 others involved in our statewide voter
10 registration system because the forms involved
11 here will require a fair amount of technical
12 work by those entities, if the commission
13 chooses to approve them at a later date.

14 **CHAIRMAN T. WHEELER:** Now as I understand
15 this, the form that you've included in our
16 packet, that was a joint effort between the
17 Division and the clerks?

18 **MR. B. KING:** That would be correct.

19 **CHAIRMAN T. WHEELER:** I like to see that
20 kind of cooperation. Any questions regarding
21 Absentee Ballot Form 1, ABS-1?

22 **COMMISSIONER S. RIORDAN:** I have a
23 question. Mr. King, will these be -- obviously,
24 this process is only starting, we're not in the
25 middle of the year adopting these forms, this is

1 just to put us on notice and let us know that
2 it's being worked on?

3 **MR. B. KING:** Yes, that's correct.

4 **COMMISSIONER S. RIORDAN:** Okay.

5 **CHAIRMAN T. WHEELER:** And again, we
6 appreciate the clerks working with the Division
7 to get this stuff done. That was information
8 only?

9 **MR. B. KING:** Yes.

10 **CHAIRMAN T. WHEELER:** All right. Anything
11 else under forms?

12 **MR. B. KING:** No.

13 **CHAIRMAN T. WHEELER:** All right. Moving
14 onto Item No. 3, Voting System Certification
15 Applications. Who's going to start with that;
16 what -- what systems applications do we have
17 pending right now?

18 **MR. B. KING:** Mr. Chairman, I would suggest
19 that Dr. Scheele of Ball State give a overview
20 of that.

21 **CHAIRMAN T. WHEELER:** All right. Let me
22 ask it this way: As I recall, we had four
23 vendors with systems beginning back in
24 September. Recertification of systems was due
25 October 1st; correct?

1 **MR. B. KING:** Yes, that's correct.

2 **CHAIRMAN T. WHEELER:** That's when we had to
3 recertify existing systems?

4 **MR. B. KING:** Correct.

5 **CHAIRMAN T. WHEELER:** We had a meeting on
6 September 16th, we held a meeting, and as I
7 recall, none of those systems were in a position
8 to be approved at that point in time; is that
9 correct?

10 **MR. R. SCHEELE:** Correct.

11 **CHAIRMAN T. WHEELER:** And that was --
12 wasn't a situation with the Commission not being
13 willing to approve them, the situation was that
14 they had not gone through the statutory mandated
15 process?

16 **MR. R. SCHEELE:** Correct.

17 **CHAIRMAN T. WHEELER:** And as I recall, Ray,
18 primarily, in some cases that was testing?

19 **MR. R. SCHEELE:** Correct.

20 **CHAIRMAN T. WHEELER:** Some cases, it was
21 some of the materials had not been provided?

22 **MR. R. SCHEELE:** Correct.

23 **CHAIRMAN T. WHEELER:** So none of the
24 those -- Hart, Premier, ES&S or Microvote were
25 approved at that meeting?

1 **MR. R. SCHEELE:** Correct.

2 **CHAIRMAN T. WHEELER:** And I will make a
3 statement that the Commission set that meeting
4 for the purpose of getting that done prior to
5 October 1st, and I will tell that the Commission
6 Members were fairly disappointed that the
7 vendors had not gotten with Ball State, and
8 there were a variety of reasons, but had not
9 gotten with Ball State and got it done. Now
10 we've reset a meeting -- when was our last
11 meeting?

12 **MR. B. KING:** November 16th.

13 **CHAIRMAN T. WHEELER:** November 16th to
14 allow that testing to take place. During that
15 November meeting we were able to get two of
16 those systems approved; is that correct -- the
17 vendors -- two vendors or two systems; correct?

18 **MR. B. KING:** That's correct, Mr. Chairman.

19 **CHAIRMAN T. WHEELER:** And that was which
20 two, Hart and Premier?

21 **MR. B. KING:** Yes, Mr. Chairman. On
22 November 16th the Hart InterCivic application
23 for recertification was approved, and the, what
24 was originally a Premier system before its
25 purchase by ES&S recertification application was

1 approved. The Premier application dealt with
2 the issue of the SSL certificates.

3 **CHAIRMAN T. WHEELER:** And found that Ball
4 State reviewed those and those were approved by
5 the commission during that meeting, so that left
6 us with two vendors with systems still
7 outstanding, ES&S and MicroVote?

8 **MR. R. SCHEELE:** Correct.

9 **CHAIRMAN T. WHEELER:** And you're here to
10 report on those two here today?

11 **MR. R. SCHEELE:** Correct.

12 **CHAIRMAN T. WHEELER:** Yeah, let me -- let's
13 go ahead and do that now. Those of you who are
14 planning on giving testimony during the course
15 of this certification system, please stand?

16 *(Witnesses complied.)*

17 **MR. B. KING:** Please raise your right hand
18 and respond I do at the conclusion of the oath?

19 *(Witnesses complied.)*

20 **MR. B. KING:** Do you solemnly swear that
21 the testimony you will provide to the commission
22 today will be the truth, the whole truth, and
23 nothing but the truth, so help you, God?

24 **THE WITNESSES:** I do.

25 **CHAIRMAN T. WHEELER:** All right. There's a

1 packet. I'm going to start with ES&S. I have a
2 packet and the commissioners have a packet. As
3 I understand it, one of the issues with ES&S was
4 their -- their materials were actually denied in
5 the September 16th meeting and they refiled an
6 application -- on November 21st, they filed a
7 new application with the appropriate materials
8 and that was then turned over to Ball State for
9 review?

10 **MR. R. SCHEELE:** Correct.

11 **CHAIRMAN T. WHEELER:** And Ray, can you go
12 ahead and discuss your review?

13 **MR. R. SCHEELE:** Sure. I'm not sure if the
14 packet -- let me hand it out and we'll do --
15 this packet contains -- this is for the
16 commissioners -- this packet contains -- Pam and
17 Brad.

18 **MS. L. BARNES:** Mr. Chairman, sorry to
19 interrupt. We did not have a sign-in sheet.
20 Ray, can you please state your name for the
21 record?

22 **MR. R. SCHEELE:** Sure. I am Raymond
23 Scheele, Co-Director of the Bowen Center for
24 Public Affairs at Ball State University and
25 Co-Project Director of the Voting System

1 Technical Oversight Program.

2 **CHAIRMAN T. WHEELER:** And Ray, just for
3 people who -- we have some clerks here and
4 people that aren't involved in the process,
5 could you discuss -- just a two-minute overview
6 of what Ball State's role in the system is?

7 **MR. R. SCHEELE:** Correct. The
8 certification process -- we have been contracted
9 by the Indiana Election Commission to oversee
10 and make recommendations to the commissioners
11 with respect to certifications of new machines,
12 new voting systems in the state, as well to test
13 and recommend to the commissioners
14 recertifications of voting systems in the state,
15 and we have done that in working with the
16 vendors.

17 We've tested all of the machines that are
18 on the agenda today, as well as -- well, all of
19 them that have also been previously approved.

20 **CHAIRMAN T. WHEELER:** All right. How do
21 you want to go? Why don't you start with the
22 Premier, the former Premier system, since that
23 application date is August 26th?

24 **MR. R. SCHEELE:** Okay. Yes, this is the
25 Assure 1.2, the new certification. We have

1 tested this machine as the report indicates, on
2 Wednesday, October 7th. The voting system was
3 brought to the campus at Ball State, and in
4 cooperation with the vendor's representatives,
5 our team did all of self-tests on it, including
6 conducting a mock election on the machines.

7 We have gone through our protocols with
8 respect to this new voting system that ES&S
9 would like to have certified. We have
10 everything in place except for one document, and
11 I think -- where's -- the ES&S representative is
12 here.

13 We do not have as we speak right now -- we
14 worked through the night on this, I think the
15 ES&S representatives did, to get verification of
16 the escrow of the voting system software and
17 that has not come to us yet so we -- that is the
18 one element we are missing on this voting
19 system, and therefore, we're not in a position
20 yet to recommend to you that it be certified as
21 a new voting system for use in the State of
22 Indiana.

23 **CHAIRMAN T. WHEELER:** All right, let me
24 stop you there. And Brad, receipt of that
25 escrow information is a statutory requirement?

1 **MR. B. KING:** Yes, Mr. Chairman, Members of
2 the Commission, under Indiana Code
3 3-11-15-7(a)(8), one of the requirements for the
4 application is to "Provide documentation of the
5 escrow of the voting system's software,
6 firmware, source codes, and executable images
7 with an escrow agent approved by the election
8 division."

9 **CHAIRMAN T. WHEELER:** So as I understand
10 it, that's not an option, that is a mandatory
11 requirement; correct?

12 **MR. B. KING:** Yes, it must satisfy the
13 following requirements.

14 **CHAIRMAN T. WHEELER:** Okay. Who's here
15 from ES&S; would you introduce yourself?

16 **MR. S. PEARSON:** Hi, my name is Steve
17 Pearson. I'm Vice President of Certification
18 for ES&S.

19 **CHAIRMAN T. WHEELER:** Steve, can you spell
20 your name for Rhonda just so she can get it?

21 **MR. S. PEARSON:** It's P-E-A-R-S-O-N.

22 **CHAIRMAN T. WHEELER:** Okay, Steve, what's
23 the deal -- you're missing one piece of paper?

24 **MR. S. PEARSON:** The acquisition -- the
25 application had been submitted with the

1 acquisition and merger of the two companies.
2 Typically, the exhibit that provides evidence of
3 escrow is provided at the time of application.

4 It was an oversight, in the fact that we
5 detect that it was not submitted at the time of
6 the application prior to the acquisition, so we
7 will get that completed and submit that -- that
8 evidence of escrow.

9 **CHAIRMAN T. WHEELER:** On what kind of time
10 frame do you figure?

11 **MR. S. PEARSON:** Well, I need to determine
12 that it's been placed in escrow with the
13 independent escrow agent.

14 **CHAIRMAN T. WHEELER:** So right now, you
15 don't even know if it's in escrow?

16 **MR. S. PEARSON:** It's in escrow with the
17 EAC, but not -- we don't know if it was
18 deposited with an independent escrow agent, and
19 I think that I'll need probably a day to get
20 that determined, and we'll make that deposit
21 just as rapidly as we can, and generally,
22 that's -- we can do that in one day, get that on
23 deposit and get evidence of escrow.

24 **CHAIRMAN T. WHEELER:** And of course, since
25 this system hasn't been approved, nobody's using

1 it, so that's --

2 MR. S. PEARSON: Correct --

3 CHAIRMAN T. WHEELER: The money's not
4 really a problem?

5 MR. S. PEARSON: Correct.

6 CHAIRMAN T. WHEELER: I'm just not sure
7 when the Commission is going to meet again to
8 approve -- it may be January or February.

9 MR. S. PEARSON: Okay.

10 CHAIRMAN T. WHEELER: So just understand if
11 that's the case, but that's not going to impact
12 any elections in Indiana or any primary
13 elections; correct?

14 MR. S. PEARSON: No.

15 CHAIRMAN T. WHEELER: In that case, the
16 recommendation is that we table this, --

17 MR. R. SCHEELE: Correct.

18 CHAIRMAN T. WHEELER: -- I assume, and then
19 you understand -- you don't have a problem with
20 it, you're going to get it to us, and I'll put
21 it on the next commission agenda?

22 MR. S. PEARSON: Yeah, I understand.

23 COMMISSIONER S. RIORDAN: Mr. Chairman, I
24 move that we table the application of Election
25 Systems & Software (formerly Premier Election

1 Systems) application for certification of the
2 Assure 1.2 until our next meeting.

3 CHAIRMAN T. WHEELER: Do I have a second?

4 MS. M. CHANDLER: Second.

5 CHAIRMAN T. WHEELER: Motion's made and
6 seconded, any further discussion?

7 *(No response.)*

8 CHAIRMAN T. WHEELER: Hearing none, all in
9 favor, signify by saying aye?

10 THE COMMISSION: Aye.

11 CHAIRMAN T. WHEELER: Those opposed, same
12 sign?

13 *(No response.)*

14 CHAIRMAN T. WHEELER: Motion carries. All
15 right, which one do you want to do next?

16 MR. R. SCHEELE: ES&S Unity 3.0.1.0. This
17 is a DRE and optical scan voting system. We
18 tested this system with, again, the
19 representatives from ES&S on October 8th of this
20 year.

21 CHAIRMAN T. WHEELER: Let me stop you
22 there.

23 MR. R. SCHEELE: Sure.

24 CHAIRMAN T. WHEELER: This is a
25 recertification of a previously approved system?

1 **MR. R. SCHEELE:** Correct.

2 **CHAIRMAN T. WHEELER:** Statutorily, there's
3 a deadline of October 1st; correct?

4 **MR. R. SCHEELE:** Correct.

5 **CHAIRMAN T. WHEELER:** And you didn't even
6 do the testing until October 8th; correct?

7 **MR. R. SCHEELE:** Correct. This is one of
8 those that we couldn't address at the September
9 meeting because we hadn't tested it yet.

10 **CHAIRMAN T. WHEELER:** Okay.

11 **MR. R. SCHEELE:** On the basis of our
12 evaluation, if you go to the final paragraph, we
13 find that the voting system referenced herein
14 meet all the requirements of the Indiana Code
15 for the use in the State of Indiana, including
16 compliance with the legal requirements for
17 voters with disabilities.

18 **CHAIRMAN T. WHEELER:** Now when we discussed
19 the Unity 3.0.1.0 on September 16th, as I
20 recall, I think they had everything in but the
21 testing?

22 **MR. R. SCHEELE:** Correct.

23 **CHAIRMAN T. WHEELER:** And as I recall, the
24 Commission because -- and I think the Commission
25 was unhappy to see that the testing had not

1 taken place before the statutorily mandated
2 deadline of October 1st, that that particular
3 application was denied?

4 **MR. R. SCHEELE:** Denied, correct.

5 **CHAIRMAN T. WHEELER:** ES&S has now refiled
6 that application as of November 24th?

7 **MR. R. SCHEELE:** Correct.

8 **CHAIRMAN T. WHEELER:** And you reviewed it
9 and finds that it meets all of the requirements,
10 including the testing that you've now had the
11 opportunity to do?

12 **MR. R. SCHEELE:** Correct, which is why the
13 date of application on this report to you is
14 November 24th, which is their latest
15 reapplication.

16 **CHAIRMAN T. WHEELER:** Any questions from
17 commission members?

18 *(No response.)*

19 **CHAIRMAN T. WHEELER:** Hearing none, I'll
20 accept a motion on ES&S Unity 3.0.1.0?

21 **MS. M. CHANDLER:** Make a motion to approve
22 it.

23 **CHAIRMAN T. WHEELER:** All right, I have a
24 motion to approve, do I have a second?

25 **COMMISSIONER S. RIORDAN:** Second it.

1 **CHAIRMAN T. WHEELER:** Motion's been made
2 and seconded, any further discussion?

3 **COMMISSIONER S. RIORDAN:** Could we just for
4 purposes of the record have an explanation of
5 exactly what this model does?

6 **MR. R. SCHEELE:** Sure. This is both a DRE
7 system, which is the touch screen voting system,
8 as well as an optical scan ballot card system.
9 The technical firmware and software that are
10 mentioned on this, some of it is
11 self-exploratory, but a lot of it isn't because
12 it's technical language dealing with their
13 firmware and software.

14 But basically, what we did in our testing,
15 our self-tests on this, everything was set up
16 the way it would be in a precinct or a vote
17 center, if this machine were to be used. We
18 went through our protocol, which was all of the
19 statutory requirements, both at the federal
20 level as well as the state level, and we took a
21 look at the laboratory reports on the systems
22 and checked off everything at the national
23 standards and then we went through all of the
24 Indiana statutory standards that we had agreed
25 with with staff, that it met all of the

1 statutory requirements in Indiana, at which time
2 then we made certain and we recorded -- in fact,
3 we videotaped all of these as well, we made
4 certain that every serial number on every
5 component was in our notes that we had tested.

6 Then we actually conducted a mock election
7 on the machine, where we had made up the
8 ballots, our team had, and we voted for an hour
9 or so or more, and then we have our graduate
10 assistants who take a look at that data and
11 match it against what we knew the ballots were
12 to show at the end to make certain that the
13 machines were functioning in what we call a
14 logical way and an appropriate way.

15 **CHAIRMAN T. WHEELER:** And it came out the
16 way you predicted?

17 **MR. R. SCHEELE:** And it came out the way.

18 **CHAIRMAN T. WHEELER:** Who won?

19 **MR. R. SCHEELE:** Well, actually, we had
20 several of us voting, and it was fun to vote all
21 day.

22 **CHAIRMAN T. WHEELER:** It sounds a lot like
23 Lake County -- cheap shot.

24 **COMMISSIONER S. RIORDAN:** And where are
25 these systems used in Indiana, how many

1 counties?

2 MR. R. SCHEELE: Oh, did we bring that data
3 on county use, perhaps ES&S -- I'm not sure.

4 MR. S. PEARSON: Sixteen counties.

5 CHAIRMAN T. WHEELER: Marion, some of the
6 major counties?

7 MR. S. PEARSON: Yes.

8 CHAIRMAN T. WHEELER: St. Joe?

9 MR. S. PEARSON: Not this particular
10 device, no.

11 CHAIRMAN T. WHEELER: St. Joe is an ES&S
12 customer?

13 MR. S. PEARSON: Correct, but it's a
14 different model.

15 CHAIRMAN T. WHEELER: Any further
16 questions?

17 COMMISSIONER S. RIORDAN: No.

18 CHAIRMAN T. WHEELER: All right, there's
19 been a motion that's been made and seconded, any
20 question from any commission member?

21 *(No response.)*

22 CHAIRMAN T. WHEELER: Hearing none, all in
23 favor of approving a renewal of the Unity
24 3.0.1.0, signify by saying aye?

25 THE COMMISSION: Aye.

1 **CHAIRMAN T. WHEELER:** Those opposed, same
2 sign?

3 *(No response.)*

4 **CHAIRMAN T. WHEELER:** Motion carries.

5 **MR. R. SCHEELE:** Then Mr. Chairman, in the
6 packet is the ES&S new certification request or
7 application for the Unity 3.2.0.0. We tested
8 this that same week as the previous system that
9 we just talked about.

10 This test was conducted on Friday, October
11 9th by our team, and again, at the last
12 paragraph on our report, on the basis of that
13 evaluation, we find that the system referenced
14 herein meets all the requirements of the Indiana
15 Code for use in the State of Indiana and this
16 includes compliance with the legal requirements
17 for voters with disabilities.

18 **CHAIRMAN T. WHEELER:** Any questions from
19 commission members?

20 **COMMISSIONER S. RIORDAN:** Is this something
21 that is currently in use in Indiana?

22 **MR. R. SCHEELE:** No, this is a new system
23 that's being asked for for new certification.

24 **CHAIRMAN T. WHEELER:** Anything else from
25 the commission members?

1 (No response.)

2 **CHAIRMAN T. WHEELER:** Hearing none, I'll
3 accept a motion on the Unity 3.2?

4 **COMMISSIONER S. RIORDAN:** I move that we
5 approve the application by ES&S for the Unity
6 3.2.0.0.

7 **CHAIRMAN T. WHEELER:** Do I have a second?

8 **MS. M. CHANDLER:** Second.

9 **CHAIRMAN T. WHEELER:** All right. I have a
10 motion that's been made and seconded, any
11 further discussion?

12 **COMMISSIONER S. RIORDAN:** I have one
13 question. Are these models compatible with the
14 ones that we just reapproved or would these be a
15 completely new system to a completely new
16 customer?

17 **MR. S. PEARSON:** This is Steve Pearson
18 again. No, it's a -- it's a separate system and
19 they're not interchangeable.

20 **CHAIRMAN T. WHEELER:** Is it intended to
21 replace?

22 **MR. S. PEARSON:** It is intended to be used
23 as...

24 **CHAIRMAN T. WHEELER:** It's the next
25 generation?

1 **MR. S. PEARSON:** It's the next generation,
2 yeah.

3 **CHAIRMAN T. WHEELER:** Does it run -- does
4 it run on the same --

5 **MR. S. PEARSON:** It introduces a new
6 tabulator, a new precinct-based tabulator.

7 **CHAIRMAN T. WHEELER:** Will it run on the
8 same hardware or does it involve new hardware as
9 well?

10 **MR. S. PEARSON:** The one new tabulator
11 we're introducing is our Model DS200, and it is
12 a new product that we're introducing, that we
13 want to introduce into the State of Indiana.

14 **CHAIRMAN T. WHEELER:** So that's going to
15 cost our counties, I guess?

16 **MR. S. PEARSON:** Well, it'll give them the
17 opportunity to step to the next level, I guess.

18 **CHAIRMAN T. WHEELER:** I suspect they'll
19 appreciate that.

20 **MR. S. PEARSON:** But the other components,
21 the Model 650 and the AutoMARK, are the same
22 platforms, then it would just be a firmware
23 upgrade to utilize those.

24 **CHAIRMAN T. WHEELER:** Any further questions
25 from the commission members?

1 *(No response.)*

2 **CHAIRMAN T. WHEELER:** Hearing none, I'll
3 accept a motion on the Unity 3.2.

4 **COMMISSIONER S. RIORDAN:** I think I made
5 the motion earlier.

6 **CHAIRMAN T. WHEELER:** Oh, I'm sorry, that
7 was the discussion. The motion's been made and
8 seconded, hearing no further discussion, all in
9 favor of approving the Unity 3.2, signify by
10 saying aye?

11 **THE COMMISSION:** Aye.

12 **CHAIRMAN T. WHEELER:** Those opposed, same
13 sign?

14 *(No response.)*

15 **CHAIRMAN T. WHEELER:** Motion carries. All
16 right, that leaves us with the MicroVote
17 application?

18 **MR. R. SCHEELE:** Correct. We do not have
19 in the packet a report on MicroVote.

20 **CHAIRMAN T. WHEELER:** Let me get to -- hold
21 off one second. As with ES&S, at the September
22 16th meeting, MicroVote was not in a position to
23 go forward. The Election Commission at that
24 meeting denied the application. MicroVote has
25 now, as I understand it, Brad, correct me if I'm

1 wrong, refiled their application on September,
2 or sorry, it was actually signed on November
3 17th but received by the commission on November
4 25th?

5 **MR. B. KING:** That's correct, Mr. Chairman.

6 **CHAIRMAN T. WHEELER:** So we do have a -- we
7 have an appropriate application in front of us;
8 correct?

9 **MR. B. KING:** Yes, the application has been
10 filed on the required...

11 **CHAIRMAN T. WHEELER:** All right. Now as I
12 recall, the hold-up with this particular system
13 last time, from the report last time, was that
14 MicroVote did not have their final report from
15 the independent testing authority?

16 **MR. R. SCHEELE:** Correct.

17 **CHAIRMAN T. WHEELER:** And I believe at that
18 meeting, the Commission directed MicroVote to
19 work with Ball State in obtaining that
20 information; is that correct?

21 **MR. R. SCHEELE:** Correct.

22 **CHAIRMAN T. WHEELER:** I would note that
23 MicroVote had previously produced this same
24 system back in, and Brad, correct me if I'm
25 wrong, September of 2006?

1 **MR. B. KING:** Yes, Mr. Chairman, the
2 previous certification was September 18th of
3 2006.

4 **CHAIRMAN T. WHEELER:** So in that
5 certification, did we have the final report at
6 that time?

7 **MR. B. KING:** No, Mr. Chairman.

8 **CHAIRMAN T. WHEELER:** As I recall, the
9 election commission, because of the pendency of
10 elections; particularly, the November 2006
11 elections, the election commission went ahead
12 and certified the system, this particular system
13 for use in the State of Indiana notwithstanding
14 the fact that the final report had not been
15 received; is that correct?

16 **MR. B. KING:** Yes, Mr. Chairman.

17 **CHAIRMAN T. WHEELER:** So three years ago,
18 more than three years ago we approved this
19 without the final report; is that correct?

20 **MR. B. KING:** Yes that is correct.

21 **CHAIRMAN T. WHEELER:** And that approval was
22 contingent upon receiving that final report?

23 **MR. B. KING:** Yes, it was, Mr. Chairman.

24 **CHAIRMAN T. WHEELER:** All right. And I
25 believe -- I'm looking over your shoulder at the

1 September 18th minutes, which says, however,
2 this approval is subject to three conditions:
3 (1) MicroVote filing a copy of the complete
4 report from CIBER Laboratory within 7 days after
5 receipt of the report by MicroVote; (2) The
6 report indicating system compliance with the
7 2002 FEC standards; and (3) MicroVote filing
8 additional information no later than September
9 28th, 2006, confirming that CIBER exercised due
10 diligence to confirm the system's straight party
11 voting features complied with the system
12 specifications filed by Cyber -- filed with
13 CIBER by MicroVote. Of those conditions, as I
14 understand it, MicroVote met one of those three
15 conditions; is that correct?

16 **MR. B. KING:** Yes, the third condition.

17 **CHAIRMAN T. WHEELER:** And that would be the
18 third condition, the filing of the CIBER report
19 relating to the system specs, but the first and
20 second conditions related to filing a complete
21 report from CIBER were not met on September
22 18th of 2006.

23 As I understand it, the commission approved
24 it contingent upon that information, and as I
25 sit here today, December 1st, 2009, more than

1 three years later, has that condition been met?

2 **MR. R. SCHEELE:** No, we do not have an
3 independent lab report from MicroVote.

4 **CHAIRMAN T. WHEELER:** All right. That's
5 despite the fact that at the November 2009
6 meeting, the Commission, specifically, addressed
7 you to work with MicroVote and get that complete
8 report; correct?

9 **MR. R. SCHEELE:** Correct. We contacted
10 MicroVote -- oh, excuse me, go ahead.

11 **CHAIRMAN T. WHEELER:** That has not been
12 produced as of today?

13 **MR. R. SCHEELE:** That's correct, it has not
14 been produced.

15 **CHAIRMAN T. WHEELER:** All right. Why not?

16 **MR. J. RIES:** My name is Jim Ries. After
17 the November 16th meeting, we spoke with the
18 gentleman from Ball State pursuant to a request
19 to try to obtain documentation from CIBER. We
20 sent a letter directly to the program engineer
21 at CIBER that day, and subsequently --

22 **CHAIRMAN T. WHEELER:** Jim, let me -- let me
23 stop you there -- actually, let me ask two
24 questions: One, you agree that those conditions
25 were imposed in September of 2006; correct?

1 **MR. J. RIES:** Correct.

2 **CHAIRMAN T. WHEELER:** No. 2, you agree that
3 as of today, you have not complied with those
4 conditions?

5 **MR. J. RIES:** That's correct.

6 **CHAIRMAN T. WHEELER:** You understand that
7 those are statutory conditions for the approval
8 of that particular system?

9 **MR. J. RIES:** I believe they are.

10 **CHAIRMAN T. WHEELER:** You understand that
11 the commission went around those statutory, and
12 I'm not sure we had the right to do it, but we
13 did it, because of the upcoming November 2006
14 elections; correct?

15 **MR. J. RIES:** Correct.

16 **CHAIRMAN T. WHEELER:** And you understand
17 the commission did that based upon your
18 reputation, and I believe it was your
19 representation, that you would get that letter?

20 **MR. J. RIES:** That's correct.

21 **CHAIRMAN T. WHEELER:** All right. And as of
22 today, do you have that letter?

23 **MR. J. RIES:** We do not have the final test
24 report because it was never generated.

25 **CHAIRMAN T. WHEELER:** I understand. That

1 was going to be my next question. Now tell me
2 why you don't have that letter -- we're three
3 years in?

4 **MR. J. RIES:** We actually asked CIBER to
5 respond back to Mr. Losco and a copy to Brad as
6 well and members of the commission, CIBER, Inc.
7 was -- lost their accreditation for VSTL at the
8 end of August of 2006, and that is referenced in
9 the response to Mr. King and Mr. Losco -- our
10 question still remains, is all the testing was
11 performed in the month of June or July 2006.
12 Subsequent letters were sent to the election
13 commission confirming that that testing had been
14 completed and a report would be forthcoming.

15 Within that jurisdiction of time, the
16 governing body was NASED at the time, that had
17 the autonomy to authorize certification to
18 system vendors. Our question remained and we
19 posed the question two weeks in writing to Miss
20 Kelly Rohacek why that report was never
21 generated, even though we completed the testing
22 in July and they did not lose their
23 accreditation until August 31 of 2006, and that
24 response was simply never answered.

25 **CHAIRMAN T. WHEELER:** All right. And

1 that's a letter dated November 17th, 2009
2 from -- signed by you as president of MicroVote
3 to this Kelly Rohacek, Practice Director, CIBER,
4 Inc.?

5 **MR. J. RIES:** Correct.

6 **CHAIRMAN T. WHEELER:** And I believe there's
7 a copy of that in the commission's packet from
8 MicroVote.

9 **COMMISSIONER S. RIORDAN:** Mr. Chairman, is
10 it September 17th or November?

11 **CHAIRMAN T. WHEELER:** November 17th is what
12 I'm looking at right here.

13 **MR. J. RIES:** November 17th.

14 **CHAIRMAN T. WHEELER:** And I believe your
15 letter was in response to an e-mail exchange
16 between, it looks like you and Ball State; is
17 that correct?

18 **MR. J. RIES:** Correct.

19 **CHAIRMAN T. WHEELER:** I have an e-mail in
20 the packet, the commission has an e-mail in the
21 packet, and Joe, is this from you?

22 **MR. J. LOSCO:** Yes, it is.

23 **CHAIRMAN T. WHEELER:** I'd like you to
24 address that e-mail at 8:53 a.m. addressing what
25 Mr. Ries says -- Mr. Ries has said CIBER

1 completed their reporting, and basically, they
2 just never issued the report, and I take your
3 e-mail to kind of beg to differ with him?

4 MR. J. LOSCO: Yes, Joe Losco.

5 CHAIRMAN T. WHEELER: Joe, can you spell
6 your last name?

7 MR. J. LOSCO: L-O-S-C-O. In the
8 communication we had with Mr. Ries, we pointed
9 out after reviewing their materials once again
10 after the November meeting with the commission,
11 that there were two possibilities that we could
12 explore, in terms of looking for some
13 verification.

14 CHAIRMAN T. WHEELER: Let me -- let me back
15 you up --

16 MR. J. LOSCO: Sure.

17 CHAIRMAN T. WHEELER: -- because I want to
18 talk -- do you have a copy of your e-mail?

19 MR. J. LOSCO: The September 17th e-mail, I
20 don't.

21 CHAIRMAN T. WHEELER: I'm looking at your
22 e-mail the 17th at 8:53 a.m. going to Mr. Ries.

23 MR. J. LOSCO: That one, I don't, I'm
24 sorry -- oh, yes, from...

25 CHAIRMAN T. WHEELER: It's from you to Mr.

1 Ries.

2 MR. J. LOSCO: No, I don't.

3 CHAIRMAN T. WHEELER: Let me give --

4 Commissioner Riordan has been kind enough to let
5 you use this copy, we have it in our packet,
6 because it was also cc'ed to both Brad and Pam,
7 our co-directors. Looking at that, it begins
8 Dear Jim, do you see that?

9 MR. J. LOSCO: Yes, uh-huh.

10 CHAIRMAN T. WHEELER: All right. And this
11 is the e-mail that you've been referring to
12 where you're e-mailing it back and expressing
13 some concerns --

14 MR. J. LOSCO: Yes.

15 CHAIRMAN T. WHEELER: -- about the process
16 and the MicroVote contention that all the review
17 has been done?

18 MR. J. LOSCO: Yes.

19 CHAIRMAN T. WHEELER: You refer to a
20 gentleman by the name of Jack Cobb?

21 MR. J. LOSCO: Yes.

22 CHAIRMAN T. WHEELER: What is your
23 understanding of who Jack Cobb is or was?

24 MR. J. LOSCO: Jack Cobb was an employee of
25 CIBER labs at the time the certification -- at

1 the time the review was done by CIBER labs.

2 **CHAIRMAN T. WHEELER:** And you're referring
3 to two letters from Mr. Cobb dated September
4 8th, 2006 and September 20th of 2006?

5 **MR. J. LOSCO:** Yes, that's right.

6 **CHAIRMAN T. WHEELER:** And those were
7 letters done by Mr. Cobb in response to requests
8 by MicroVote?

9 **MR. J. LOSCO:** By MicroVote, yes.

10 **CHAIRMAN T. WHEELER:** And so these were in
11 response to MicroVote's attempt to provide some
12 format of this final report?

13 **MR. J. LOSCO:** Yes, that's right.

14 **CHAIRMAN T. WHEELER:** And you express some
15 concerns about Mr. Cobb's letter, I note in
16 there. He states, "Some information provided
17 may not be exact" in his letters. You note that
18 he did not provide any of the test results in
19 his letter?

20 **MR. J. LOSCO:** Correct.

21 **CHAIRMAN T. WHEELER:** You also note that
22 Mr. Cobb states that a report, quote,
23 recommending a system to be certified will be
24 sent to the EAC -- that never ever happened; is
25 that correct?

1 **MR. J. LOSCO:** Correct.

2 **CHAIRMAN T. WHEELER:** And those -- and
3 those were all expressed in your e-mail or
4 concern back to Mr. Ries?

5 **MR. J. LOSCO:** Correct.

6 **CHAIRMAN T. WHEELER:** And as a consequence
7 of that, you say, and I'm quoting you, "We do
8 not have and cannot find this document but
9 believe it may provide us with some assurance
10 about the reliability of the CIBER tests."

11 As I understand it, from your perspective
12 as, and this is the king leader of the three of
13 you, Ball State's perspective, the information
14 in the Cobb letters was not compliant with
15 either the statutory requirement for a final
16 report and did not -- was not sufficient to give
17 you a level of comfort that the system was
18 actually -- had been fully tested and met the
19 statutory requirements; is that correct?

20 **MR. J. LOSCO:** That's correct, Mr.
21 Chairman.

22 **CHAIRMAN T. WHEELER:** And that's what
23 you're expressing back to him in this letter or
24 e-mail?

25 **MR. J. LOSCO:** Yes.

1 **CHAIRMAN T. WHEELER:** And as I understand
2 it, you give him two options, what are those two
3 options?

4 **MR. J. LOSCO:** First, to inquire again from
5 CIBER to see if the testing data is available
6 and we can look at it, or secondly, to provide
7 us with the referenced report to EAC
8 recommending certification.

9 **CHAIRMAN T. WHEELER:** And what you're
10 saying -- what I take from this is in the
11 absence of something like that, we cannot
12 recommend approval of the system because it
13 doesn't meet the statutory requirements of
14 having a final report?

15 **MR. J. LOSCO:** Correct.

16 **CHAIRMAN T. WHEELER:** Now Mr. Ries, as I
17 understand, this e-mail is what generated your
18 letter to MicroVote -- to CIBER; correct?

19 **MR. J. RIES:** That's correct.

20 **CHAIRMAN T. WHEELER:** And that was taking
21 one of these options they offered, to get back
22 with CIBER and try to get this information?

23 **MR. J. RIES:** Yes.

24 **CHAIRMAN T. WHEELER:** I take it from what
25 you've said, there's been no response to this

1 letter?

2 **MR. J. RIES:** No. We did receive a
3 response back from Kelly Rohacek on -- I believe
4 it was the 24th of November cc'ing Brad King and
5 Joe Losco, that in fact MicroVote did complete
6 the testing. We did everything we could. We do
7 not generate the final report, that comes from
8 the testing facility, not MicroVote.

9 The reference letters that you mention from
10 Jack Cobb, referenced that the testing was
11 completed, the 2002 standards were performed,
12 and a subsequent letter requested by the EAC in
13 September of 2006, I believe was sent back to
14 you, Chairman Wheeler, from Jack Cobb listing
15 some answers to questions as far as straight
16 party voting and issues that were tested, that
17 they were compliant.

18 **CHAIRMAN T. WHEELER:** And I note in her
19 response, she states, "The final outcome of this
20 testing was found to be incomplete and did not
21 result in a final letter."

22 **MR. J. RIES:** The certification portion of
23 it. The testing was completed.

24 **CHAIRMAN T. WHEELER:** Well, that's not what
25 it says in there.

1 **MR. J. RIES:** Well, I missed it.

2 **CHAIRMAN T. WHEELER:** CIBER says that the
3 testing was incomplete.

4 **MR. J. RIES:** The testing was completed.
5 The certification not completed.

6 **CHAIRMAN T. WHEELER:** With all due respect,
7 CIBER, which was the independent testing
8 authority said that it wasn't. That's what
9 this -- this letter you just provided says that
10 testing was incomplete -- that's what she says;
11 right?

12 **MR. J. RIES:** You've got the letter.

13 **CHAIRMAN T. WHEELER:** Okay.

14 **MR. S. SHAMO:** Excuse me, the two previous
15 letters state from CIBER that the testing has
16 been completed.

17 **CHAIRMAN T. WHEELER:** Which letter are you
18 referring to?

19 **MR. S. SHAMO:** The two Jack Cobb letters
20 from August 20th, 2006, and it was followed up
21 on September 18th.

22 **CHAIRMAN T. WHEELER:** But the Jack Cobb
23 letter very specifically says the information --
24 some information provided in this letter may not
25 be correct. That's what he said in his letter;

1 right?

2 MS. L. BARNES: Mr. Chairman, can you have
3 him introduce himself?

4 CHAIRMAN T. WHEELER: I'm sorry, Steve,
5 introduce yourself?

6 MR. S. SHAMO: Steve Shamo with MicroVote.

7 CHAIRMAN T. WHEELER: Okay.

8 MR. S. SHAMO: You've referenced several
9 times the statutory requirement for the
10 report -- I'm not sure where that statutory
11 requirement is for the report. If I remember
12 correctly, two years ago, when we went through
13 this process, Mr. Simmons recommended that
14 requiring the report could be problematic in
15 certain situations if testing was completed, and
16 you had -- we were waiting for the EAC to
17 produce a report in retrospect, so I'm wondering
18 where is the statutory requirement, the test
19 documentation, and at the last meeting Mr.
20 Simmons at least confirmed that, a report is not
21 a statutory requirement, however, it is
22 preferred by the commission; is that correct?

23 MR. D. SIMMONS: Well, actually, that was
24 the case back then -- oh, sorry.

25 COMMISSIONER S. RIORDAN: No, no, please.

1 **CHAIRMAN T. WHEELER:** Go ahead.

2 **MR. D. SIMMONS:** Actually, that was the
3 case --

4 **CHAIRMAN T. WHEELER:** Dale, introduce
5 yourself?

6 **MR. D. SIMMONS:** Dale Simmons, General
7 Counsel, for the Indiana Election Division.
8 Actually, that was the case back then, and I
9 think I did respond that the commission had
10 become uncomfortable because all we were getting
11 were letters, not full reports, which full
12 reports identify the whole system, identify the
13 testing performed, it has a lot of detail.

14 At that time we were getting reports, and
15 all the statute says is documentation from the
16 ITA, it doesn't specify the report. Since that
17 time there have been the introduction of Ball
18 State as the reviewer, and there is a statute
19 that says they review -- they have to review
20 report, specifically, to program requirements
21 are set forth in 3-11-16-4, subpart 3, "Review
22 reports concerning voting systems prepared by
23 independent laboratories." So since the
24 introduction of Ball State, certainly, a report
25 is part of the requirement.

1 **CHAIRMAN T. WHEELER:** All right. Now let's
2 go back for a second. As I understand it, your
3 position at this point is this is as good as
4 it's going to get, and we're not going to get a
5 final report from CIBER on your system?

6 **MR. J. RIES:** That's what CIBER has
7 addressed to us, that they never sent their
8 data, test data to NASED at the time.

9 **CHAIRMAN T. WHEELER:** Now let's go to the
10 next question that I, specifically, asked you at
11 our next meeting: Why can't you just go to
12 another vendor -- Wyle or someone else, there
13 are other vendors other than CIBER, and get your
14 system approved there?

15 **MR. J. RIES:** Well, we did. In April of
16 2007, we submitted this product upgrade to a
17 company by the name of iBeta out of Denver,
18 Colorado, and we went you said the 2005
19 standards, so we -- if we were to -- if any
20 vendor were to submit their current system today
21 for testing, it would have to be under the 2005
22 EAC standards.

23 **CHAIRMAN T. WHEELER:** I guess I don't
24 understand that, and I think I -- I said that at
25 the last meeting -- you and I had this

1 conversation at the last meeting, and let me
2 read to you what you said to me: Because those
3 standards might be a little -- the 2002
4 standards were no longer recognized, so if we
5 were to go to another lab, we would have to do
6 exactly what we've done, is resubmit our product
7 under the 2005 standards.

8 **MR. J. RIES:** Correct.

9 **CHAIRMAN T. WHEELER:** And you -- you stand
10 by that today; correct?

11 **MR. J. RIES:** Correct.

12 **CHAIRMAN T. WHEELER:** Now I still don't
13 understand why they can't certify under the 2002
14 standards. Why couldn't you go to Wyle and say
15 Wyle, here's our system, we don't need 2005, we
16 need 2002, why can't you do that?

17 **MR. J. RIES:** Because those standards don't
18 exist today. They're not recognized by the EAC
19 and...

20 **CHAIRMAN T. WHEELER:** You're telling me
21 Wyle can't do that?

22 **MR. J. RIES:** They cannot.

23 **CHAIRMAN T. WHEELER:** Okay, and you're
24 under oath?

25 **MR. J. RIES:** To my knowledge, the 2002

1 standards are not a recognized standard of
2 testing for any vendor?

3 **CHAIRMAN T. WHEELER:** Have you made any
4 inquiry as to whether they can or can't?

5 **MR. J. RIES:** Yes, we have.

6 **CHAIRMAN T. WHEELER:** All right. Mr.
7 Scheele, or whichever one is going to address
8 it, as you'll recall, at the end of the meeting
9 I asked both of you to check into that issue
10 because the one thing I cannot understand, as I
11 sit here today, is that MicroVote can sit for
12 three years after having, specifically, been
13 told to get that report and not get that report,
14 and as I understand what Mr. Ries has testified
15 today under oath, and it's the same thing he
16 said back on November 16th, that the ITA, the
17 Independent Testing Authority, cannot test the
18 2002 standard -- you understood him to say that
19 then, and do you recall me actually,
20 specifically, directing both of you to go back
21 and do that; do you recall that meeting?

22 **MR. R. SCHEELE:** Correct.

23 **CHAIRMAN T. WHEELER:** And you recall I told
24 both of you to do that?

25 **MR. R. SCHEELE:** Correct.

1 **CHAIRMAN T. WHEELER:** Mr. Ries, you recall
2 me saying that as well, don't you?

3 **MR. J. RIES:** Yes, I do.

4 **CHAIRMAN T. WHEELER:** Okay. I can read it
5 from the record, if you'd like. You went and
6 checked as well; correct?

7 **MR. J. LOSCO:** Yes.

8 **CHAIRMAN T. WHEELER:** And what was the
9 response of Wyle?

10 **MR. J. LOSCO:** This e-mail is a copy of
11 correspondence between myself and Frank Padilla,
12 who is the program manager --

13 **CHAIRMAN T. WHEELER:** Would you give a --
14 give a copy to Mr. Ries, please?

15 **MR. J. LOSCO:** Yes, program manager at Wyle
16 for voting systems testing, and I asked,
17 specifically, if it were possible to test the
18 2002 standards, whether or not that could be
19 made by a vendor or whether the state needs to
20 come in and ask for that kind of certification,
21 etc., and you could see at the top of the page
22 is the response I got back from Frank Padilla
23 where he says that a state or vendor can ask us
24 to test to any standard we are accredited to.
25 We are accredited to the 2002 Standard. The

1 only difference is our process would not involve
2 the EAC if we test to the 2002 standard and the
3 report would be produced by Wyle for the vendor
4 or the state directly. All testing would follow
5 the same procedures and guidelines. So to
6 answer your question directly, either can pay or
7 request, and yes, we can perform the testing
8 required.

9 **CHAIRMAN T. WHEELER:** Okay. And that's --
10 his response is dated November 17th at 8 a.m.;
11 is that correct?

12 **MR. J. LOSCO:** Yes.

13 **CHAIRMAN T. WHEELER:** Now as I understand
14 it, you simply asked him can he test to 2002,
15 and Wyle's response was yeah?

16 **MR. J. LOSCO:** Yes.

17 **CHAIRMAN T. WHEELER:** So that answers the
18 question I kept asking, which was can the ITA
19 test the 2002, and the answer is yes. Now they
20 said it wouldn't involve the EAC, but in terms
21 of issuing a final report, as to whether it's
22 compliant with 2002 standards, Wiley said sure?

23 **MR. J. LOSCO:** Yes, Mr. Chairman.

24 **CHAIRMAN T. WHEELER:** Mr. Ries.

25 **MR. J. RIES:** We submitted our product on

1 April 17th, 2007 under the 2005, which we have
2 completed and received EAC accreditation so it
3 would make no business sense for us to resubmit
4 a system under older standards when we've
5 already gone through the process with a newer
6 upgraded system.

7 **CHAIRMAN T. WHEELER:** But when you say it
8 doesn't make any business sense -- I mean, you
9 had an order from the Commission to do it.

10 **MR. J. RIES:** Which we pursued every viable
11 avenue in testing...

12 **CHAIRMAN T. WHEELER:** Did you call Wyle and
13 ask them?

14 **MR. J. RIES:** Wyle was not -- we did not
15 use Wyle at the time.

16 **CHAIRMAN T. WHEELER:** I understand that,
17 but CIBER was gone. You didn't call them and
18 see -- I mean, you were under the order of the
19 Commission in September '06 -- I mean, what
20 boggles my mind is at that point in time you're
21 in the midst of an investigation by the
22 Secretary of State, you're in the process of a
23 situation with the election commission, and you
24 don't even call another ITA to see if you're
25 going to comply with an order of this

1 commission?

2 **MR. J. RIES:** We did, we refiled an
3 application on April 17th, 2007, with iBeta for
4 this said system under the new standards, and it
5 took us nearly two years to complete that
6 process, so we went through the process. CIBER
7 was not a viable entity at the time. There was
8 another company in Denver by the name of
9 SysTest, who were having issues as well, so we
10 went forward with iBeta and completed that
11 testing in the middle of 2008, and received the
12 final EAC certification report in December of
13 2008.

14 **CHAIRMAN T. WHEELER:** Mr. Ries, I asked
15 you, specifically, under oath just a couple of
16 minutes if you checked into it, and you said no,
17 nobody can test the 2002. That was -- that was
18 your testimony on November 16th and that was
19 your testimony again.

20 **MR. J. RIES:** And it still is my testimony.
21 I checked with iBeta, who we currently have our
22 product certified with, if we could go back, a
23 regression, and they could not, and I don't
24 believe I have any correspondence in writing,
25 but we already completed the 2005 federal

1 testing so it made no sense for us to go
2 backwards.

3 CHAIRMAN T. WHEELER: Are you familiar with
4 the election commission's -- I'm sorry.

5 COMMISSIONER S. RIORDAN: I --

6 CHAIRMAN T. WHEELER: I apologize. Are ou
7 familiar with the election commission's order
8 that was entered into connection with
9 MicroVote's prior -- at least -- I think there
10 were findings with at least misstatements to
11 this commission in connection with the prior
12 certification process that is currently in
13 litigation -- now you probably have seen a copy
14 of some of the appellate materials on that?

15 MR. J. RIES: I have.

16 CHAIRMAN T. WHEELER: Do you recall what
17 the commission ordered with respect to MicroVote
18 doing business in Indiana and with respect to
19 whether or not the commission would stay the
20 sanctions that had been entered against
21 MicroVote and what the conditions of that stay
22 were?

23 MR. J. RIES: At this point, I -- you know,
24 I'm not sure what you're saying.

25 CHAIRMAN T. WHEELER: Do you recall on the

1 final order of this commission where we noted
2 that you were given an order of prohibition, a
3 five-year order of prohibition from sales,
4 marketing, etc. of equipment in the State of
5 Indiana, and we, quote, stayed that based upon
6 No. 1, MicroVote performing its contractual
7 obligations to Indiana customers, B) MicroVote
8 must abide by all election laws; do you recall
9 that?

10 **MR. J. RIES:** I believe I do.

11 **CHAIRMAN T. WHEELER:** That's all my
12 questions for right now.

13 **COMMISSIONER S. RIORDAN:** Just to refresh
14 my memory. What is the model number or what is
15 the product that you are seeking certification
16 for today?

17 **MR. J. RIES:** It's the Infinity Voting
18 System Firmware Version 3.10 and Election
19 Management System 3.1.1.0.

20 **COMMISSIONER S. RIORDAN:** And is that a
21 touch screen or is that a ballot card?

22 **MR. J. RIES:** It is a DRE.

23 **COMMISSIONER S. RIORDAN:** Which means touch
24 screen; right?

25 **MR. J. RIES:** It's touch button.

1 **COMMISSIONER S. RIORDAN:** A touch button?

2 **MR. J. RIES:** Correct.

3 **COMMISSIONER S. RIORDAN:** So it's not one
4 that has a paperless trail?

5 **MR. J. RIES:** That is correct.

6 **COMMISSIONER S. RIORDAN:** And basically,
7 the product that we're talking about does what,
8 in practical terms, it tabulates votes --

9 **MR. J. RIES:** It tabulates votes.

10 **COMMISSIONER S. RIORDAN:** -- based on a
11 touch by the voter?

12 **MR. J. RIES:** That is correct.

13 **COMMISSIONER S. RIORDAN:** And what is the
14 number of counties that are currently using this
15 product?

16 **MR. J. RIES:** Forty-eight.

17 **COMMISSIONER S. RIORDAN:** Okay. And are
18 any of those big counties, like Lake or...

19 **MR. J. RIES:** Lake County, Allen County,
20 Hendricks County and Hamilton County.

21 **COMMISSIONER S. RIORDAN:** Okay. And those
22 are machines that are out there right now and we
23 do not have -- are you telling us that -- that
24 those machines that are in the field being used
25 right now are certified to the 2005 standards?

1 **MR. J. RIES:** No, they are not.

2 **COMMISSIONER S. RIORDAN:** Okay, because I
3 was confused when you were talking about the
4 2005 standards. What has been certified to the
5 2005 standards?

6 **MR. J. RIES:** We resubmitted an upgrade
7 version, both hardware and software, under the
8 EAC 2005 standards, but that has not been
9 certified by the State of Indiana.

10 **COMMISSIONER S. RIORDAN:** And -- and is
11 there an application?

12 **MR. J. RIES:** No, there is not.

13 **COMMISSIONER S. RIORDAN:** Okay. So what
14 I'm trying to nail down is are those -- these
15 machines are out there being used in the
16 counties and we don't have an independent
17 testing report that tells us that these meet the
18 2002 standards or the 2005 standards, we don't
19 have that right now; right?

20 **MR. J. RIES:** That's correct.

21 **COMMISSIONER S. RIORDAN:** Okay. And I
22 think Mr. Wheeler went into why that is, but the
23 way I understand the statute, we have to have
24 documentation -- it says we have to have
25 documentation, it doesn't say we must have a

1 complete report from an independent testing
2 authority, but it also requires that we cannot
3 certify anything unless it complies with either
4 the 2002 standards or the 2005 standards.

5 And what we rely on as proof that a system
6 complies with either of those years' systems is
7 an independent testing report, so actually, it
8 isn't discretionary. And I think that the
9 commission, you know, requiring something more
10 than an employee saying we did it and it's okay,
11 I think that standard is okay -- I mean, I think
12 that's appropriate for us because what we're
13 doing here is protecting voters who are just
14 pushing buttons rather than a paper trail. Is
15 it possible to use an ITA now to approve under
16 the 2002 standard?

17 **MR. J. RIES:** Well, I mean, based on the
18 letter I just saw, I -- I suppose so, but I
19 guess our other option would be to resubmit a
20 new application under the 2005 already tested
21 system and that would come with a cost to the
22 counties.

23 **COMMISSIONER S. RIORDAN:** Why -- why would
24 that come at a cost to the counties?

25 **MR. J. RIES:** Because there are some

1 hardware modifications that have to be performed
2 for each individual unit.

3 **COMMISSIONER S. RIORDAN:** Is there anything
4 wrong with the units that are out there right
5 now?

6 **MR. J. RIES:** No.

7 **COMMISSIONER S. RIORDAN:** I mean, are they
8 due for an upgrade or can they keep using those?

9 **MR. J. RIES:** No, they're not due for an
10 upgrade.

11 **COMMISSIONER S. RIORDAN:** So ideally, the
12 best scenario for the counties is that they can
13 keep using what they're using and we can approve
14 it with the proper documentation, they don't
15 have to buy anything new, but what you're saying
16 is that if you're not in a position to get the
17 2002 independent testing standards, independent
18 testing authority's certification, then you're
19 going to have to put new products out to the
20 clerks right?

21 **MR. J. RIES:** Modifications.

22 **COMMISSIONER S. RIORDAN:** Sorry,
23 modifications, okay.

24 **MS. M. CHANDLER:** I have a question
25 whenever you're done.

1 **COMMISSIONER S. RIORDAN:** Please.

2 **MS. M. CHANDLER:** Jim, do these counties
3 know that their systems are in peril?

4 **MR. J. RIES:** I'm sorry?

5 **MS. M. CHANDLER:** Do these counties, these
6 48 counties know that their systems are in
7 peril, may not be certified?

8 **MR. J. RIES:** What do you mean by in peril?

9 **MS. M. CHANDLER:** May not be certified?

10 **MR. J. RIES:** I believe they do.

11 **MR. S. SHAMO:** Yeah. May I clarify
12 something, too? There seems to be a lot of
13 fluffing over, in terms of the conversation
14 regarding the 2002 testing back against 2002
15 standards. When we made the business decision
16 to move forward with 2005 testing standards
17 rather than 2002 testing standards, we were told
18 then that the EAC would never file a final
19 report.

20 In our mind, that's the certification that
21 everything is moving toward. So when Jim was
22 stating that we can't test against the 2002
23 standards, my -- my memory of those discussions
24 was testing against the 2002 standards would
25 still leave us short of any federal

1 certification from the point in time when NASED
2 abandoned the project and EAC came over.

3 So I think there's a lot of clarification
4 that's got to take place in that before you can
5 simply say you can test against the 2002
6 standards.

7 **CHAIRMAN T. WHEELER:** Let me ask for
8 clarification from Co-Director King.

9 **MR. B. KING:** Mr. Chairman, just on the
10 point of the role of the election assistance
11 commission, Indiana law has never required that
12 a voting system to be certified, receive a
13 certification number, a system number, as it's
14 called, from either the U.S. Election Assistance
15 Commission or its predecessor, NASED, the
16 National Association of State Election
17 Directors -- again, that's never been a
18 requirement under Indiana law. All that's been
19 required is sufficient documentation under the
20 statute and meeting the other requirements under
21 Indiana law for the commission to certify a
22 voting system.

23 **MR. S. SHAMO:** Nor has it required a report
24 and the appointment with Ball State. I guess my
25 point is in a broader sense, you have to realize

1 this is a perpetually moving target. Even under
2 the 2005 current standards, you can test to the
3 2005 current standards and then have a new board
4 of directors come in and test on the 2005
5 standards and they can look back at previous
6 products and go, well, that previous board
7 didn't quite have it right so we can move
8 backward in regression.

9 So I guess I -- I feel a little disarmed in
10 the discussion, from the sense that you see it
11 from one perspective, however, this is a -- I
12 think all of the vendors in the room share a
13 similar frustration in the certification process
14 how it's evolved since its inception. It's been
15 a perpetual moving target and we haven't even --

16 **CHAIRMAN T. WHEELER:** Let me interrupt you,
17 Steve, just for a second. The one non-moving
18 target was that we recertified you without that
19 report, and told you in 2006, that as a
20 condition of that recertification, you had to
21 produce that final report. We told you that.
22 It wasn't a moving system. It wasn't golly,
23 whether you have to do a report or don't have to
24 do a report. Your recertification was
25 conditional upon providing that final report.

1 You've known that since 2006.

2 What I've heard you say several times is we
3 made a business decision. What you made a
4 business decision to do is ignore an order of
5 this commission, as far as I can tell, because I
6 know based upon what Wyle said, you can test to
7 2002 standards. You chose not to for business
8 reasons, as both you and Jim have said, and I
9 respect your decision to do that, but understand
10 that this commission, what you've said is we've
11 made a business decision to ignore your order.

12 We bent over backwards to certify it
13 without that final report, and you know what
14 happened, we never got it. So when you're
15 saying to us it's not fair, that now we require
16 a final report, it's a moving target -- well,
17 one of the reasons we require a final report is
18 because you ignored us when we certified it.

19 We certified it because we were concerned
20 that the counties would not be able to use those
21 systems during the November '06 elections. You
22 have tried to play us against the clerks again
23 and again, and frankly, I get tired of it. We
24 held a special meeting. We went six months
25 waiting for that report -- we held a special

1 meeting, we certified without that report, we
2 conditioned it upon receipt of that report, and
3 you didn't do it for three years. I know from
4 what Wyle said, you could go get that report
5 right now. You can get that report between now
6 and May.

7 I know the counties can continue to
8 receive, to use those under the grandfather
9 thing, but you chose not to do it for what I
10 keep hearing as business reasons.

11 **MR. J. RIES:** Chairman Wheeler, I disagree
12 with you. We were not the entity that generated
13 the final report. We completed and complied
14 with all the testing. We did not ignore your
15 request, and I taking issue with that.

16 We were told in December of 2006, finally,
17 after Jack Cobb left, that we would not get that
18 report. Our option at that time was to submit
19 with an EAC approved voting system testing
20 laboratory, which we did, and we did that in
21 April of 2007, so we did...

22 **CHAIRMAN T. WHEELER:** All right. Why
23 wouldn't you go to Wyle right now?

24 **MR. J. RIES:** Because it's -- because they
25 would have to take this system -- I have no idea

1 of time frame -- I mean, I think anybody in here
2 that's been through this will tell you that
3 months and months can go by.

4 We've already done it, Chairman Wheeler, so
5 our only other option would be to resubmit a new
6 application for this existing product and make
7 modifications in the field at a cost to the
8 counties.

9 **MR. S. SHAMO:** The question I have -- it
10 goes beyond you and us, it's more CIBER. Since
11 August, since this -- this situation or this
12 process began -- in spite of the September
13 18th meeting, it was a short time frame, we were
14 notified by Ball State on August 24th, and I
15 believe...

16 **CHAIRMAN T. WHEELER:** Notified them of
17 what?

18 **MR. S. PEARSON:** Of needing to come to them
19 for review. That was the first notice that we
20 received from anyone from the State that this
21 process would begin. And since that day
22 started, we've been trying to generate the test
23 requirement or the test package which they
24 require to test against.

25 **CHAIRMAN T. WHEELER:** What I don't

1 understand is you've been under this requirement
2 since September of '06, and suddenly, it's a
3 surprise that three years later, we ask for it.
4 I don't understand that.

5 **MR. S. SHAMO:** I wouldn't say it's a
6 surprise. I mean...

7 **CHAIRMAN T. WHEELER:** That's what you just
8 told me, you said golly, it's a surprise that
9 Ball State asked for that report.

10 **MR. S. SHAMO:** I didn't say golly and I
11 also didn't say it wasn't fair. Several times
12 you've put words into our situation here. What
13 I'm saying is this process unfolded very quickly
14 for us in the last few months -- yes, you can
15 argue all you want about the last three years,
16 but the bottom line is the report -- your letter
17 of condition says to get that report to you
18 within seven days upon receipt. We have not
19 received it, simply put.

20 **COMMISSIONER S. RIORDAN:** Mr. Chairman --
21 pardon me -- procedurally, where are we, and
22 what -- what do we need now?

23 **CHAIRMAN T. WHEELER:** As I understand it,
24 we have an application. Ball State has
25 indicated that the application remains

1 incorrect; is that correct?

2 MR. J. LOSCO: Correct.

3 CHAIRMAN T. WHEELER: So we have two
4 options, we can table the application or we can
5 deny the application.

6 MS. M. CHANDLER: What's the -- is there a
7 motion?

8 CHAIRMAN T. WHEELER: There's no motion
9 pending.

10 MS. M. CHANDLER: It seems to me, Mr.
11 Chairman, that the discussion has been complete,
12 that we lack discretion to approve so the only
13 issue is whether you table or deny, and if we
14 deny, do you have procedurally the right to
15 reapply -- it sounds like yes, so I think...

16 CHAIRMAN T. WHEELER: That is correct, and
17 indeed that's what happened in September, we
18 denied it once and they reapplied, --

19 MS. M. CHANDLER: Which is their right.

20 CHAIRMAN T. WHEELER: -- which is this
21 reapplication.

22 MS. M. CHANDLER: So I -- I would
23 respectfully move for a vote.

24 CHAIRMAN T. WHEELER: Any further
25 discussion?

1 *(No response.)*

2 **CHAIRMAN T. WHEELER:** Do I have a motion?

3 **MS. M. CHANDLER:** Motion.

4 **CHAIRMAN T. WHEELER:** Motion is for what?

5 **COMMISSIONER S. RIORDAN:** To deny or to
6 table it?

7 **MS. M. CHANDLER:** I would move that we
8 deny.

9 **CHAIRMAN T. WHEELER:** Do I have a second on
10 the motion for purposes of discussion?

11 *(No response.)*

12 **CHAIRMAN T. WHEELER:** Motion fails for lack
13 of second. Do I have any other motions?

14 **COMMISSIONER S. RIORDAN:** I'm trying to
15 formulate, you know, a middle ground and
16 formulate some sort of a solution -- I mean, I
17 don't -- I've said many many times, that when
18 you're talking about using a voter -- you know,
19 a voter who uses their hand to make a vote and
20 there's no paper trail and the appropriate
21 entities have not signed off on the magic that
22 happens inside that computer as counting
23 everything correctly, particularly, when it
24 comes to straight party votes, I can't sleep at
25 night knowing that we don't have the statutorily

1 required proof that it meets the standards that
2 the federal government has set out.

3 That being said, you know, these have been
4 out there for a long time, and I don't think --
5 I don't think in these particular times that
6 it's okay to just tell counties that they've got
7 to buy something new -- I mean, I really have
8 what hard time with that, too.

9 Does anyone have a sense of what it would
10 require to go to Wyle, No. 1, and No. 2, if
11 CIBER couldn't deliver on their -- presumably,
12 what were their contractual obligations to you,
13 you know, do you have any remedy against CIBER?

14 **MR. S. SHAMO:** We certainly do.

15 **COMMISSIONER S. RIORDAN:** And what's going
16 on with CIBER right now, did they get their
17 accreditation back?

18 **MR. J. RIES:** Yes, they did.

19 **COMMISSIONER S. RIORDAN:** Can you file a
20 lawsuit against them and ask that they be
21 compelled to produce the report at their
22 expense -- I mean, are you going down that road
23 at all?

24 **MR. J. RIES:** Certainly, with this most
25 recent confirmation letter, that's an option.

1 **CHAIRMAN T. WHEELER:** Let me ask -- if I
2 could ask a quick question with the other
3 vendors. Do any of the other vendors use Wyle?

4 **UNIDENTIFIED SPEAKER:** Not currently.

5 **MR. S. PEARSON:** We use Wyle for some of
6 our hardware evaluations.

7 **CHAIRMAN T. WHEELER:** What are your
8 experiences with Wyle?

9 **MR. S. PEARSON:** Our experience with Wyle
10 has been good.

11 **CHAIRMAN T. WHEELER:** Responsive?

12 **MR. S. PEARSON:** Yes.

13 **CHAIRMAN T. WHEELER:** Let me ask you, leave
14 aside MicroVote, do you have an idea in your
15 experience what kind of time frame it would take
16 Wyle to do something like this; do you have any
17 idea?

18 **MR. S. PEARSON:** What are you asking, that
19 they do a complete retest or just a generation
20 of a report on previously tested materials?

21 **CHAIRMAN T. WHEELER:** Either one -- I don't
22 have a grip on that?

23 **MR. J. RIES:** Our experience with Wyle has
24 been fantastic -- we've used them for many many
25 years, and they are responsive on the hardware

1 side. They don't typically perform software
2 compliance testing.

3 **CHAIRMAN T. WHEELER:** And I guess my
4 question is: Why not go to Wyle and do this?

5 **MR. J. RIES:** Well, I mean, based on this
6 very vague e-mail, it's certainly not sanctioned
7 by the EAC so I don't really know without
8 talking to Frank Padilla who what would be
9 involved.

10 **MR. S. PEARSON:** May I make a request -- it
11 may be denied, but may I request that you do
12 table it in time for us to find out from Mr.
13 Padilla the timetable that you're asking about?

14 **CHAIRMAN T. WHEELER:** I think that's a fair
15 statement, and frankly, I was going to make a
16 motion from the chair to table it, because --
17 and that's kind of -- with all due respect,
18 that's what I was asking the last time -- I
19 mean, I can go back and read the transcript.

20 I said look, No. 1, figure out if there's a
21 final report -- I said three things in there, so
22 No. 1 is the final report, and No. 2, if there's
23 not a final report, can anybody else do it, and
24 No. 3, if they can do it, what's it going to
25 take to do it?

1 **MR. S. SHAMO:** I think I -- I know myself
2 misunderstood you in that last meeting, in terms
3 of saying -- sending it back through a complete
4 retesting, which I know would be -- our current
5 testing has taken over two and a half years,
6 that's how I understood that.

7 **CHAIRMAN T. WHEELER:** If CIBER's, in fact,
8 has got the information and they're willing to
9 give it to Wyle, for example, and Wyle can test
10 that, then that takes care of it. I'm concerned
11 because CIBER has said -- I mean, you saw the
12 same letter, I had you passed the letter, they
13 said -- you know, according to CIBER, they
14 didn't complete the testing.

15 **MR. S. SHAMO:** But I -- again, I think that
16 Kelly wrote -- with Kelly being new on the scene
17 and picking up the pieces of someone else, I'm
18 not certain how she's defining testing, you
19 understand -- you see what I mean?

20 **CHAIRMAN T. WHEELER:** And I -- and I
21 understand that and I think -- so I agree with
22 you, Steve. I think that what we need to do is
23 table this, that's at least going to be my
24 recommendation, and I think I heard sort of a
25 second or at least an agreement to table this,

1 but you need to get on -- I really mean that.

2 I have -- for me, personally, I think No.
3 1, you've had three years; No. 2, I think the
4 failure to do it; and then what I view at least
5 as a threat, that we're going to have to charge
6 the counties to upgrade to 2005 -- I have a real
7 problem with that because I think it's because
8 you guys have failed to comply over the last
9 three years.

10 And you've got another chance -- I mean, I
11 thought -- I thought we made that clear in
12 November, that this is what we should have done,
13 we're sitting here in December, and I've been
14 very clear with all the vendors that we'll set
15 meetings to try to get these approvals, and
16 we've done that -- we did that for you guys in
17 '06 -- I mean, we did that without that letter.
18 I'm willing to do that, but you've got to do
19 something, is what I'm saying.

20 **MR. S. SHAMO:** Just an editorial comment.
21 May I ask --

22 **COMMISSIONER S. RIORDAN:** I don't think we
23 want any editorial comments. I'm ready to make
24 a motion -- I'm ready to make a motion -- we've
25 got to stop this debate because it's not being

1 productive. I think that I would move that we
2 table the application, and I think given that
3 we're in the holiday season, we have to add a
4 little time, but I mean, I think January 15th,
5 and I'd really like to have some communication
6 between the vendor and the division staff to
7 kind of let us know where the process is, and
8 you know, that we -- that we get some
9 information about what CIBER can do to help you
10 out and that we also get some information about
11 what Wyle or another vendor can do to help you
12 out because we've got to get this taken care of
13 before the next election.

14 And also, for purposes of housekeeping, we
15 had a lot of documents back and forth today, and
16 I want to make sure that everything is part of
17 the record in the event that it's required
18 later. I guess I have a packet that has -- did
19 you bring this or did somebody else bring this?

20 **MR. B. KING:** That was brought by staff.

21 **COMMISSIONER S. RIORDAN:** It was brought by
22 staff.

23 **CHAIRMAN T. WHEELER:** You have a copy of
24 the packet given to commissioners.

25 **COMMISSIONER S. RIORDAN:** And this is a --

1 this starts ES&S letter dated November 23rd,
2 2009, there are a number of forms that follow
3 it, and then some correspondence that relates to
4 this matter, I want to make sure that's in the
5 record, and I also want to make sure that the
6 November 17th e-mail from Mr. Padilla is in the
7 record and the November 24th e-mail from Kelly
8 Rohacek are also part of the record.

9 **CHAIRMAN T. WHEELER:** And would you --
10 would you place -- can I place your copies in
11 the record to pass to the court reporter, do you
12 mind?

13 **COMMISSIONER S. RIORDAN:** Sure. Yeah, let
14 me make sure there's no scribbling on here.

15 **CHAIRMAN T. WHEELER:** That's my problem, I
16 scribbled on mine.

17 **COMMISSIONER S. RIORDAN:** But anyway,
18 that's my motion, that we table until January
19 15th at the outside, and we also direct
20 MicroVote to provide an update every week about
21 where you're going, to the co-general counsel
22 about where things stand, that's my motion.

23 **CHAIRMAN T. WHEELER:** Do I have a second on
24 the motion?

25 **MS. B. McCLELLAN:** I second the motion.

1 **CHAIRMAN T. WHEELER:** The motion's been
2 made and seconded, and for purposes of
3 discussion, I would ask that Commissioner
4 Riordan will accept a friendly amendment that
5 will include Ball State in the notification
6 process and act as -- as a proxy, as they have,
7 in determining whether or not the information we
8 are getting -- I mean, I would like to hear from
9 Ball State -- I'd like to hear from Wyle what
10 needs to be done, how long it would take them,
11 and what it would cost to do it.

12 **MR. R. SCHEELE:** Okay.

13 **CHAIRMAN T. WHEELER:** And fairly rapidly,
14 if we can, and that that would be communicated
15 to the co-directors as -- did you say
16 co-directors are in the process?

17 **COMMISSIONER S. RIORDAN:** Either
18 co-directors or the co-general counsel just so
19 that we're kept in the loop and we know things
20 are moving. I'm a little bit concerned. I
21 don't think we can require somebody to use a
22 particular vendor, but if we're talking about
23 Wyle as providing just some indication of what's
24 possible.

25 **MR. R. SCHEELE:** Right. Sure.

1 **COMMISSIONER S. RIORDAN:** What's possible
2 and what can be done -- I mean, we can't shove
3 them down your throat.

4 **CHAIRMAN T. WHEELER:** Yeah, you can use any
5 vendor -- I could care less what vendor, but you
6 know, as long as they can certify 2002.

7 **COMMISSIONER S. RIORDAN:** I'll accept that
8 amendment.

9 **CHAIRMAN T. WHEELER:** Any further
10 discussion?

11 *(No response.)*

12 **CHAIRMAN T. WHEELER:** Motion's been made
13 and seconded, all in favor, signify by saying
14 aye?

15 **THE COMMISSION:** Aye.

16 **CHAIRMAN T. WHEELER:** Those opposed, same
17 sign?

18 *(No response.)*

19 **CHAIRMAN T. WHEELER:** Motion carries. Any
20 further business with the Commission?

21 *(No response.)*

22 **CHAIRMAN T. WHEELER:** We had a prior issue
23 related to Hart InterCivic in Harrison County.
24 I would note the Clerks Conference was scheduled
25 to start 10 minutes ago, in which several

1 members, the people on the dias, are supposed to
2 be participating in that particular conference,
3 and I don't know if the conference starts until
4 we get over there, and we'll have a herd of
5 grumpy clerks, despite the fact that we said
6 that, but what I would like to do is table this
7 particular one. It appears to me that we will
8 be having a commission meeting in the not too
9 distant future to discuss this particular issue.

10 **COMMISSIONER S. RIORDAN:** The Hart
11 InterCivic issue?

12 **CHAIRMAN T. WHEELER:** The Hart InterCivic
13 issue. That being said, are there people here
14 on the Hart InterCivic issue?

15 **MR. E. PEREZ:** We are, yes.

16 **CHAIRMAN T. WHEELER:** All right. Tell me
17 who's here?

18 **MR. E. PEREZ:** To start speaking just
19 quickly --

20 **CHAIRMAN T. WHEELER:** Please introduce
21 yourself.

22 **MR. E. PEREZ:** My is a Edward Perez, I'm
23 the manager of compliance, and we also have Ted
24 Gilkey, who's from our sales department.

25 **CHAIRMAN T. WHEELER:** And you gave us a

1 declaration, as I understand it?

2 MR. E. PEREZ: Yes, sir.

3 MR. T. GILKEY: Yes, Mr. Chairman.

4 CHAIRMAN T. WHEELER: Is there anybody else
5 here from Hart InterCivic?

6 MR. E. PEREZ: Not from Hart InterCivic.

7 MR. T. GILKEY: Not from Hart InterCivic,
8 no.

9 MR. E. PEREZ: There are -- we have other
10 parties that are also knowledgeable.

11 CHAIRMAN T. WHEELER: Harrison County?

12 MS. S. BROWN: Harrison County Clerk,
13 Sherry Brown.

14 *(Discussion among the commission.)*

15 COMMISSIONER S. RIORDAN: If we move to
16 table this, aside from the fact that you've
17 traveled here?

18 MR. E. PEREZ: If I may speak very
19 respectfully. My feeling on it is -- what I
20 wanted to say, I really sincerely regret that
21 Hart was not able to be at the prior meetings,
22 not only because -- I sincerely recognize the
23 importance of the commission's work and why
24 these proceedings are necessary, but on the
25 specific issue of Harrison County, it's our

1 sworn testimony that the facts are actually very
2 straight forward, and that's why we came today
3 because we believe that we can briefly and in an
4 expedient way clear up what I really think was a
5 kind of misrepresentation -- it was a fact about
6 an action that the county had taken that I think
7 was not placed in the proper context -- it was
8 offered by a non-neutral party, and we came
9 today in the spirit of full collaboration, full
10 responsiveness and full disclosure to answer
11 your questions because we really -- we are
12 confident that we have been studiously in
13 compliance with the prohibition against
14 marketing and selling systems not certified.

15 **COMMISSIONER S. RIORDAN:** I -- I appreciate
16 that and recognize that and appreciate it, but
17 we -- we are not voting to certify any of your
18 equipment today.

19 **MR. E. PEREZ:** Understood.

20 **COMMISSIONER S. RIORDAN:** We basically
21 summoned you here in order to kind of set the
22 record straight or at least explain to us what
23 was going on; right?

24 **MR. E. PEREZ:** That's exactly right.

25 **COMMISSIONER S. RIORDAN:** While it is

1 important for us to address this issue, we don't
2 have a matter that's going to affect the use of
3 any voting systems equipment right at this
4 particular second. The question is whether you
5 were marketing outside the parameters of Indiana
6 law to a county; right?

7 **MR. E. PEREZ:** That is -- that is my
8 understanding, yes.

9 **COMMISSIONER S. RIORDAN:** Okay. So I think
10 we should table it.

11 **MR. E. PEREZ:** I mean, we currently are a
12 certified system, that is correct.

13 **CHAIRMAN T. WHEELER:** I think what we're
14 going to do because I recognize you guys have
15 traveled here and I want to give you the
16 opportunity to be heard, what we're going to do
17 is let Brad and Pam get on with starting the
18 meeting, ask that Leslie and Dale stay here to
19 provide us legal counsel as we -- as we go
20 through this, if that's okay with you guys, just
21 so we can get through this because I appreciate
22 the fact -- are you guys okay with that --
23 Leslie, Pam, are you guys okay with that?

24 **MS. L. BARNES:** Yes.

25 **CHAIRMAN T. WHEELER:** Brad, are you okay

1 with that?

2 MR. B. KING: Yes.

3 CHAIRMAN T. WHEELER: They can get the
4 meeting started.

5 MR. E. PEREZ: I just want to say I
6 sincerely appreciate the commission's
7 flexibility.

8 CHAIRMAN T. WHEELER: Give me one sec.

9 COMMISSIONER S. RIORDAN: I don't there's
10 anything that we're going to need a vote on.
11 This is basically hearing the testimony.

12 CHAIRMAN T. WHEELER: Let's hear the
13 testimony and we'll table the vote.

14 COMMISSIONER S. RIORDAN: And I think that
15 Ms. Titsworth-Chandler needs to leave for
16 another commitment and we'll still have a
17 quorum.

18 CHAIRMAN T. WHEELER: Okay, we'll keep
19 it -- if Barb will stay with us for a couple of
20 minutes, we'll keep our quorum. All right,
21 thank you, Mary, I appreciate it, and we'll let
22 Brad and Pam go here for just a second and then
23 we can hear this. Surely grateful was said
24 several times. Okay, go ahead -- and I would --
25 and I would note we all have the declaration in

1 the attached documentation.

2 MR. E. PEREZ: Okay.

3 CHAIRMAN T. WHEELER: I think each of the
4 commissioners had an opportunity to review that.

5 MR. E. PEREZ: Very good, then I really
6 won't have much to add. I do want to reiterate
7 and I'm going to be sincere to you, that -- that
8 it is not just fluff, that before I quickly get
9 to a summation of what I think are the facts,
10 that I take very seriously what the charge of
11 the I felt IEC is, to protect the State's
12 interests and the counties and the voters -- my
13 own background is in political science in the
14 state legislature and I don't view this part of
15 election administration as an extra or an add-on
16 or as an annoyance for us as technology
17 providers, it's part of the public process, and
18 we have tried to show to the members of Ball
19 State and to the commission that we do take that
20 seriously.

21 And if I also just may say, Mr. Chairman,
22 as I think a correction of the facts, and I say
23 this very very humbly, that Hart InterCivic,
24 actually we completed our testing with Ball
25 State on September 17th -- excuse me, Wednesday,

1 September 16th, which was actually two days
2 before the prior meeting, which again, I could
3 be wrong, but I believe it was on the 18th, and
4 we certainly made effort --

5 **CHAIRMAN T. WHEELER:** Let me ask Ray real
6 quick, why did we not approve Hart at the
7 September meeting?

8 **MR. R. SCHEELE:** Our recommendation at the
9 September 18th meeting was to approve, but I
10 think because the other vendors weren't ready, I
11 don't think the commission was not quite ready.
12 That's my interpretation.

13 **CHAIRMAN T. WHEELER:** So you had -- Ball
14 State had actually completed its due diligence
15 and such?

16 **MR. R. SCHEELE:** Yeah, that's correct.

17 **MR. E. PEREZ:** We had completed our
18 testing.

19 **CHAIRMAN T. WHEELER:** But the Commission
20 tabled those --

21 **MR. R. SCHEELE:** Correct.

22 **CHAIRMAN T. WHEELER:** -- tabled two of
23 those, the Hart and Premier, and denied ES&S and
24 MicroVote?

25 **MR. R. SCHEELE:** Correct.

1 **CHAIRMAN T. WHEELER:** Go ahead.

2 **MR. E. PEREZ:** Thank you. More to the
3 point, I think what's more important with the
4 facts about Harrison County, it's our sworn
5 testimony, and I'm going to say it today, you've
6 seen it in the document, that during the period
7 of time that the Hart Voting System Version
8 6.2.1 was not certified in the state, which was
9 from October 1, 2009 until November 16th, 2009.

10 It is our testimony that we were not in
11 contact with Harrison County and we were not
12 marketing and selling to Harrison County.
13 Essentially, what happened and what I've tried
14 to describe in a time line was sales --

15 **CHAIRMAN T. WHEELER:** Let me stop you for
16 one question.

17 **MR. E. PEREZ:** Yes, sir.

18 **CHAIRMAN T. WHEELER:** ES&S raised this
19 issue; correct?

20 **MR. S. MCGINNIS:** Yes, that's correct.

21 **CHAIRMAN T. WHEELER:** Okay. And so have
22 you had an opportunity to review -- do you have
23 an extra copy to give to ES&S?

24 **MR. E. PEREZ:** I do. I might have a copy.

25 **MR. S. MCGINNIS:** It's not necessary, Mr.

1 Chairman. The question was more of a point of
2 clarification for us to ask if we were allowed
3 to sell our old line of products from that time
4 frame. That's what I was checking.

5 **CHAIRMAN T. WHEELER:** As I understand what
6 Hart has said, and I'm shorting a little bit,
7 because we have an obligation with the clerks,
8 too.

9 **MR. E. PEREZ:** Understood.

10 **CHAIRMAN T. WHEELER:** As I understand it,
11 basically, your position is to the extent we did
12 any selling, it was before October 1st, when
13 certification expired?

14 **MR. E. PEREZ:** Yes, sir.

15 **CHAIRMAN T. WHEELER:** And the fact that
16 they voted after October 1st isn't our vote?

17 **MR. E. PEREZ:** That's correct, and that
18 that -- the scheduled of the county council that
19 took place on October 13th, it's my
20 understanding and after conferring with our
21 sales representative, Ted Gilkey, that that was
22 scheduled by the county at the time that the
23 system was still certified. I believe that it
24 is was actually put on the county schedule on
25 September 28th or 29th.

1 I have known and have complied with and
2 have been very up front with Mr. King, in
3 particular, about the prohibition against
4 marketing and selling, and that the moment that
5 that happened, --

6 CHAIRMAN T. WHEELER: Let me ask --

7 MR. E. PEREZ: -- we did stop those
8 activities.

9 CHAIRMAN T. WHEELER: Yeah, let me ask you,
10 and I'm sorry, Harrison County, your name is?

11 MS. S. BROWN: Sherry Brown.

12 CHAIRMAN T. WHEELER: Sherry, I take it you
13 were involved in this process?

14 MS. S. BROWN: Yes.

15 CHAIRMAN T. WHEELER: He has indicated that
16 it was on the agenda for, I assume, the county
17 council; correct?

18 MS. S. BROWN: Correct.

19 CHAIRMAN T. WHEELER: On September 28th,
20 prior to October 1st; correct?

21 MS. S. BROWN: Correct.

22 CHAIRMAN T. WHEELER: And I take it, having
23 spent a long time on a county council myself, it
24 got pushed off, or what -- tell me what
25 happened, why did it get pushed into October?

1 **MS. S. BROWN:** Their -- the council has two
2 meetings and one is to hear requests, like a
3 planning meeting, and then two weeks later they
4 have an action meetings -- meeting, and the 28th
5 was their planning meeting.

6 **CHAIRMAN T. WHEELER:** So that was the
7 information meeting. That was -- let me tell
8 you what I want to do -- and then they voted on
9 it in October?

10 **MS. S. BROWN:** On October 1st.

11 **CHAIRMAN T. WHEELER:** So to the extent
12 there would have been marketing of the system,
13 that would have taken place at the September
14 meeting -- I assume, the September 28th meeting?

15 **MR. E. PEREZ:** And the period prior to
16 that.

17 **CHAIRMAN T. WHEELER:** And the period prior
18 to that?

19 **MR. E. PEREZ:** Yes, sir.

20 **CHAIRMAN T. WHEELER:** You know, then they
21 made it similar in an executive session and a
22 general session, and then they made their
23 decision, their actual vote took place in mid
24 October.

25 **MS. S. BROWN:** In mid October.

1 **CHAIRMAN T. WHEELER:** Does that answer your
2 questions?

3 **MR. S. MCGINNIS:** Kind of. I just had the
4 feeling we were not allowed to take any action
5 after the October 1st date or I would have
6 scheduled some of my appointments during that
7 time frame, and again, I just wanted
8 clarification on it, is all I was looking for.

9 **CHAIRMAN T. WHEELER:** As I understand it,
10 Hart --

11 **MR. E. PEREZ:** We didn't schedule anything.

12 **CHAIRMAN T. WHEELER:** Hart did not conduct
13 any contacts after October 1st?

14 **MR. E. PEREZ:** That's correct.

15 **MR. T. GILKEY:** That's correct, we weren't
16 present.

17 **CHAIRMAN T. WHEELER:** And that's my
18 understanding, kind of -- I just want to make
19 sure you guys are playing on an even field, and
20 I -- I think that's what you were asking as
21 well.

22 **MR. S. MCGINNIS:** That's all I was asking
23 as well, Mr. Chairman.

24 **CHAIRMAN T. WHEELER:** And -- and I -- is
25 there anything else from your guys -- I'm sorry,

1 I keep interrupting you, and I apologize?

2 MR. E. PEREZ: No, unless you have other
3 questions -- I mean, that's why we're today, and
4 I want to be absolutely...

5 CHAIRMAN T. WHEELER: I spent all of my
6 time talking so let me let one of the other
7 commissioners ask questions.

8 MR. E. PEREZ: Yeah. In some ways, there's
9 not that much to tell but I do want to answer
10 whatever questions they have.

11 MR. T. GILKEY: And to further -- actually,
12 we did cancel any existing appointments that we
13 did have. We had scheduled demos --

14 COMMISSIONER S. RIORDAN: After October 1?

15 MR. T. GILKEY: We had scheduled demos set
16 up and are now actively re-engaging those.

17 CHAIRMAN T. WHEELER: So the same thing as
18 ES&S did, scheduled those and...

19 MR. T. GILKEY: Correct. No one was in
20 attendance at the county council meeting on
21 October 13th, Hart InterCivic or...

22 COMMISSIONER S. RIORDAN: And the county
23 council meeting was the county council's timing
24 and prerogative and that's beyond the control of
25 anybody in this room; right?

1 **MS. S. BROWN:** Correct.

2 **MR. E. PEREZ:** Because I also note in our
3 declaration, just to be very much on the safe
4 side, that on November 16th, on the date that we
5 received news that our voting system had been
6 recertified, I did go out of my way to contact
7 Mr. King and be absolutely above board and say I
8 want to be absolutely clear, is that
9 certification effective right now and would you
10 have any concerns about us contacting Harrison
11 County, and he indicated he did not, as the
12 prohibition extends only to those systems that
13 are not certified.

14 **CHAIRMAN T. WHEELER:** And you note that in
15 your time line, that --

16 **MR. E. PEREZ:** I do, yes.

17 **CHAIRMAN T. WHEELER:** -- on November 16th
18 you talked to him -- you requested it and got it
19 and then you moved forward?

20 **MR. E. PEREZ:** Yes. And again, I think it
21 should also be stated that we don't have an
22 order and we don't have a contract with Harrison
23 County.

24 **COMMISSIONER S. RIORDAN:** I'm satisfied.

25 **CHAIRMAN T. WHEELER:** At this point we have

1 the complaint, we should vote on the
2 complaint -- I'm not sure what the process is.

3 **MR. D. SIMMONS:** Well, Mr. Chairman and
4 Members of the Commission, when this has been
5 previously come up in other context, MicroVote,
6 the commission considered under 3-6-4.1, I think
7 it was, 21, whether there's substantial reason
8 to believe that election law violation has
9 occurred, and in this case the election law
10 violation would be illegal marketing or selling,
11 so there's that first step, and once you make
12 that determination, you would refer it to staff
13 to investigate and...

14 **CHAIRMAN T. WHEELER:** So we just need -- we
15 just need to, based upon what we've heard today,
16 make a decision as to whether there's sufficient
17 reason to believe that a violation has taken
18 place?

19 **MR. D. SIMMONS:** That's correct.

20 **CHAIRMAN T. WHEELER:** Speaking for myself,
21 I feel very comfortable with the explanation
22 that Hart has provided. It seems to me that, as
23 I think we're obligated to do statutorily,
24 there's a level playing field for all the
25 parties and all the parties should have ceased

1 and desisted -- it sounds like everybody did.

2 I don't think Hart is responsible for the
3 scheduling the county council meeting, and
4 having been on county council, I'm fairly
5 certain that's the case. Although, I would
6 disagree that the clerk does not have a great
7 deal of influence on that -- I'm very
8 disappointed in you.

9 **MS. S. BROWN:** Not in our county.

10 **CHAIRMAN T. WHEELER:** If you knew the
11 former clerk in Boone County, Ms. Garoffolo
12 (Phonetic), which you met, it was a whole
13 different story in my county. In any event, I'm
14 certainly declined to determine that there's not
15 a substantial basis to believe that a violation
16 has taken place.

17 **COMMISSIONER S. RIORDAN:** Is there an
18 actual complaint pending -- there's an actual
19 complaint?

20 **MR. S. MCGINNIS:** Mr. Chairman, not from
21 our end.

22 **CHAIRMAN T. WHEELER:** Okay.

23 **COMMISSIONER S. RIORDAN:** You -- you just
24 made -- you just kind of raised a question?

25 **CHAIRMAN T. WHEELER:** And that's fair.

1 **MR. S. MCGINNIS:** We were asking what am I
2 allowed to do so there is no complaint from ES&S
3 regarding this matter.

4 **CHAIRMAN T. WHEELER:** Fair enough.

5 **COMMISSIONER S. RIORDAN:** And there --
6 there isn't anything filed regarding this?

7 **MS. L. BARNES:** There was an inquiry, an
8 e-mail inquiry, I believe.

9 **COMMISSIONER S. RIORDAN:** Right, but
10 there's no...

11 **CHAIRMAN T. WHEELER:** Right.

12 **COMMISSIONER S. RIORDAN:** So I don't -- I
13 don't think there's any...

14 **CHAIRMAN T. WHEELER:** Well, for Hart's
15 purposes, I guess I would like to give them
16 closure on the issue.

17 **MR. E. PEREZ:** I would sincerely appreciate
18 that, Mr. Chairman.

19 **CHAIRMAN T. WHEELER:** And so I guess from
20 my inclination, I'd like to see a motion that
21 there is no basis to believe that there's been a
22 violation, because I think that gives them
23 something -- certainly, for Harrison County --
24 for you to go back to Harrison County and say
25 hey, they did what they were supposed to do and

1 it was appropriate.

2 **COMMISSIONER S. RIORDAN:** Okay. Then I
3 guess I'll formulate a motion to that effect,
4 which is that upon hearing raised concerns about
5 marketing outside the authorized time line, the
6 Commission has convened and has heard testimony
7 and has received documentary evidence, and
8 having considered same, the Commission
9 determines that there is no substantial reason
10 to believe that an election law violation has
11 occurred.

12 **CHAIRMAN T. WHEELER:** Do I have a second?

13 **MS. B. McCLELLAN:** Second.

14 **CHAIRMAN T. WHEELER:** Motion's been made
15 and seconded, any further discussion?

16 *(No response.)*

17 **CHAIRMAN T. WHEELER:** Hearing none, all in
18 favor of the motion, signify by saying aye?

19 **THE COMMISSION:** Aye.

20 **CHAIRMAN T. WHEELER:** Those opposed, same
21 sign?

22 *(No response.)*

23 **CHAIRMAN T. WHEELER:** Motion carries. The
24 declaration, I'm going to place into the record
25 with the court reporter. Any further business?

1 *(No response.)*

2 **MR. E. PEREZ:** Our thanks to the
3 Commission.

4 **CHAIRMAN T. WHEELER:** Thank you. Hearing
5 none, I'll accept a motion to adjourn?

6 **COMMISSIONER S. RIORDAN:** So moved.

7 **CHAIRMAN T. WHEELER:** Do I have a second?

8 **MS. B. McCLELLAN:** Second.

9 **CHAIRMAN T. WHEELER:** All in favor, signify
10 by saying aye?

11 **THE COMMISSION:** Aye.

12 **CHAIRMAN T. WHEELER:** Those opposed, same
13 sign?

14 *(No response.)*

15 **CHAIRMAN T. WHEELER:** We're adjourned.

16 *(At this time the proceedings were*
17 *concluded.)*

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STATE OF INDIANA)
) SS:
COUNTY OF HENDRICKS)

I, Rhonda J. Hobbs, RPR, and a Notary Public
and Stenographic Reporter within and for the County
of Hendricks, State of Indiana at large, do hereby
certify that the transcript is a full, true and
correct transcript made from my stenograph notes.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my notarial seal this 22nd
day of December, 2009.


NOTARY PUBLIC

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