

Indiana Election Commission

Minutes

March 20, 2006

Members Present: Thomas John, Proxy for Thomas E. Wheeler, II, Chairman of the Indiana Election Commission (“Commission”); Jennifer Wagner, Proxy for S. Anthony Long, Vice Chairman of the Commission; Paul Mullin, Proxy for Thomas E. John, member of the Commission; Sarah Riordan, Proxy for Butch Morgan, member of the Commission.

Members Absent: Thomas E. Wheeler, II; S. Anthony Long; Butch Morgan

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

Also Attending: Martha Padish, Vermillion County Circuit Court Clerk, Jill Jackson, Johnson County Circuit Court Clerk, Doris Anne Sadler, Marion County Circuit Court Clerk, Sherry Brown, Harrison County Circuit Court Clerk, Rita Martin, Washington County Circuit Court Clerk, Sarah M. Benter, Jackson County Circuit Court Clerk, Patricia French, Henry County Circuit Court Clerk, Sue Anne Lower, Wayne County Circuit Court Clerk, Nancy Marcum, Henry County Voter Registration, Mary Beth Schneider, Michael P. Burns, Steve Pearson, Jamie Rough, Ken Carbullido, Linda Bennett, Pat Whalen, Robb McGinnis, Toby McClamroch, David L. Woo, Bill Bock, and Evan B. Broderick.

1. Call to Order

The Chair called the March 20, 2006 meeting of the Commission to order at 1:15 p.m. in the Indiana Government Center South Conference Center, Room 22, at 402 West Washington Street Room E-204, Indianapolis, Indiana.

The Chair noted that proper notice of the meeting had been given, as required by state law, and that Ms. Wagner was present as the designated proxy for Mr. Long, and Mr. Mullin was present as the designated proxy of member and acting Chair Thomas John, and that Ms. Riordan was present as the designated proxy for Mr. Morgan. 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. Ratification of Agreements for Payment of Civil Penalties Concerning Campaign Finance Enforcement Matters

The Chair introduced members of the staff of the Election Division. The Chair administered the oath to all those who planned to testify to the Commission at today’s meeting. The Chair requested that individuals introduce themselves before addressing the Commission.

The following individuals introduced themselves as representatives of Election Systems and Software (ES&S): Linda Bennett, Ken Carbullido, and Steve Pearson. Michael Burns introduced himself as a representative of Voting Technologies International (VTI)

The Chairman requested Ms. Robertson to address the first item on the agenda regarding the ratification of agreements for payment of civil penalties concerning campaign finance enforcement matters.

Ms. Robertson directed the Commission members to their packets to a memo and a list that followed the memo. She explained that the list contained campaign finance committees that have entered into settlement agreements as a result of a new law that that permits campaign finance committees that have filed late reports or committed other campaign finance violations to enter into a settlement agreement where the committee agrees to pay the entire proposed fine and waive a hearing before the Commission. She explained that a number of committees had signed agreements and returned them and that these settlement agreements represented a total of fines in the amount of \$2,600. She indicated that fines collected by the Election Division are deposited in the campaign finance enforcement account that pays for the enforcement of campaign finance laws and the publication of campaign finance information on the website maintained by the Election Division. She explained that the statute requires the Commission to ratify these agreements and that she was presenting the agreements to the Commission at this time for ratification.

Ms. Riordan moved, seconded by Mr. Mullin, that the Commission ratify the campaign finance agreements tendered to the Commission by the Election Division. The Chair called for discussion. The Chair noted that he liked the idea that these cases would not require a hearing. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. John, Ms. Riordan, Ms. Wagner, and Mr. Mullin), and no Commission member voting “no,” the motion was adopted.

3. Order 2006-93 Designating Form Obsolete

The chair indicated that the next agenda item was the consideration of Order 2006-93. The chair recognized Mr. King who stated that, given that the Election Division requests the Commission to approve a great many forms, that it is a happy occasion when the Election Division can present the Commission with an order to make some existing forms obsolete. He stated that the form that the proposed order would make obsolete is the IEC-1 which is an order form for counties to order presidential and statewide ballots from the Election Division. He stated that the statute requiring the Election Division to print ballots has been repealed and that the Election Division no longer prints ballots. Mr. King explained that the Commissions’ approval of Order 2006-93 would make the IEC-1 form obsolete.

Ms. Riordan moved that the Commission order that form IEC-3 be made obsolete. The Chair offered a friendly amendment to add to the motion that the Commission approve

Order 2006-93 and Ms. Riordan indicated her consent. The Chair called for discussion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. John, Ms. Riordan, Mr. Mullin, and Ms. Wagner), and no Commission member voting “no,” the motion was adopted.

4. Voting Systems Applications for Certification for Term Ending October 1, 2009

A. Voting Technologies International (VTI) application for a direct record electronic voting system upgrade (Dell Optiplex 280); software version 5.0.4.1 (Ballot Builder 5.0.4.1d; DRE 5.0.4.1g; EMSTools 5.0.4.1e); firmware version “not applicable.”

The Chair indicated that the Commission would next consider voting system certification applications. The Chair recognized Mr. King for this purpose.

Mr. King directed Commission members to a memorandum prepared by the Co-Directors and in the packets provided to Commission members. He explained that the memorandum outlines the status of certain voting system certification applications that are pending before the Commission.

Mr. King stated that the first application on the agenda is the application filed by Voting Systems International (VTI) for approval of an upgrade to an existing direct electronic record voting system, the Dell Optiplex 280 software version 5.0.4.1 with further components identified in the memorandum. He explained that the application was filed on November 17, 2005 and demonstrated to the Commission at its meeting on January 17, 2006. He stated, that at the January 17, 2006, staff explained to the Commission that the application was complete with regard to the escrow of voting system software and documentation from Wyle Laboratories with regard to compliance with 2002 FEC Voting System Standards for both voting system hardware and firmware. He explained that VTI did not have a report from an Independent Testing Authority (“ITA”) for the voting system software at the earlier Commission meeting.

Mr. King then stated that, on March 13, 2006, VTI supplied a letter from the ITA Cyber that indicated that Cyber had completed functional testing of the system’s software and the software complied with 2002 FEC voting system standards. He stated that the recommendation of the Co-Directors on VTI’s application is that the Commission approve the application subject to VTI filing a complete copy of the final reports from Wyle and Cyber within seven days of VTI’s receipt of those final reports and that the approval be for marketing, sale, leasing, installation and implementation of the voting system in Indiana for a term that would expire October 1, 2009. He then indicated that he would be glad to answer any of the Commission’s questions on the application and he noted that a VTI representative was present and available for questions as well.

Ms. Riordan noted that the Ciber report indicated that the functional testing was completed and asked whether the Commission was waiting upon the filing of a full report at this point.

Mr. Burns, a representative of VTI, stated that VTI had received a letter from Ciber that indicated that Ciber had completed all the functional testing but Ciber was waiting to issue a full report, which he explained would be a fairly lengthy report.

Mr. Riordan asked if there were any other tests remaining to be completed besides the functional tests.

Mr. Burns indicated that he was aware of no other testing that remained to be done.

Mr. King added that, pursuant to statute, a voting system vendor is required to present documentation from an ITA which can consist of a letter that addresses compliance with 2002 FEC Voting System Standards. He stated that the full report from the ITA is not required by statute to be filed with the Election Division before the Commission can consider approval of the application.

Ms. Riordan asked whether the test had to be performed and documented. Mr. King indicated that this was correct.

The Chair indicated that he would entertain a motion on VTI's application. Mr. Mullin moved, seconded by Ms. Wagner, that the Commission approve the application of VTI with respect to the Dell Optiplex 280, software version 5.0.4.1. for sale, marketing, leasing, installation and implementation in Indiana. The Chair indicated that he would make a friendly amendment to the motion that the approval be for a period ending October 1, 2009 and subject to VTI filing full reports as indicated in the recommendation of the Co-Directors. Mr. Mullin indicated his consent to the amendment. The Chair called for discussion and, there being no further discussion, called the question and declared that with four members voting "aye" (Mr. John, Ms. Riordan, Mr. Mullin and Ms. Wagner), and no Commission member voting "no," the motion was adopted.

B. ES&S iVotronic Personal Electronic Ballot (PEB)

The Chair indicated that the next item on the agenda concerned the ES&S iVotronic Personal Electronic Ballot.

The Chair recognized Mr. King who referred Commission members to an email in the Commission packets that was sent by ES&S to the Election Division. Mr. King indicated that the email, dated March 17, 2006, was sent by Steve Pearson of ES&S at the request of Chairman Wheeler to address news accounts coming from Ohio concerning problems with PCMCIA cards in Ohio used in ES&S's optical scan voting systems.

Mr. King indicated that the next document in the Commission packets following the email, also dated March 17, 2006, was a copy of a letter that was sent by Commission Chairman Wheeler to counties with respect to ES&S's iVotronic voting system. He stated that ES&S has a pending application for certification before the Commission for the iVotronic voting system as well as the Unity 3.0.1.0 election management software that is used with the iVotronic voting system.

Mr. King explained that the letter from Chairman Wheeler was sent to counties that use the iVotronic voting system and indicates that there have been issues raised with respect to the use of the Personal Electronic Ballots (PEB) that are used in conjunction with the iVotronic voting systems. He added that the letter invited a representative from each county that uses the iVotronic voting system to attend the Commission meeting today.

Mr. King also directed the attention of Commission members to the next document in their packets, a letter from Marion County Circuit Court Clerk Doris Anne Sadler addressed to Dale Simmons with regard to the details concerning the use of PEBs in Marion County. Mr. King then indicated that he would, with the consent of the Chair, defer to Mr. Simmons to discuss how this matter came to the Commission and what is embodied in the documents.

The Chair then recognized Mr. Simmons who explained that this matter arose in the context of discussions with attorney Mike Gabovitch, who represents Marion County with respect to their contract with ES&S and their pending request to the state for reimbursement from the State for the purchase of voting systems. He explained that during these discussions Mr. Gabovitch described a problem with the use of the iVotronic and that Marion County discovered this problem when they used the voting system during a slating convention. He stated that Mr. Gabovitch reported that some of the PEB units that activate the iVotronic voting system, and collect results from the iVotronic, failed during the slating convention. He added that this failure prompted Marion County to perform some additional testing on their inventory of PEBs to determine if the problem was more widespread.

Mr. Simmons indicated that he reported his conversation with Mr. Gabovitch to his supervisor, Mr. King, and that Mr. King requested him to attempt to obtain additional information from Marion County regarding the problems experienced by Marion County with the PEBs. He added that he first tried to obtain this information from Mr. Gabovitch; however, Mr. Gabovitch was uncertain as to the technical nature of the problem. He explained that Circuit Court Clerk Doris Anne Sadler provided additional information during a telephone call. He added that David Woo, an individual employed by Marion County and responsible for maintaining the voting systems, and Robert Vane, the County Election Administrator employed in Ms. Sadler's office, also participated in the call. He indicated that during the phone call, he requested some follow-up documentation of the matters discussed during the call.

Mr. Simmons indicated that the Election Division was concerned about whether the problem that existed in Marion County may also exist in other counties that used the

iVotronic voting system. He explained that the Election Division received follow-up correspondence dated March 17, 2006 from Ms. Sadler and that this correspondence documented the voting system issues in Marion County. He explained that this documentation, together with a memo from the Election Division, was provided to clerks in Indiana in counties that had purchased the iVotronic and planned to use it at the May 2, 2006 primary. He added that the clerks were also invited to today's meeting of the Commission so that they could explore whether or not the problems in Marion County would affect their counties use of the iVotronic and whether there were any steps that they could take to reduce the risk of having problems with the iVotronic voting system in the primary.

The Chair indicated that he would give the floor to representatives of ES&S to address the issues raised in the documentation provided by Marion County.

The Chair recognized attorney Toby McClamroch who introduced himself as counsel for ES&S. Mr. McClamroch stated that he understood the issues as explained by Mr. Simmons in Marion County and he believes that ES&S has addressed those issues. He indicated that he thought the issue, as Mr. Simmons had explained it, was whether these problems existed in other counties. He suggested that, since representatives from the counties were present, it may be helpful to hear from them first and let ES&S respond to the issues as raised by the counties.

The Chair requested by show of hands those present as representatives from the counties to speak on the issue. The Chair invited those who identified themselves to indicate their name, identify the county they were from, and describe any problems or concerns they have with their iVotronic voting system.

The Chair recognized Martha Padish, circuit court clerk in Vermillion County, who stated that their county just received delivery of the iVotronic and they had not had a chance to use it so she was unable to identify any problems. She added that Vermillion County had not had any problems in the past with ES&S.

The Chair recognized Sarah Benter, circuit court clerk in Jackson County, who stated that their county had just purchased the iVotronic voting system and they have not had a chance to use the system. She also added that their county had not had any problems in the past with ES&S in using their Eagle optical scan machines.

The Chair recognized Rita Martin, circuit court clerk in Washington County, who stated that their county had just purchased the iVotronic voting system and they also have not had a chance to use the system. She also added that their county had not had any problems in the past with ES&S in using their Eagle optical scan machines.

The Chair recognized Sherry Brown, circuit court clerk in Harrison County, who stated that their county had just purchased the iVotronic voting system. She stated that this was her first election cycle as clerk so she doesn't know how the ES&S equipment has

worked in the past. She added that her county has also used the ES&S Eagle optical scan system in the past.

The Chair recognized Patricia French, circuit court clerk in Henry County, who stated that her county had used the iVotronic in the municipal election in 2003 and the primary and general elections in 2004 and they had virtually no problems with the performance of the iVotronic voting system.

The Chair recognized Sue Ann Lower, circuit court clerk in Wayne County, who stated that her county had also used the iVotronic in the municipal election in 2003 and the primary and general elections in 2004. She stated that they did not have any significant problems but that they did have to change some batteries.

The Chair recognized Jill Jackson, circuit court clerk in Johnson County, who stated that her county used the iVotronic voting system in the municipal election in 2003 but that she was not the clerk at that time. She said her county used the voting system in the primary of 2004. She added that her county performed maintenance on the voting system during the fall of 2005 and they had to send two and one-half boxes of PEBs to the ES&S office in Omaha because, when they tested the batteries for the PEBs, they found that they were weaker than they were suppose to be. She added that the iVotronic has not been used in her county since the primary in 2004. She stated that she hoped that the testing that they are performing at this time will show that the batteries for the PEBs have enough power to use in the May primary.

The Chair asked Ms. Jackson the number of PEBs that would have been shipped in the two and one-half boxes. Ms. Jackson stated that they shipped about two hundred eighteen out of the five or six hundred PEBs they have in the county.

The Chair asked Ms. Jackson if they had yet performed their testing. Ms. Jackson indicated that they had not. She added that since they had tested the PEBs to wake them up in late October or early November of 2005, and ES&S recommended that the PEBs be awakened every six months, that they had not yet performed this maintenance on the PEBs this year.

The Chair recognized Mr. McClamroch who stated that this was the information he was seeking given the concern raised about whether there were problems in other counties. He then deferred to representatives of ES&S.

The Chair recognized Ken Carbullido who introduced himself as representative of ES&S. The Chair asked whether the Ohio incident involved an ES&S voting system other than the iVotronic. Mr. Carbullido indicated that this was correct. The Chair asked Mr. Carbullido for some background on the Ohio incident.

Mr. Carbullido explained that the Ohio incident involved the PCMCIA cards, a device that is the size of a credit card that is used as a general purpose memory device. He stated that ES&S obtains these cards from another company and the company had a change in

the way it manufactured the cards which caused a circuit problem that drained the battery. He indicated that ES&S has replaced all of these cards.

The Chair asked whether the cards were defective when shipped or whether the defect was discovered only after use. Mr. Carbullido indicated that a few of these cards were actually sent out into the field to customers but that they were detected before their use in any election. He added that ES&S is obtaining all of the cards that were delivered and that the manufacturer is covering all costs for replacing the cards.

The Chair asked Mr. Carbullido to discuss the issue in Marion County with respect to the iVotronic and how it can be addressed. The Chair also asked Mr. Carbullido to identify the counties in Indiana that have these systems.

Mr. Carbullido stated that nineteen counties in Indiana use the iVotronic and that the iVotronic is the voting system that uses the PEBs. He stated that PEBs are different than PCMCIA cards in that the PEB is a block cartridge, not a card. He added the PEB and the PCMCIA cards are similar in that they both run on batteries. He stated that it might be important to understand that Marion County's PEBs were shipped a long time ago and that they had not been used by Marion County over a long period of time. He added that the Marion County PEBs set dormant for well over two years and that the lack of use of the PEBs was a factor in the problem. He stated that all other counties in Indiana that use the PEBs used them in elections and that this kind of use, like a cell phone battery or any other kind of battery, extends the life of the battery. He stated that, because of the difference between Marion County and other counties in the use of the PEBs, he did not anticipate that other counties would have problems with their PEBs.

The Chair asked how long it had to be between uses of the PEBs to experience performance degradation. Mr. Carbullido responded that the specifications indicate that as long as you use the PEBs in an election, or perform a reconditioning process every six months or so if there are no elections, then the PEBs should remain in good shape though they would still have a life span and at some point they would have to be recharged or changed. He indicated that Marion County's problem was attributable to the batteries being unused for two and one-half years.

The Chair asked if the batteries would fail if they went unused for a year. Mr. Carbullido responded that they haven't had customers not use this voting system for that period of time.

The Chair indicated that he was curious about the PEBs for Indiana counties that fell between two and one-half years and the use of every six months as recommended by ES&S.

The Chair asked the clerks in attendance when their county received delivery of the iVotronic voting system from ES&S. Ms. Padish responded that her county received delivery of the iVotronic voting system last October. Ms. Lower responded that her county received delivery of the iVotronic voting system the latter part of October. Ms.

Brown responded that her county received deliver of the iVotronic voting system last November. Ms. French indicated that her county received delivery of the iVotronic voting system in October of 2003 but that they have used their voting system since then.

Mr. Carbullido indicated that it was important to remember that, when a county prepares for an election, the county will use the system long before election day and, at that point, every PEB will get checked so that a county can see the battery level of the PEBs. He added that another thing that happens is that polling places have multiple PEBs so that if one doesn't work then a county can simply use another in that polling place. Mr. Carbullido stated that he did not see any problem at all in any other Indiana counties, even the ones that were delivered in October, and that things should go flawlessly since the system has redundancies with multiple PEBs that are checked before they are delivered.

The Chair asked Mr. Carbullido if ES&S knew that there would be a problem in Marion County in January. Mr. Carbullido stated that ES&S did not know this but that they have never before had a situation where a customer has purchased a system and let it sit for two and one-half years without using it.

The Chair recognized Bill Bock who identified himself as counsel for Marion County. Mr. Bock stated that he would like to point out some inconsistencies between what Marion County has been told by ES&S and the testimony provided to the Commission by Mr. Carbullido.

Mr. McClamroch asked whether Mr. Bock had been sworn in. The Chair responded that it appeared that counsel was speaking on behalf of a client. Mr. McClamroch responded that counsel was providing factual information.

The Chair asked Mr. Bock if he intended to testify before the Commission. Mr. Bock responded that he did not come to the meeting intending to testify. The Chair then asked whether Mr. Bock wanted at this point to testify. Mr. Bock responded that it depended upon how the Commission wanted to receive and consider his testimony and that he would take the oath if that was the desire of the Commission. The Chair then administered the oath to Mr. Bock.

Mr. Bock stated that he would like to make clear that his testimony was second hand, that he did not have personal knowledge of the facts. The Chair asked if Mr. Bock would like to have his clients testify. Mr. Bock stated that they will if that was the desire of the Commission and indicated that he simply wanted to point out for the Commission some inconsistencies in what ES&S told Marion County and what ES&S is testifying to today.

The Chair indicated that he would allow Mr. Bock to proceed since the Commission is not bound by formal rules of evidence but advised Mr. Bock that if he wanted the Commission to take action based upon the information provided then it should be based upon the testimony of Mr. Bock's clients.

Mr. McClamroch indicated that ES&S has made a commitment to Marion County to address their issue with batteries and solve their problem. He added that Marion County's issue is not relevant to the issue as stated by Mr. Simmons, namely, whether the other counties are the same problems with the PEB batteries as in Marion County. He stated that he did not believe the Commission's inquiry was intended to address the problems in Marion County.

The Chair indicated that Mr. McClamroch had a fair point and, speaking only on behalf of himself, he recognizes that Marion County has excellent counsel representing their interests. He added that he was interested in hearing how these alleged discrepancies in testimony may relate to other counties. He indicated that he has heard various things about how often the batteries needed to be awakened and that he was interested in hearing whether the counties that have used their PEBs only once during a year would have a problem like that experienced in Marion County. He stated that he had a concern about the failure rate of the PEBs in these other counties and he was interested in learning whether there is a plan to have replacement batteries available to the other counties in a timely manner in case they were needed. He invited Mr. Bock to comment further if his comments were directed at these concerns.

Mr. Bock stated that ES&S advised them that the PEB batteries had a four-year shelf life regardless of the number of times that they were used. Mr. Bock stated that Marion County checked the batteries to determine when they were manufactured and found that many of the batteries were a year or two old when they were delivered to Marion County and many of them were currently outside the four-year period.

Mr. Bock added that ES&S represented to Marion County that four-year old batteries are not dependable. He stated that this issue is a little different than the issue of waking up the batteries. Mr. Bock continued by saying they were told that the batteries had to be awakened every three months and the testimony from ES&S today indicates that it has to be done every six months. Mr. Bock explained that Marion County has been waking the batteries up with special equipment they purchased and yet they still experienced an eighty five percent failure rate of the PEBs.

The Chair asked Mr. Bock when Marion County began waking up the batteries. Mr. Bock deferred to David Woo who indicated he had not been sworn. Doris Anne Sadler suggested that she be sworn in as well as she anticipated giving testimony. The Chair administered the oath to Mr. Woo and Ms. Sadler.

Mr. Woo introduced himself as the supervisor of the Marion County election board service center. Ms. Sadler introduced herself as the circuit court clerk of Marion County.

Mr. Woo indicated that they have been waking up the batteries on a continuous basis since November or December of 2004. He added that, before this, Marion County was on a different firmware and did not know the batteries in the PEBs should be subjected to this waking up procedure.

The Chair asked Mr. Woo how he found out about the waking up procedure. Mr. Woo responded that the service account manager from ES&S, Jamie Rough, advised Marion County that they had to begin waking up the batteries and that they needed to buy certain equipment to do this. He added that Marion County has been performing this procedure every three months since they were told about it.

The Chair recognized Mr. Bock who stated that another inconsistency noted by Marion County was statement by ES&S that you could check for this problem by checking the battery level in the PEBs. He stated that the experience in Marion County shows that the problem does not manifest itself until valid information is actually loaded on the PEBs and this does not occur until just days before the election. He explained that the PEBs began to fail when they began loading data on the PEBs prior to the Marion County slating convention despite the fact that the battery levels showed a sufficient charge. Mr. Bock stated that this indicates that you can't simply check battery charge to determine whether or not you will experience a PEB failure and that this is why Marion County sent five hundred and fifty four out of six hundred and some PEBs back to Omaha for replacement of batteries. He indicated that Marion County concluded that the only way that they could determine whether a PEB was reliable was to conduct an inventory by opening each PEB and look at the manufacture date of the battery to determine if the battery was within the four-year shelf life period.

The Chair asked Mr. Carbullido if he could define whether the shelf life ran from the date of manufacturer or the date of first use. Mr. Carbullido indicated that the shelf life ran from the date of manufacturer of the battery and should be four years plus or minus but the shelf life estimate is based on ES&S's assumption that the PEBs will be used.

The Chair asked Mr. Carbullido how he would advise counties on how to protect themselves on election day in counties other than Marion County. Mr. Carbullido stated that they have not had the same battery change up difficulties anywhere else that their voting systems are used. Mr. Carbullido added that, under normal use, there isn't any problem. He indicated that they had never tested battery life for a situation where the PEBs have set without use for two and one-half years.

The Chair reminded Mr. Carbullido that he was asking about counties other than Marion County. Mr. Carbullido stated that it is difficult to say if the period is three, six, or nine months because they have never had a situation where a battery has sat without use for two and one-half years.

The Chair indicated that, setting aside Marion County, he was concerned about problems lurking in other Indiana counties that have not been identified. He added that he was interested in what maintenance needed to be done on the PEBs to assure that at least ninety-five percent of the PEBs on election day will work and whether procedures to assure the PEBs work have been communicated to the counties.

Mr. Carbullido stated that, aside from Marion County, counties should use the PEBs on the regular election cycle and the PEBs should be checked for battery charge when the voting system is being programmed.

The Chair asked about when the batteries should be replaced. Mr. Carbullido stated that batteries should be replaced when the battery level shows that it is low during either preventative maintenance or as part of election preparation.

The Chair then asked how ES&S would address Marion County's contention that checking battery levels did not predict the failure of the PEBs they experienced. Mr. Carbullido stated that he does not believe that would happen anywhere else because other Indiana counties would have used the PEBs more regularly. He stated that he was not being inconsistent and that you should know when the machine is programmed before its use whether it is sufficiently charged.

The Chair asked whether county contracts or practice assures that preventative maintenance and battery level checking is performed. Mr. Carbullido responded that some counties contract with ES&S to perform preventative maintenance and programming and some do not. He added that if the county is doing either or both of these things then it has the tools to check the voltage level of the batteries in the PEBs.

The Chair asked whether ES&S advises the counties that do not contract with ES&S to perform maintenance or programming. Mr. Carbullido responded that the counties will have the tools to check the battery level during programming.

The Chair asked whether ES&S had PEBs in inventory to supply clients on short notice in case of massive failure. Mr. Carbullido responded that they had well over one thousand in inventory at this time and that ES&S planned to ship PEBs to Marion County on Friday to replace all of them.

The Chair asked what the turnaround time was between the request for replacement and shipment. Mr. Carbullido responded that ES&S received PEBs to be replaced from Marion County last Thursday and they will ship over five hundred PEBs to Marion County by this Friday.

Robb McGinnis of ES&S asked to be recognized. The Chair asked if Mr. McGinnis had taken the oath yet. Mr. McGinnis responded that he had not. The Chair then administered the oath to Mr. McGinnis.

Mr. McGinnis indicated that we know that there will not be massive failure of the PEBs by the track record of the iVotronic. He added that the iVotronic, which utilizes the PEBs, has been used in elections throughout the country and that they have run fantastic elections and he thinks that this point is being overlooked.

The Chair asked how long these voting systems have been used with these batteries. Mr. McGinnis responded that ES&S begin producing the iVotronic six or seven years ago.

The Chair then asked if the failure in Marion County was the only major failure experienced on this voting system. Mr. McGinnis responded “yes” indicating that this was true.

The Chair recognized Mr. McClamroch who asked Mr. Carbullido the number of states that were using the iVotronic. Mr. Carbullido responded that thirty states were using the iVotronics involving a total of sixty thousand iVotronics and he confirmed that ES&S had never run into this situation in any other state.

The Chair asked how many PEBs were replaced each year. Mr. Carbullido indicated that they probably had twice the number of PEBs than iVotronics being used in different states. Mr. McClamroch asked Mr. Carbullido how ES&S deals with the replacement of PEBs when the batteries wear out. Mr. Carbullido stated that ES&S replaces them. He added that many customers send their PEBs to ES&S for programming and they check the PEBs at that point and advise the customer about replacing batteries and the customer can decide at that time whether or not to replace the batteries.

The Chair recognized Commission member Sarah Riordan who indicated that Mr. Carbullido had mentioned having extra PEBs available and she asked if that was part of the practice in Indiana. Mr. Carbullido indicated that any particular polling place should have multiple PEBs so that if there is a problem with one you could use another. Ms. Riordan asked whether ES&S planned to have the technical people in place on the ground in Indiana to address problems with battery failure should it occur in the primary. Mr. Carbullido indicated that they would.

The Chair recognized Commission member Jennifer Wagner who stated that she did not hear an explanation from ES&S as to why Marion County received some PEBs in 2003 with batteries that already exceeded the four-year shelf life. Ms. Wagner asked whether this would indicate that every county should check the manufacture date of the batteries in their PEBs to make sure they do not have batteries older than the represented shelf life. Mr. Carbullido indicated that he did not think so unless the counties plan not to use the voting system for an extended period of time.

Linda Bennett, another representative of ES&S, added that batteries on the PEBs will be checked when ES&S programs the PEBs and confirms the data on the PEBs. She stated that this will be checked by ES&S whether or not the county requests them to do so.

Ms. Wagner asked whether ES&S already knew that the batteries in the PEBs in Marion County had exceeded their shelf life because they checked them. Ms. Bennett responded that the PEBs in Marion County did not get checked because Marion County did not have an election until the slating convention.

The Chair asked why PEBs were delivered to Marion County in 2003 with 1999 batteries. Mr. Carbullido indicated that he could only conclude that ES&S had built up an inventory at that time. Ms. Bennett added that it was her understanding that only four of those PEBs actually had 1999 batteries.

The Chair stated that the problem ES&S has identified with respect to Marion County PEBs was that they set for two and one-half years. The Chair asked whether ES&S was indicating that the batteries that are older than four years should work if they are routinely maintained by waking them up. Mr. Carbullido responded that ES&S does not make batteries, they buy them. Mr. Carbullido added that they could do more testing but he did not feel it was indicated given that these systems have been used in many elections without the kind of problem experienced in Marion County.

The Chair indicated that he was concerned about ES&S quality control with respect to shipping the old batteries to Marion County. Mr. Carbullido indicated that he could understand the Chair's concern but that the Commission should be able to have some confidence in the fact that through extensive use of the iVotronic that this has proven this to be a non-issue.

Mr. McClamroch indicated that he would hate to see the Commission make a policy based on the Marion County situation when ES&S has stepped up to make the situation right. He added that quality control was a legitimate issue but that the track record of this system shows that it is not a significant issue. He added that when it became an issue in Marion County, ES&S indicated it would replace the batteries.

The Chair indicated that he comes back to the point that, if the process of using and maintaining the PEBs the way you are supposed to should disclose any problem, then what is being done to make sure that proper use and maintenance is occurring.

The Chair recognized Jill Jackson, circuit court clerk of Johnson County, who introduced herself and stated that she wanted to clarify why she indicated that she was told that the PEBs should be awakened up every six months. She stated that she received a letter from ES&S that explained the battery issue. She stated that she had to go through a lengthy process of finding someone who could perform the maintenance on the batteries because her staff is small. She stated that she had to obtain an additional appropriation from her county council to pay a person two thousand dollars to perform this maintenance. She added that the maintenance consisted of unscrewing the PEB, opening it up, attaching a clamp to the positive and negative sides of the battery, waiting for five minutes, then looking at a reading on a supervisor terminal to see if the reading was above the minimum of 3.39 to pass or be woke up. She explained that ES&S provided the memo that described this procedure and indicated that it had to be performed every six months.

The Chair recognized Ms. Sadler who indicated that she wished to clarify the issues in Marion County and that this may shed some important light on the issue. She stated that there were two issues- battery shelf life and waking up the battery. She said that they know from their experience that, just because the voltage on the battery shows the recommended amount, does not mean that the PEB will accept the ballot definition. She stated that Mr. Carbullido had indicated that there is time to address the issue during pre-election preparation. Ms. Sadler indicated that they were lucky to find out that the PEBs were not holding the ballot definition during the slating convention since this event

involved only thirty machines. She added that if they had not learned this during the slating convention then they would not have learned of the problem until sometime between April 3 through April 10 when they would place ballot definitions on the machines. She stated that she disagrees that there would have been enough time to address the issue before the primary if this would have been the first they learned of the problem. She added that she was told that it would take ten working days to switch out the batteries and send them back. She indicated that it should be a concern for counties using the system that you cannot learn about a problem with the battery until you attempt to put the ballot definition on the PEB.

Mr. Sadler indicated that Marion County did not have the back-up PEBs that Mr. Carbullido suggested are widely available. She stated that Marion County does not have multiple iVotronics in the precincts since they use the iVotronic as the disability unit together with the M-100 optical scan systems. She added that if a PEB did not work on election day then they would have to call their warehouse and send out another PEB to the polling place that has been programmed with the correct ballot definitions. She stated that it would be extremely inconvenient for both voters and election administrators to handle PEB failures on election day.

Mr. Sadler added that she wanted to make sure that the Commission understood that Marion County had awakened the batteries every three months since November of 2004. She stated that ES&S should anticipate non-use since Indiana has a non-election year.

She stated that she also wanted to make sure that the other counties in Indiana understood that the batteries have a four-year shelf life and that there should be a procedure in place to replace those batteries on a regular basis. She concluded by thanking Commission members for their time.

The Chair asked if Mr. Carbullido wished to respond to Ms. Sadler's comments. Mr. Carbullido responded that the shelf life and use of the battery are factors that work together. He added that the more you use the battery, the longer it lasts. He stated that if you don't use the battery at all the life of the battery might be reduced.

The Chair asked why the PEB wouldn't accept ballot definitions if the battery tested at acceptable levels. Mr. Carbullido indicated that there are three steps to the "clear and test" process. He stated that qualification sets the PEBs for use for a specific election. He added that the PEB is then loaded with the election definitions and then there is the use of the PEB on election day. He stated that the first two processes can be done anytime before an election, including long before an election is scheduled to occur.

The Chair asked what advice ES&S gave its customers with respect to when to perform these processes to maximize the opportunity to deal with potential PEB failures on election day. The Chair recognized Mr. McGinnis who stated that the public testing of voting systems has to be completed at least two weeks before the election so ES&S has to have their coding completed before that date.

The Chair indicated that, at this point, he was more interested in the procedural issues rather than the hardware issues. The Chair asked the clerks present how far in advance of the election they have their PEBs prepared for the election.

Ms. Jackson indicated that they have not yet used the iVotronic voting system in Johnson County. Ms. French indicated that she would not feel comfortable unless her system was ready to go at least three weeks before the election. Ms. Lower indicated that they are the same and are aware that the iVotronic voting system is subject to the public testing requirement. Ms. Jackson indicated that she was aware that the public test for the voting system had to be completed by April 18 and indicated that they have scheduled their public test for April 11.

The Chair asked Mr. Carbullido whether ES&S was prepared to address problems that came up during public tests held by the deadline of April 18. Mr. Carbullido indicated that ES&S was prepared to do so. Ms. Bennett added that ES&S had more PEBs in stock and that they could replace PEBs in the worst case scenario.

The Chair recognized Mr. McClamroch who stated that he wanted to repeat the point that Ms. Bennett had made. He stated that ES&S intended to check the PEBs in the next two weeks and he asked Ms. Bennett to indicate the counties that would be checked. Ms. Bennett responded that they intended to check the PEBs in counties where the PEBs were not new, including Henry, Vanderburgh, Johnson, and Wayne.

The Chair asked Mr. Simmons to describe the requirements of a public test. Mr. Simmons indicated that the timing of the public test as stated is correct in that it must be conducted fourteen days before the election but that the statute does not require that every unit of the voting system be checked. He explained that the statute requires a random selection of at least three precincts for testing of the voting systems that will be used in those precincts. He added that this did not prevent a county from going beyond this statutory minimum and that the Election Division had advised the clerks to perform more testing than the statutory minimum. He stated that the statute did not require the testing of every PEB that would be used in the county on election day to determine that each would have the power to work an entire election.

The Chair recognized Mr. King who indicated that he wished to add that the statute requiring public testing of DREs went into effect for the first time this year and that the basic requirement was set forth in IC 3-11-14.5-1 on page 391 of the of the election code. He added that the voting system must ascertain that the system will correctly count the votes cast for all candidates and on all public questions in that precinct. He stated that this section does not explicitly reference checking the battery date in equipment to make sure that the battery is within the shelf life identified at today's meeting. He added that his own personal opinion as a Co-Director is that counties should also check the PEB batteries if they are a county using this equipment for the first time to make sure that they have batteries that are within the identified shelf life.

The Chair recognized Ms. Lower who asked whether she was correct in her understanding that if they send their iVotronic voting system to ES&S for programming that ES&S will check the battery levels in the PEBs as part of this. Ms. Bennett indicated that this was correct in that PEBs are tested and loaded with ballot definitions at that time.

The Chair recognized Mr. Bock who asked whether ES&S would stand by its statement that the batteries have a four-year shelf life. Mr. Carbullido indicated that it would be a good practice to replace batteries after four years.

Mr. Bock asked whether it was possible for ES&S to provide a written procedure to follow with assurances regarding the battery life if the procedures are followed. Mr. Carbullido indicated that ES&S would be glad to do that.

The Chair indicated that he was not sure whether such assurances would be part of the certification process before the Commission but certainly could be part of the contract a county has with ES&S. The Chair then indicated that the Commission would move on to the consideration of pending voting system approval applications.

C. Election Systems and Software (ES&S) application for an upgrade to AutoMARK Voter Assist Terminal; hardware AutoMARK Voter Assist Terminal (VAT) version 1.1.2258; firmware number “NA”; software AutoMARK Information Management System (AIMS) version 1.12.18.

The Chair recognized Mr. King who referred Commission members to the voting system memo prepared by the Co-Directors and dated March 20, 2006. Mr. King indicated that page 3 of the memo addresses the ES&S AutoMark Voter Assistance Terminal and AutoMark Information Management System, or “AIMS” upgrades. He added that ES&S filed their voting system approval application on March 10, 2006, paid the required fee, and filed documentation showing that the software had been properly escrowed.

Mr. King stated that the AutoMark voting system was originally demonstrated to the Commission when it was originally certified on September 22, 2005. He stated that ES&S has provided documentation from SysTest Labs that states that the upgrades for the Voter Assistance Terminal version and the AIMS software version identified in the application had been tested and found to be in compliance with the 2002 Federal Election Commission (FEC) voting system standards. He indicated that the SysTest Lab report indicates that the version of the AutoMark submitted for testing is intended to be used with the following: Unity 3.0.1.0 hardware: the Model 100, the Model 650, and the Optech Eagle 3p. Mr. King stated that this is a voting system that would permit blind and disabled voters to cast their ballots without assistance and does not use the Unity software since it has its own software, the AIMS software.

Mr. King stated that the recommendation of the Co-Directors is summarized at the bottom of page 3 of the memo which indicates that, based upon the documentation provided by ES&S, the Co-Directors recommend that the upgrades of the AutoMark identified in the application of ES&S be approved for marketing, sale, leasing, installation and implementation in Indiana in conjunction with the Unity 3.0.1.0 hardware specified above, and with the software specified below if that is approved by the Commission at today's meeting, for a term expiring October 1, 2009. Mr. King stated that he would be happy to answer any questions that the Commission may have about the pending application and noted that representatives of ES&S were present and could address questions as well.

Mr. King added that the Co-Directors have received the full SysTest Lab report with regard to the application on a CD.

The Chair asked Commission members if they had any questions.

Ms. Riordan asked whether the application involves software that tallies votes for the entire county in an election. Mr. Carbullido indicated that the AutoMARK simply marked paper ballots which were counted using whatever process the county had in place, including an optical scan system.

Ms. Riordan asked what Mr. King meant by the statement that the AutoMark was not used with the Unity software. Mr. Carbullido stated that the AIMS software programmed the AutoMARK and it is different software from the Unity software.

There being no further question the Chair indicated that he would entertain a motion on the pending application. Mr. Mullin moved, seconded by the Chair, that the Commission approve the pending applications for the AutoMARK in conjunction with the hardware with the versions of Unity 3.0.1.0 software identified, for marketing, sale, leasing, installation and implementation in Indiana for a term expiring October 1, 2009. There being no further discussion, the Chair called the question and declared that with four members voting "aye" (Mr. John, Ms. Riordan, Mr. Mullin and Ms. Wagner), and no Commission member voting "no," the motion was adopted.

D. ES&S Unity 3.0.1.0 election Management Software, consisting of Audit Manager 7.3.0.0; EDM version 7.4.4.0; ESSIM 7.4.2.0; iVotronic Image Manager version 2.0.1.0; Optech Image Manager 4.0.0.0; HPM 5.2.4.0; DAM 6.0.0.0; ERM 7.1.2.0 (Unity version 2.5 previously certified by the Commission)

E. ES&S Optech 3PE Optical Scan Ballot Card Voting System, hardware number ("ES&S does not assign hardware versions numbers"); Firmware number 1.28/1.50; Software number(s): "not applicable."

F. ES&S application for upgrade to Model 650 Optical Scan Ballot Card Voting System, hardware number (“ES&S does not assign hardware version numbers”); Firmware number 2.1.0.0; Software number(s): “not applicable.”

G. ES&S application for upgrade to Model 100 Optical Scan Ballot Card Voting System, hardware number (“ES&S does not assign hardware version numbers”); Firmware number 5.2.0.0; Software number(s): “not applicable.”

H. ES&S application for upgrade to iVotronic Direct Record Electronic voting system hardware number (ES&S does not assign hardware version numbers”); Firmware number 9.1.4.0; Software numbers(s): “not applicable.”

The Chair recognized Mr. King who stated that this application involves the Unity Software, with the components listed, and is related to other applications on the agenda, including ES&S’s application for the Optech 3PE Optical Scan voting system, the Model 100 Optical Scan voting system, and the Model 650 Optical Scan voting system. He added that each of these hardware components has an application for a software upgrade associated with it and these applications are separate from the application for approval of the Unity software. He indicated that he would defer to Ms. Robertson regarding any comments she had and indicated that he had just wanted to explain the relationship between the applications so that the Commission could determine how to proceed with them.

Ms. Robertson stated that agenda items D through H are related since they are all related to the Unity software.

The Chair indicated that he would propose to take agenda items D through H together unless there was an objection by a Commission member. Ms. Riordan indicated that she did not know that she had an objection but she wanted ES&S to identify exactly what it is that the Commission is approving and the independent testing that has been completed on the voting systems.

The Chair indicated that he did not wish to abbreviate the discussion by considering these agenda items together but that these applications are either approved or not approved together. The Chair indicated that ES&S should proceed with that understanding.

Mr. Pearson stated that the Unity software version 3.0.1.0 was tested by the ITA with the list of tabulators that Mr. King identified as a voting system. He added that the Unity software version 3.0.1.0 was tested with the Model 100, the Model 650, the iVotronic and Optech 3P Eagle with the specified firmware versions all submitted together as a voting system. He indicated that previously Unity software version 3.0.1.0 was tested with the AutoMARK 1.2 as part of that voting system as well. Mr. Carbullido indicated that they are all part of the same system but separate applications were submitted because they didn’t really know how else to do it. He indicated that he wanted to present the applications in the manner that the Commission preferred.

The Chair indicated that he thought that the applications were clear enough and that he was consolidating the consideration of these applications because it was his thought that the Commission would either approve all or none of the applications.

The Chair indicated that one of the Co-Directors could continue with the Co-Director's memo regarding these additional pending applications.

The Chair recognized Mr. King who stated that there are some special points in the memo that he wanted to bring to the attention of the Commission. He referred the Commission to the discussion on page 4 where it discusses the Unity version 3.0.1.0 software that has the generic components listed. He indicated that the memo notes that on March 10, 2006 ES&S filed an application for an upgrade. He explained that Unity version 2.5 is currently certified for use in Indiana and the Unity version 3.0.1.0 would be an upgrade that could be used with both DRE and optical scan ballot voting systems. He stated that the application for Unity version 3.0.1.0 has been filed, the fee has been paid, and the proof of escrow of the components has been documented. He added that certain components of Unity version 2.5 were demonstrated to the Commission when those components were certified by the Commission in 2004. He added that ES&S has submitted a complete report from SysTest Labs, the ITA, dated March 9, 2006 which states that the Unity 3.0.1.0 meets the 2002 FEC voting system standards. He indicated that the Co-Directors recommendation for approval is set forth in the memo on page 5.

Mr. King then directed the Commission to the portion of the memo on the Optech 3PE beginning on page 6 of the memo. He stated that on February 28, 2006 the Commission certified the version of the Optech 3PE for use in Indiana subject to filing the complete SysTest Lab report with the Commission. He stated that the complete report has now been filed.

He stated that with respect to the application before the Commission at today's meeting, ES&S has filed the application, paid the required fee, and provided proof of escrow. He explained that the Optech 3PE was demonstrated in its original form when it was originally certified by the Commission. He directed the Commission to the bottom of page 6 of the memo regarding the ITA report. He indicated that the memo states that SysTest has completed testing of the Unity version of the Optech 3PE and that it meets 2002 FEC voting system standards. He added that the bottom of the page 6 of the memo states that the lab report lists the additional equipment used with the Unity for testing purposes only, including the Optech 3PE, are not to be qualified to the 2002 FEC voting system standards. He indicated that Indiana law does permit the continued county use of voting systems that do not meet the 2002 FEC standards, such as the Optech 3PE, if the system was previously acquired by the county when the system was certified in Indiana and the system complies with the requirements of the Help America Vote Act and Indiana law. He indicated that the Co-Directors recommendation with respect to the Optech 3PE is a little different in that the Co-Directors recommend that the Commission approve the Optech 3PE firmware version 1.28/1.50 with the approval being limited to the installation of the Unity 3.0.1.0 on the Optech 3PE voting systems that are currently used in Indiana counties. He stated that it was his understanding, from discussions with

ES&S, that ES&S does not currently plan to market the Optech 3PE for sale in Indiana but intends only to service counties that have previously purchased the system. He then deferred to Ms. Robertson to discuss the Model 650.

Ms. Robertson explained that the Model 650, the Model 100, and the iVotronic are similar to what the Commission has heard on the Unity 3.0.1.0 as far as the documentation that has been submitted. She stated that the Co-Directors recommend approval of the use of the Unity 3.0.1.0 to be used with the Model 650, Model 100 and the iVotronic voting systems. She stated that these are different than the Optech 3PE in that they meet the 2002 FEC voting system standards so that all the components of the system are eligible to be approved for marketing and sale in Indiana.

Mr. King indicated that the only thing he would like to add is that there is a firmware version upgrade for the Model 100 from version 5.1.0.0 to 5.2.0.0. He indicated that ES&S may want to make comment with respect to the significance of the changes in the firmware.

The Chair recognized Mr. Pearson who indicated that the enhancements made to the system involve the type and number of reports that the system can provide users.

The Chair asked whether Commission members had any questions and recognized Ms. Riordan who stated that she would like to have assurance from staff that the testing reports have been reviewed by staff for security risks and other items tested for and that the 2002 FEC voting system standards have been met and that staff feels confident that the Commission can go forward and approve these applications. She added that she did not see the independent testing reports in her materials and she would probably have a difficult time understanding the reports even if they were made available.

Mr. King indicated that the Co-Directors have reviewed the ITA reports, including the voluminous documentation that indicates that the testing was preformed. He stated that he would add the caveat that the Co-Directors are lawyers and not engineers so that their ability to perform an analysis of an independent testing report is limited to making sure that the components of the report are included and whether the report contains anything that goes beyond the summary statements. He added that the recommendation of the Co-Directors, and that of the Co-General Counsel, are based that type of legal review of the application and not any kind of a technical review that the ITA performs.

Mr. Robertson indicated that the only thing that she would add is that the ITAs are certified and that the Co-Directors and the National Association of State Election Directors rely upon them. She added that the Co-Directors also rely upon the fact that the ITAs have put the voting systems to all the tests required by the 2002 FEC voting systems standards. She stated that ITAs have been reliable in the past in testing these voting systems.

Ms. Riordan thanked the Co-Directors for that explanation and indicated that she would like to give the clerks who have attended the meeting the opportunity to ask questions, though it appeared that Ms. Padish was the only one left.

Ms. Padish indicated that she did wish to make one observation. She stated that she was very impressed with the way the Commission handled the business that comes before it. She congratulated the Chair on the way he conducted the meeting.

The Chair thanked Ms. Paddish and indicated that he was just pitch hitting today as Chair.

The Chair asked about ES&S procedures to deal with unforeseen problems and ES&S's plan for communicating with clients about problems, whether it is a problem with the batteries like in Ohio or Indiana or whether it is something they just haven't anticipated.

Mr. Carbullido indicated that he would start by noting that ES&S has a dedicated account team, account managers, people who are always in direct contact with customers. He added that these people are supported by the customer service group at ES&S's corporate office. He stated that they have a help desk. He stated that ES&S provides technical bulletins to customers. He indicated that ES&S has advisory groups of customers in the state to discuss customer issues.

The Chair asked whether the battery maintenance procedure would be something ES&S would put in a technical bulletin to its customers. Ms. Bennett indicated that their communication on the battery maintenance issue was similar to a technical bulletin. She added that they have an escalation procedure at the company to direct resources to a problem as they become aware of it.

Mr. Mullin asked how many customers ES&S had for the iVotronic voting system in Indiana. Ms. Bennett indicated that ES&S had 19 customers in Indiana. Mr. Mullin asked how many of these customers have maintenance included in their contract. Mr. Mullin indicated that they all did at this time as they are in their initial warranty period.

The Chair indicated that he would entertain a motion on agenda items D through H. Mr. Mullin moved, seconded by Ms. Wagner, that the Commission adopt the Co-Director recommendations for agenda items D through H and approve those items, including the Unity 3.0.1.0 software, the Optech 3PE optical scan ballot card voting system, the Model 650 optical scan voting system, the Model 100 optical scan voting system, and the iVotronic direct record electronic voting system.

The Chair offered a friendly amendment to the pending motion, namely that it specify that the Model 650, Model 100, and the iVotronic voting systems be approved as upgrades of the voting systems rather than new systems. Mr. Mullin and Ms. Wagner indicated consent to the amendment.

The Chair thanked the representatives of ES&S for attending the meeting and indicated that he came into the meeting with grave concerns. He stated that ES&S should be aware that some of their clients may not be sophisticated and that it was incumbent upon ES&S, through its internal and external procedures, to insure their clients are not put in a position to fail. He indicated that he felt comfortable, based upon assurances made by ES&S, that they are doing that but he stressed that ES&S would have to live up to those assurances.

The Chair called for additional discussion. There being no further discussion the Chair called the question on the pending motion, and declared that with four members voting “aye” (Mr. John, Ms. Riordan, Mr. Mullin and Ms. Wagner), and no Commission member voting “no,” the motion was adopted.

5. Adjournment

There being no further items on the Commission’s agenda, the Chair entertained a motion to adjourn. Ms. Wagner moved, seconded by Mr. Mullin, that the Commission do now adjourn. The Chair called the question, and declared that with four members voting “aye” (Mr. John, Ms. Riordan, Mr. Mullin and Ms. Wagner), and no Commission member voting “no,” the motion was adopted. The Commission then adjourned at 3:05 p.m.

Respectfully submitted,

J. Bradley King
Co-Director

Pamela Potesta
Co-Director

APPROVED:

Thomas E. Wheeler, II
Chairman