

Indiana Election Commission

Minutes

DECEMBER 20, 2001

Members Present: Dudley Cruea, Chairman of the Indiana Election Commission (the Commission); S. Anthony Long, Vice Chairman of the Commission; Butch Morgan, member of the Commission; and Joseph M. Perkins, Jr., member and Commission.

Members Absent: None

Staff Attending: Laurie P. Christie, Co-Director, Indiana Election Division of the Office of the Indiana Secretary of State (Election Division); Spencer Valentine, Co-Director of the Election Division; Kristi Robertson, Co-General Counsel to the Commission and Election Division; Dale Simmons, Co-General Counsel to the Commission and Election Division and Lori Hershberger, Special Projects Coordinator, Election Division.

Also Attending: David Frizzell, Indiana Representative, District 93, and member of the Lake County Redistricting Commission; Edmund Mahern, Indiana Representative, District 97, and member of the Lake County Redistricting Commission; Brad Klopfenstein, Libertarian Party of Indiana; Mark Stratton and Maureen Bard, Office of Census Data, Legislative Services Agency; Steve Corey, Global Election Systems and Software, Inc.; Stephanie Mannon, office of the Indiana Secretary of State; Kurt A. Young, Brown County Attorney; James Greedy, County Commissioner of Brown County; Kathi S. Smith, Auditor of Brown County; and Amy Nelson, Marion County Election Board

1. Call to Order

The Chair called the December 20, 2001 meeting of the Commission to order at 1:10 p.m. at the Indiana Government Center South, Conference Center, Conference Room 2, 302 West Washington Street, Indianapolis, Indiana. He noted that proper notice of the meeting had been given, as required by state law, and that a quorum was present.

A copy of the meeting notice and agenda is incorporated by reference in these minutes. *[Copies of all documents incorporated by reference are available for public inspection and copying at the Election Division office.]*

2. Approval of the December 4, 2001 Meeting Minutes

The Chair noted that the December 4, 2001 meeting minutes had been prepared and are now subject to approval. Mr. Long moved, seconded by Mr. Perkins, that the December 4, 2001 Commission meeting minutes be approved as presented. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Cruea, Mr. Long and Mr. Perkins), and no member voting "nay", the motion was adopted.

3. Litigation Update

The Chair recognized Mr. Simmons who stated that of the several outstanding cases listed on the agenda there has been nothing that has occurred in any of the cases except the *Williamson v. Indiana Election Commission* case. He explained that this case is one of the cases brought by Libertarian Party candidates that challenge the application of Indiana's campaign finance laws to them because they raise

or spend no money in their pursuit of elected office. He indicated that the issues in this case are similar to those raised in the *Majors* case. He indicated that the *Williamson* case is pending in Marion County Superior Court in front of judge Mike Keele. He explained that counsel from the Attorney General's office representing the Commission moved to dismiss one count of the Complaint that involved the administrative appeal of the Commission's order fining the campaign committees of Libertarian Party candidates. He stated that the basis of the motion was the failure of the counsel for the candidates to timely file the administrative record. He explained that the record was timely provided to counsel for the candidates. He further explained that failure to timely file the record for an administrative appeal is a jurisdictional defect and that the court dismissed this count of the complaint on that ground. He continued that the case also involves some civil rights, state statutory and state constitutional claims that remain pending.

Mr. Simmons added that counsel in the *Williamson* case has approached the Commission's counsel regarding a settlement proposal. He explained that the proposal included an invitation to sit down with all counsel regarding the terms of any proposed settlement and that it may be desirable to have an executive session regarding any proposal at the Commission's next meeting.

4. Forms Approval

The Chair recognized Ms. Robertson who stated that the Spanish version voter registration form has now been prepared with the help of Lattice Otera. She indicated that this registration form is ready for adoption and may be adopted by the Commission by approving ORDER 2001-91. She added that there are several forms that are now obsolete and ORDER 2001-92 would make those forms obsolete. She indicated that these orders would be sent to the counties so that they are aware of the new form and of the forms that are now obsolete.

Mr. Long moved that ORDERS 2001-91 and 2001-92 be approved as submitted. Mr. Perkins seconded the motion. There being no further discussion, the Chair called the question, and declared that with three members voting "aye" (Mr. Cruea, Mr. Long and Mr. Perkins), and no member voting "nay", the motion was adopted.

Mr. Long asked counsel for the Commission whether the Commission could approve the establishment of precincts with three votes. Both counsel indicated that the Commission could approve new precincts with three votes.

5. Establishment of Precinct Boundaries

The Chair requested the presentation of the first county up for the approval of precinct boundaries.

The Chair recognized Lori Hershberger who stated she has prepared for presentation today precincts for the counties of Grant, Fayette, Scott, and Howard. She indicated that the electronic versions of precinct maps for these counties were available for viewing by the Commission.

Mr. Long asked whether the Office of Census Data ("OCD") had reviewed and approved the proposed precincts for these counties. Ms. Hershberger indicated that they had. Mr. Long asked if there was anything that the Commission should know about on these precincts. Mr. Valentine asked for clarification on whether Mr. Long was asking about the precincts being presented by Ms. Hershberger or all of the precincts. Mr. Long indicated that he was asking about all of the precincts that would be presented today. The Chair noted that he saw a potential problem with Monroe County.

Mr. Valentine stated that he has three counties to present to the Commission today. He said that of these counties, only Perry had drastic changes necessitated by redistricting. He added that he was also presenting counties on behalf of Michelle Brzycki today. He indicated that these counties were pretty simple for the most part as well. He indicated that Elkhart had some problems but that they were all resolved.

Mr. Simmons asked Mr. Valentine whether he could indicate the counties he was reviewing with the Commission so that he could check them off against those listed on the orders approving the precincts. Mr. Valentine indicated that, on behalf of Michelle Brzycki, he was presenting Brown, Cass, Clay, Elkhart, Jay, LaGrange, LaPorte, Monroe and Lake. Mr. Valentine added that Lake County was, of course, a sizeable county but that all of the issues raised by OCD have been resolved. He stated that Monroe had an issue in that they included a letter requesting an exemption for a precinct from the requirement that it contain less than 1200 active voters. He stated that this was for the new Bloomington 14 precinct and the basis of the request for exemption was IC 3-11-1.5-3.5 which allows them to go over 1200 active voters for college precincts. He stated that this precinct is not within college territory but is adjacent to campus and holds a couple of apartment complexes that are predominately student housing. He added that Monroe County has submitted a detailed letter explaining the reasons for this exemption and he indicated that it was Michelle Brzycki's recommendation that the Commission grant that exemption.

Mr. Long and Mr. Perkins asked if this exemption request was for one precinct in Monroe only. Mr. Valentine indicated that it was only for Bloomington precinct 14. Mr. Long indicated that the statute allows such a precinct to vary from the 1200 requirement if less than 40% of the active voters in the precinct actually voted in the last primary. The Chair indicated that the number of registered voters in the precinct exceeds the population in the precinct.

The Chair requested Ms. Hershberger to identify the number of precincts in Lake County. He added that the new proposal calls for 531 precincts. He asked whether Lake County has reduced their number of precincts in their proposal before the Commission. Mr. Valentine stated that he did not believe that Lake County reduced the number of their precincts. He added that some precincts were added and some were deleted.

The Chair recognized Mark Stratton who indicated that Lake County has proposed about the same number of precincts as it had before.

Kristi Robertson indicated to the Chairman that staff had prepared ORDERS 2001-93, 2001-94, 2001-95 and 2001-96 for the precincts that are before the Commission at today's meeting.

Mr. Long asked whether the Commission needed to approve Monroe County's request for exemption on the number of active voters or whether approving the precincting order for Monroe County would, in effect, approve the request for exemption.

Mr. Simmons asked what the basis of the waiver was. Mr. Long stated that Monroe County was asking to have a precinct over 1200 active voters. Mr. Simmons indicated that if the exemption is being requested under section 3.5 then they don't have to have an exemption. He added that the general rule is a 1200 active voter limit and when there are special exceptions the limit goes up and that if it meets the requirements in the exceptions to the 1200 limitation it automatically goes up. The Chair indicated that there are 1607 active voters indicated on the submission. Ms. Robertson indicated that section 3.5 is stated in terms of the percentage of active voters who voted in the last primary. Mr. Simmons stated

that if fewer than 40% of the active voters voted in the last primary then under section 3.5 they don't have to worry about their precinct size.

Mr. Long asked again if approval of the order would approve of this situation. Both counsel responded that it would. Mr. Long then asked if everyone was comfortable with recommending all of the counties submitted. The Chair asked if the Co-Directors recommended approval. The Co-Directors indicated that they recommended the precincts and that their recommendations are in the file. Ms. Christie added that the orders were prepared so that the Commission could split them out if they wanted to.

The Chair stated that his only concern was that these counties were split out at all. He indicated that they were usually put together into one order. He stated that when Perry, Switzerland and Pike are separated out on a separate order that it sends up a red flag to him to ask why they are split out this way.

The Chair recognized Mr. Simmons who indicated that he had prepared the orders. He stated that he prepared separate orders based upon who had done the work on the county. He explained that he prepared separate orders for the counties that Spencer Valentine, Lori Hershberger and Michelle Brzycki had worked on. He said that he split Lake County out into a separate order because it was such a big county and that it had a simultaneous request for approval of its County Commissioner and County Council districts before the Commission.

Mr. Long added that he thought maybe staff had anticipated that the Commission would approve the counties by presenter. Mr. Simmons indicated that was so except for Lake County and that it was broken out because he didn't know if redistricting in Lake County would present any special issues with respect to their precincts.

Mr. Valentine indicated that he thought that all of the precincts could be approved in one motion approving all of the orders. Mr. Simmons indicated that this was true; that the Commission could approve all the counties presented today by approving ORDERS 2001-93, 94, 95 and 96.

The Chair asked whether there was anyone present that wished to address any of the proposed precincts in any of the following counties: Brown, Cass, Clay, Elkhart, Jay, LaGrange, LaPorte, Monroe, Owen, Lake, Perry, Switzerland, Pike, Grant, Howard, Fayette, and Scott. There being no response, the Chair indicated that a motion would be in order.

Mr. Long moved that the Commission approve ORDERS 2001-93, 2001-94, 2001-95 and 2001-96 covering the aforementioned counties. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Cruea, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting "nay", the motion was adopted as is indicated in more detail hereinbelow.

A. Brown County

Mr. Long moved that the Commission approve the proposed precinct establishment order submitted by the Brown County Commissioners as reflected in the submissions made in the record before the Commission. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Mr. Cruea, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting "nay", the motion was adopted.

B. Cass County

Mr. Long moved that the proposed precinct establishment order submitted by the Cass County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

C. Clay County

Mr. Long moved that the proposed precinct establishment order submitted by the Clay County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

D. Elkhart County

Mr. Long moved that the proposed precinct establishment order submitted by the Elkhart County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

E. Jay County

Mr. Long moved that the proposed precinct establishment order submitted by the Jay County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

F. LaGrange County

Mr. Long moved that the proposed precinct establishment order submitted by the LaGrange County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

G. LaPorte County

Mr. Long moved that the proposed precinct establishment order submitted by the LaPorte County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

H. Monroe County

Mr. Long moved that the proposed precinct establishment order submitted by the Monroe County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

I. Owen County

Mr. Long moved that the proposed precinct establishment order submitted by the Owen County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

J. Lake County

Mr. Long moved that the proposed precinct establishment order submitted by the Lake County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

K. Perry County

Mr. Long moved that the proposed precinct establishment order submitted by the Perry County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

L. Switzerland County

Mr. Long moved that the proposed precinct establishment order submitted by the Switzerland County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

M. Pike County

Mr. Long moved that the proposed precinct establishment order submitted by the Pike County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

N. Grant County

Mr. Long moved that the proposed precinct establishment order submitted by the Grant County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

O. Howard County

Mr. Long moved that the proposed precinct establishment order submitted by the Howard County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

P. Fayette County

Mr. Long moved that the proposed precinct establishment order submitted by the Fayette County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

Q. Scott County

Mr. Long moved that the proposed precinct establishment order submitted by the Scott County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Mr. Cruca, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

Mr. Long asked how many precincts were finished and how many there were to go. Mr. Stratton indicated that since there were 21 approved as of last meeting and 17 approved today that there are 38 total approved so far. Mr. Long indicated that would leave 54 to go. Mr. Stratton indicated that OCD has probably reviewed another 8 to 10 counties that have been sent back for additional work.

The Chair asked whether there were still meetings set for January 10 and January 17 for precinct approvals. Mr. Valentine indicated that those meetings are scheduled. Mr. Valentine indicated that some of the more difficult counties have gone through but that staff expected Marion County to file their proposed precincts tomorrow.

The Chair indicated that he had heard that Marion County was looking at cutting their precincts by one-third and that's why he asked about Lake County cutting down on the number of their precincts. Ms. Bard stated that you have to look not only at the size of precincts but the number of congressional, state legislative, township and other lines that precincts must not cross. She indicated that this causes a county to create a lot of non-voting precincts.

6. Lake County Redistricting Commission

The Chair recognized Mr. Valentine who directed the Commission to copies of maps that contain proposals for three County Commissioner districts and seven County Council districts in Lake County. Mr. Valentine indicated that the record before the Commission also contains spreadsheets showing the lists of precincts in each of the proposed districts illustrated on the maps. Mr. Valentine added that the record also contained a letter from the Republican Party and Democratic Party chairmen in Lake County indicating that each had reviewed and approved the proposed districts. Mr. Valentine indicated that he would address any questions the Commission may have about the proposed districts.

The Chair asked for an explanation about the Indiana House and Senate members of the Lake County Redistricting Commission. He indicated that he had talked to Indiana Senator Sue Landske, a legislative member of the Lake County Redistricting Commission, who indicated that she had never been consulted on the proposed maps. He asked whether the legislative members of the Lake County Redistricting Commission were to be involved in the process.

The Chair recognized Ms. Christie who stated that the Lake County Redistricting Commission contains four legislative advisory members. She added that of the four legislative members of the Lake County Redistricting Commission, Representative David Frizzell was present at today's meeting. She added that the other legislative members include Representative Ed Mahern, Senator Sue Landske and Senator Rose Ann Antich. She stated that the legislative members of the Lake County Redistricting Commission serve in an advisory capacity to the Commission in determining County Commissioner and County Council districts in Lake County. She stated that it was her understanding from Senator Sue Landske that interested parties in Lake County had formed their own unofficial redistricting group to consider proposals for the districts to generate proposals for the Commission. She said that Senator Landske and Roger Chiabai were part of that group. She added that Senator Antich might have also been part of that group. She stated that it would not surprise her that Representative Frizzell was not part of that since he is from Indianapolis. She stated that this Lake County group serves a separate function than the official function that the Lake County Redistricting Commission serves. She said that what Sue Landske may have been talking about in her conversation with the Chair was that she had not been advised in her role as part of the unofficial Lake County redistricting group.

Ms. Christie added that the election division was not able to advise the legislative members of the Lake County Redistricting Commission of the proposed maps until the division received the maps. She stated that the maps submitted to the Commission today were not received by the division until late yesterday.

The Chair asked Mr. Frizzell if he had any comments on the process. Mr. Frizzell indicated that he was new on the Lake County Redistricting Commission and has just seen the maps today so it was difficult for him to make any determination in order to serve in his advisory capacity to the Commission. He added that it would be his preference for the Commission to delay any final decision on the proposed districts until it was clear that all members of the Lake County Redistricting Commission were given an opportunity to review the proposals. He stated that there might be a logistical problem of scheduling another meeting before the end of the year so that the other legislative members of the Lake County Redistricting Commission would have the opportunity to be present.

The Chair indicated that he had talked to Roger Chiabai, the Lake County Republican Chairman, who said that he signed off on the letter that was submitted but that he did not get the maps that are before the Commission today until yesterday afternoon. He said that Mr. Chiabai indicated that he had called Mr. Stiglich who had indicated to Mr. Chiabai that the maps being proposed were the same maps that

Mr. Chiabai had already seen and approved. He stated Mr. Chiabai said that is why he signed off on the letter submitted to the Commission. He stated that Mr. Chiabai indicated on the telephone that when he looked more closely at the maps being proposed today that these maps were different than the ones he had already seen and approved by his letter. He stated that Mr. Chiabai had asked the Commission to postpone approval of the proposed maps until he (Mr. Chiabai) had an opportunity to look at the proposed new maps filed with the Commission and see what the discrepancies are between the new proposed maps and the maps he had already approved.

Mr. Long asked if anyone knew who was on the unofficial group in Lake County. Mr. Valentine indicated that he did not know. Mr. Long expressed a desire to pay some deference to interested parties in Lake County who have to live with the maps as finally approved by the Commission. He stated that County Commissioners, County Council members, Mayors, the chairs of both major parties and the Libertarian Party should come forward with a proposal that is acceptable to a majority of people in the community. He stated that if the Commission draws the maps then interested parties Lake County may be dissatisfied with the maps.

The Chair recognized Mr. Valentine who stated that the Commission issued a press release in August about how the Commission would proceed, to let both the County Commissioners and other interested parties in Lake County know that the Commission would accept proposals for the new County Commissioner and County Council districts. He stated that the Commission established a deadline of October 15 for the submission of proposals. He stated that the only person who expressed an interest in submitting a proposal was Mr. Stiglich. He added that Mr. Stiglich asked that the October 15 deadline be extended. He said that he told Mr. Stiglich that the deadline had no basis in statute and that he could submit proposals after the deadline. He said that there has been ample notice given to many different parties in Lake County and that interested parties had both notice and the opportunity to make proposals.

Mr. Long stated that he was concerned with the fact that Senator Landske was picked by somebody in Lake County to be part of the group to give input, and that she is also part of the official Lake County Redistricting Commission, but that she was not notified of a meeting in Lake County. He said that is troublesome to him because she is also an Indiana Senator from Lake County.

Mr. Valentine added that he had talked to Senator Antich and that her recollection of the unofficial group in Lake County was that Sue Landske was the chair of it. He added that Senator Antich was not necessarily certain of that.

Mr. Long said that it is also troublesome to him that the chairman of the Republican Party in Lake County signed off on maps but that he is now indicating that he did not sign off on the maps that are now before the Commission. He said that he was not taking a position on Mr. Chiabai's statement one way or the other but the fact that the comment was made justifies delaying decision on the proposals until the issue can be straightened out.

Mr. Perkins also indicated his concern that Mr. Chiabai had indicated that he had signed off on different maps than presented to the Commission today and he expressed his desire to come back before the end of the year to approve districts for Lake County.

Mr. Long indicated that the Commission should consider setting some ground rules regarding future proceedings of the Lake County Redistricting Commission. He maps were not submitted by a certain date then the election division staff would need to draw the maps. He stated that the maps have to be done by the end of the year.

Mr. Morgan indicated that he thought that interested parties in Lake County would see the urgency for compromise. He said that he thought the bone of contention in Lake County involved the County Commissioner districts and not the County Council districts.

Mr. Valentine indicated that he had a recommendation. He stated that the Commission should consider requiring that proposals be signed and notarized. Mr. Morgan indicated that it might be better if interested parties came to the Commission meeting.

Mr. Long indicated that it would be his preference for the parties who support a particular map to sign the actual map. He indicated that he did not think that the issue was forgery but the issue appeared to be whether a particular person has seen a particular map.

The Chair asked whether the Commission needed to take a particular action that reflects the direction of the discussion today. Mr. Long asked about scheduling. The Chair observed that December 28 falls on a Friday. Ms. Christie suggested December 28 at 11:00 a.m. Indianapolis time as the time for the next meeting.

The Chair asked about establishing a deadline for the submission of maps with signatures. He suggested that if none were submitted, then the Commission and its staff would have to draw the maps. The Chair suggested that the deadline be set for noon, Indianapolis time, Thursday, December 27, 2001.

Mr. Long asked about who should be notified. Ms. Robertson indicated that the Lake County Board of Elections and Registration should be notified. Ms. Christie stated that both major party county chairmen should be notified. Mr. Long suggested that the mayors be notified. Mr. Morgan suggested that the County Commissioners and County Council members should also be notified.

The Chair observed that if all parties agree on one set of maps then it should be an extremely short meeting. Mr. Long asked to be notified whether everyone has signed off on one set of maps. He indicated that he might designate a proxy to attend if there is complete agreement.

7. Voting Systems

The Chair recognized Ms. Christie who stated that she would give a status report on pending requests for approval of voting systems. She stated that there are a couple of vendors who have preformed voting system demonstrations. She stated that both companies have submitted documentation that indicates that they have been approved by the Independent Testing Authorities. She stated that the Commission did not yet taken action on the requests for certification previously since both companies involved, Hart InterCivic and Global, now Diebold, had not submitted required escrow agreements showing escrow of the source code that drives the hardware and software of their voting systems. She stated that between the last Commission meeting and this Commission meeting both companies have submitted escrow agreements. She said that the agreements are being presented to the Commission today and that both companies, Hart InterCivic and Global/Diebold, have fulfilled the statutory requirements for certification of their voting systems.

The Chair asked if there were any questions from the Commission. Mr. Perkins asked if legal counsel had reviewed the escrow agreements and approved them.

The Chair recognized Mr. Simmons who indicated that one of the issues that came up with respect to the escrow agreements was the designation of the preferred beneficiary. He stated that staff had looked

back on the records of the Commission to see who the designated beneficiaries were under prior escrow agreements. He stated that some of the escrow agreements submitted did not designate the election division as a preferred beneficiary. He stated that the submitted escrow agreements today do designate the election division as a preferred beneficiary and he indicated that he thought that this provision was important to ensure that the division could act on behalf of the counties in Indiana who purchased these voting systems to obtain the source codes in the event that a company goes out of business or something else goes wrong where obtaining the source code would be important.

Ms. Christie indicated that she had additional conversations with Hart InterCivic where she indicated that the State of Indiana needed to be an additional licensee under the agreement. Ms. Christie indicated that Mr. Corey was present and could address the issue of the change of Global to Diebold.

The Chair recognized Steve Corey who stated that his company, at present, was going to proceed under the designation of Diebold/Global since the company, Global Election Systems, has been in business so long and is known across the country. He stated that the system that Diebold/Global is seeking certification for is the R6 Accutouch DRE unit, which is the newer version of the R4 unit, which was certified back in June of 2000, and the GEMS software, which is a new version of GEMS that has been in use in Indiana since 1997. He added that this version of GEMS runs both the optical scan units being used by Indiana counties and future counties that will use the R6 unit.

The Chair asked if there were any questions. Mr. Morgan indicated that there were some new federal regulations regarding voting systems that are being considered. He stated that he had a concern about issues involving the ADA and other matters brought up in news articles and in task force hearings. He asked where we were as a Commission and as a state with regard to the new voting system standards. He stated that state legislators are putting together bills right now for the short session. He stated there are many vendors seeking certification. He stated that the staff spends considerable time reviewing these materials. He asked what the other Commission members think and what the staff thinks will happen with regard to these new federal regulations, especially if they are different than the statutes that Indiana now has on the books.

The Chair recognized Mr. Simmons who stated that, as a preliminary matter, he noted that the discussion regarding the Commission's accessibility guidelines came up in the Commission's November meeting. He stated that he copied these guidelines which were approved by the Commission in 1991. He indicated that he would pass copies of the guidelines out to Commission members and he did so. He stated that these guidelines relate to the implementation of the accessibility requirements imposed by federal law as they relate to the accessibility of polling places. He indicated that he had also had made some preliminary contact with Stephanie Mannon of the Secretary of State's office to collect some names and contacts of persons in disability organizations. He stated that he would contact the League of Women Voters for additional contacts and Suellen Jackson Bonner, Executive Director of the Governor's Panning Council on Disabilities, regarding contacts within the disability community. He stated that these efforts could at least provide the Commission a list of contacts within the disability community. He stated that the guidelines adopted by the Commission in 1991 address just the accessibility of polling places. He added that one of the things troubling the Commission and staff is how evolving notions of accessibility under the ADA apply to voting systems. He stated that such accessibility standards are not specifically incorporated into the 1990 federal standards for voting systems adopted by the State of Indiana. He added that additional standards regarding accessibility might be incorporated into the new federal standards for voting systems and that, according to the FEC, these may be issued by next spring. He indicated that he had not had the opportunity to research these issues but that perhaps it was time for the Commission to turn its attention to these issues.

Mr. Morgan observed that he thought that the new standards would be out in time for the next presidential election. He stated that, in the meantime, the Commission is being asked to pass on voting systems without any specific measuring stick with respect to these new standards.

The Chair recognized Mr. Valentine who indicated that he has recently spoken with the state election director for the State of New York who is also the chair of the voting systems standard committee on behalf of the National Association of State Election Directors. He stated that the new FEC voting system standards are drafted and have passed committee. He indicated that the proposed standards have now been submitted for review and comment. He stated that the last time he spoke with this individual he had indicated that they expect the FEC to approve the standards next spring. He stated that the question with regard to statute is whether a new voting system, or a voting system up for re-certification, complies with the 1990 federal standards. He stated that if the Commission wished to make a recommendation to the legislature then they could do so by advisory opinion. He stated that the legislature could consider language to the effect that certification of a voting system in Indiana would be subject to compliance with the most recent federal voting system standards and that such language would give the Commission guidance on what the Commission should do when certification, or re-certification, issues come before the Commission in the future.

Ms. Christie added that there are several voting systems that are scheduled for re-certification in the near future.

Mr. Valentine stated that the other issue is, if the Commission would adopt standards in addition to the FEC standards, then who would test the voting systems for compliance with these standards. He stated that the Independent Testing Authorities would be in a position to test new voting systems with respect to the new federal standards but he did not know if they could test under other standards prior to the adoption of the new federal standards.

Mr. Long asked if the standards adopted under Indiana law specifically reference the 1990 federal standards. Mr. Simmons, Ms. Robertson and Ms. Christie responded that state statute specifically references the 1990 standards.

The Chair indicated that the state legislature should be advised that the statute should be updated to include a reference to the current, updated, federal standards. He added that Senator Skillman has not finished with the election bills that she is working on and offered to call her and ask her to make that a part of a Senate bill.

Mr. Long asked whether it would be a good idea to send a memorandum from the Commission to advise the legislature of the imminent adoption of the new standards and suggesting that the legislature amend the statute accordingly. Mr. Valentine indicated that the legislature should be informed of its options considering the fact that voting systems in the future may be under more frequent review.

Mr. Morgan expressed concern that Congress has been sidetracked by the September 11 tragedy and other projects and that he hoped Congress would take this issue up again.

Mr. Valentine indicated that there is one other item to discuss with respect to voting systems and that is the pending request for proposals from voting system vendors to enter into quantity purchase agreements. He stated that this is related to legislation designed to give state funding to counties to replace their voting systems. He indicated that the purpose of the legislation was to acquire the best price for counties that are purchasing new voting systems. He stated that the deadline for responding to the request for proposal is (inaudible). He said that this was extended in part due to inquiries from vendors. He said that a quantity purchase agreement is good for four years and then you would have to

do another request for proposal for a new quantity purchase agreement. He said that voting system vendors have expressed concern about getting certified in time to meet the deadline for the request for proposals. He stated that the election division made an addendum to the quantity purchase agreement that stated that any systems that are certified, or pending certification as of the date the initial request for proposals was issued, were eligible for consideration for a quantity purchase agreement. He stated that the reason he was pointing this out was because if the Commission failed to approve the pending applications for voting system certification it did not mean that those vendors were ineligible to participate in the quantity purchase agreement process so that counties who purchase such systems would be eligible for reimbursement under the program created by the legislation.

The chair recognized Mr. Corey who stated that Diebold/Global meets or exceeds the current voting system standards. He added that he could guarantee that his company could meet whatever new voting system standards were adopted. He stated that his company had over 200 million dollars worth of business in the hopper and they were just awarded a statewide system last week with the system that is before the Commission for certification. He stated that the system before the Commission probably already exceeds any new federal standards that may be adopted.

Mr. Morgan asked what state had purchase the system on a statewide basis. Mr. Corey stated that it was the State of Maryland. Mr. Morgan asked if Maryland had developed any ADA criteria applicable to their voting systems. Mr. Corey stated that there has been some confusion in Indiana with clerks and election boards on the ADA issue. He stated that it is obviously a big issue and that some counties have organizations within the counties that deal with the issue. He added that, at one time, it was discussed whether Indiana would adopt the standards adopted in Florida regarding voting systems and the ADA. He stated that there are some vendors in Indiana telling clerks and election boards that their ADA system is certified in Indiana when, in fact, there is no system so certified. He stated that Diebold/Global has subjected their system to an approval process with respect to the Florida ADA standards but that they have not yet heard the result.

Mr. Morgan asked when Diebold/Global submitted that for approval in Florida. Mr. Corey responded that he had been on the phone with Don Lowinski who is in charge of that but he didn't get that information. Mr. Morgan asked if it had been in the last couple of months. Mr. Corey indicated that it had. Mr. Morgan asked how long it takes. Mr. Corey stated that it was his understanding that they just need to complete testing with blind and hearing-impaired people. He stated that they have been happy with the technical aspect of their submission. He stated that with respect to the ADA and voting machines, most of the issues revolve around the hardware and not the software of a system.

The Chair asked whether the Commission wished to vote on the pending applications for certification. Mr. Morgan moved to table the pending applications until the next meeting. The Chair asked whether he was referring to the December 27 meeting or the January 10 meeting. Mr. Morgan said that he moved to table the applications until the January 10 meeting. Mr. Valentine indicated that he would attempt to find more information about the timing of the new federal regulations. Mr. Morgan asked the staff to generate a memo to all vendors regarding the concerns of the Commission.

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

Mr. Morgan stated that there has been an increased attendance at the last couple of conferences that reflects a hunger for information about the election process. He stated that the Commission, the Secretary of State and the legislators should have a meeting to set priorities for the next to legislative sessions with an eye toward the new federal regulations. He indicated that the Commission should seek

some input from the vendors and the Independent Testing Authorities on voting systems. He stated that the Commission should address the issues raised by the discussion today. He said that it makes him nervous that everyone has not been able to stay focused on addressing the issues raised by the last federal election.

Mr. Corey asked if he could address the Commission. The Chair recognized Mr. Corey who asked if the pending application was going to be held up. He asked whether the direction the Commission was taking would also affect the voting systems that have been approved in the last six months.

The Chair recognized Mr. Valentine who indicated that there were re-certification deadlines that were also approaching and that the Commission also had authority to withdraw certification if the Commission decided that it was appropriate. Mr. Simmons stated it was perhaps better to say we don't know what will occur at this point.

Mr. Corey indicated that his company has provided all the paperwork required as the other company did back in late June or July of this year. He stated that the other company's system was certified and that their system has not yet been certified. He stated that the last time that they were before the Commission they submitted all of their certification materials in June of 1998 and were not certified until June of 2000. He stated that this concerns him since their system meets all the standards in Indiana just as the one previously approved did and they would have the same ADA considerations applicable to them as expressed by the Commission now.

Mr. Morgan stated that this is why he has asked for a letter to go to all the vendors regarding the Commission's concerns. He stated that he also wanted to talk to a couple of state legislators about how the new federal regulations may affect Indiana and what they could do about it in this session.

Mr. Corey indicated that the delays encountered by his company in Indiana hampers its ability to do business in the state where they meet the standards and have done everything previous companies have done. Mr. Valentine indicated, again, that the current delay did not prevent Mr. Corey's company from participating in a quantity purchase agreement. Mr. Valentine noted the look of concern from counsel and Mr. Corey indicated that their attorneys could get involved if there were further delays.

The Chair recognized Mr. Simmons who stated that what he thought the Commission's discussion reflected is a little uncertainty. He indicated that the federal government might mandate upon everyone that voting systems meet defined ADA standards not previously enacted. He indicated that there is nothing the Commission can do about that and there is nothing that the vendors can do about it. He indicated that the he thought the Commission was asking staff to do was to help them make an informed decision on whether they should make a decision now or delay it based on something anticipated in the future. He stated that he did not think that the Commission's act in tabling the pending applications indicated how they would act on those applications one way or the other at this point.

Mr. Corey indicated that he disagreed. Mr. Corey stated that he did not think it fair that vendors certified under the current voting system standards over the last year should have an advantage over his company who was asking for certification under the same standards.

8. Reports by Co-Directors

The Chair recognized Ms. Christie who stated that the co-directors had already addressed most of the issues that they had planned to discuss today. She stated that the quantity purchase agreement as been

addressed. She stated that the division's annual conference has been getting larger and larger. She indicated that, as an agency, the division needs to think about voter outreach and voter education in a different light given the Internet and the ability to generate documents.

Mr. Morgan stated that he was concerned that the division was understaffed.

Ms. Christie agreed and stated that the division needed to look at disseminating information to more people particularly after the controversial election of 2000 and the interest in elections after that election.

Mr. Valentine stated that he wished to thank staff in making the election administrators conference successful, particularly the attorneys who worked diligently to redraft every manual and form for the 2002 election cycle.

Ms. Christie stated that Representative Mahern had joined them and that the Commission may want to give him an update on the scheduling of the Lake County Redistricting Commission. The Chair advised Mr. Mahern that the Commission was postponing action on the County Commissioner and County Council maps for Lake County because Lake County Republican Chairman Roger Chiabai had signed off on some maps but had called and indicated that the maps he had received yesterday afternoon were not the maps he had approved earlier. He stated that the Commission would meet on December 28 at 11:00 a.m. and interested parties in Lake County would have to submit any maps it wanted the Commission to consider by noon December 27 signed by all persons who were proposing the maps. He stated that if the maps have not been signed off by all parties by that time then the Commission would instruct staff to prepare maps. He said that the Commission would meet again and vote on December 28 at 11:00 a.m.

9. Adjournment

The Chair asked if there was any further business. There being no response, Mr. Perkins moved, seconded by Mr. Long, that the Commission adjourn. The Chair then called the question, and declared that with four members voting "aye" (Mr. Cruea, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting "nay", the motion was adopted. The Commission then adjourned at 3:00 p.m.

Respectfully submitted,

Laurie P. Christie
Co-Director

Spencer Valentine
Co-Director

Approved,

Dudley Cruea, Chair