

Indiana Election Commission

Minutes

SEPTEMBER 27, 2001

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

Members Absent: Dudley Cruea

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; Michelle Brzycki, Special Projects Coordinator, Election Division; Lori Hershberger, Special Projects Coordinator, Election Division; Kerrie Cobb, Executive Assistant, Election Division, and Lori Peterson, Governor's Fellow, Election Division.

Also Attending: Brad Klopfenstein, Libertarian Party of Indiana; Mark Stratton, Office of Census Data, Legislative Services Agency; Maureen Bard, Office of Census Data, Legislative Services Agency; Phillip Sachtlenben, Legislative Services Agency; Jack Pike, Warrick County Commissioner; Shannon Weisheit, Warrick County Clerk; Cathy Oser, Warrick County Election Office; Rita Long, Warrick County Democratic Party Chairman; Arlene Castongia, Jasper County Clerk; Rhonda Milner, Starke County Clerk; Dennis Tyler, Delaware County Democratic Party Chairman; Fred Fields, Delaware County Democratic Party Central Committee; Phil Nichols, Delaware County Voter Registration; Sandy Green, Hart InterCivic, and Gary Grandy, Hart InterCivic.

1. Call to Order

Joseph M. Perkins, Jr., acting Chair, called the September 27, 2001 meeting of the Commission to order at 1:10 p.m. at the Indiana Government Center South, Conference Center, Conference Room A, 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 August 7, 2001 Regular and Executive Session Meeting Minutes

The Chair noted that the Commission members had received a copy of the August 7, 2001 regular and executive session meeting minutes.

After Commission members reviewed these documents, Mr. Long moved, seconded by Ms. McClellan, that the August 7, 2001 regular and executive session meeting minutes be approved as presented. There being no further discussion, the Chair called the question, and declared that with four members voting

“aye” (Ms. McClellan, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

3. Voting Systems

Demonstration of the Hart InterCivic eSlate Electronic Voting System

The Chair recognized Laurie Christie, co-director of the Indiana Election Division who indicated that representatives of Hart InterCivic were present at today’s meeting and will be demonstrating their eSlate electronic voting system. Ms. Christie introduced Stacey Green from Hart InterCivic. Ms. Green introduced herself and indicated she was from InterCivic’s Colorado division. She also introduced another representative of Hart InterCivic, Gary Grandy, from their Austin division. Mr. Grandy gave a brief history of Hart InterCivic, including the systems they have in other states. He explained that they have expended much effort to create voting systems compliant with the American with Disabilities Act and they have had recent success in selling their voting systems to Paris County, Texas, the third largest jurisdiction in the country. He explained that their system utilizes a navigational table at the bottom as opposed to the typical touch screen system. He explained that their research showed that providing these navigational tools assured a more accurate response from the voter.

Ms. Green indicated that the system consists of four parts: 1) “BOSS”, a ballot originating software system; 2) a “PBS” system; 3) Ballot Now system for use in absentee voting; and 4) a tally and report generating system. She stated that everything is written to a card. She explained that the card is a flash card that allows the voting system to be flexible and interchangeable. She stated, that with respect to the eSlate system, that once you design your ballot into BOSS you write it to a flash card that is generic. She stated that every precinct set up in BOSS can be written on one card so that you don’t have to create special cards for different precincts. She explained that you can put the card into the machine and let the machine know what precinct you are in so that it can display the appropriate ballot. Ms. Green then invited Commission members to approach the machines that she set up so that she could give a demonstration of how the machine works.

The Chair invited questions from the Commission prior to approaching the voting machines. Mr. Long asked what part of the system would be in the voting booth. Ms. Green pointed to the part of the voting system that would be in the voting booth. She said that once a voter checks in with the poll clerk, the judge provides the voter with a code that the voter enters into the machine to obtain a ballot display.

The Chair asked if the system had some kind of battery back up in case of power failure. Ms. Green indicated that the system runs on a battery pack that lasts 26 hours.

Ms. McClellan asked if you could use the system to vote different precincts in one location. Ms. Green indicated that you could and you would get the appropriate ballot based upon the code entered. Ms. Green indicated that this is why the system is particularly desirable for early voting in a limited number of locations.

Mr. Perkins asked about how the voting system accommodates a voter who is visually impaired. Ms. Green responded that the system accommodates the voter by a combination of a headset that provides verbal instructions for navigation through the ballot and the machine has specially shaped keys to push according to the instructions relayed over the headset. She explained that recording the audio for the headset is a simple operation. She said that the system would also accommodate dual language instructions. She added that the system would also accommodate curbside voting and, if power in the

system did go down, that all votes cast would still be recorded and a report of votes cast can be printed when the system is brought back up.

The Commission members along with staff, representatives of the vendor and members of the audience then approached the voting machines to observe a demonstration. Once the voting system was demonstrated, Commission members had further questions. Ms. Green responded to the questions by stating that if only one machine is used per precinct the voting machine can be locked down to present only the ballot applicable to that precinct. Mr. Grandy detailed the auditing and reporting functions of the eSlate voting machine. Ms. Green indicated that the system would accommodate provisional voting by assigning a retrieval code that would cause the ballot to pop up during tallying for the purpose of determining at that time whether the ballot would be counted or not. She explained that you could not view the ballot during this process; you simply are given the option of accepting or rejecting the ballot. She also stated that the eSlate machine could also be used to print paper ballots for use in absentee voting.

The Chair thanked Ms. Green and Mr. Grandy for their presentation and asked if the Commission members had any additional questions. The Chair asked if this voting system was currently installed anywhere. Ms. Green responded that the machines have been installed in two jurisdictions in Colorado and two jurisdictions in Texas.

Mr. Long asked for a ballpark figure on how much the system cost. Ms. Green said they submitted some pricing information in the materials submitted to the Commission but that pricing depended on the number of units ordered and the services ordered along with machines. Ms. Green gave an estimate of \$2,500 to \$3,500 per unit depending upon which unit and unit components were part of an order.

4. Campaign Finance Enforcement

A. Adoption of Advisory Opinion 2001-01

The Chair recognized Kristi Robertson who stated that in 1999 the Indiana Election Commission adopted an advisory opinion in response to a campaign finance complaint to advise candidates and committees on how to deal with reimbursing a candidate for lost wages, or paying a candidate a salary, out of campaign finance funds. She said that, at the time this issue came up in 1999, there was no statute directly dealing with the issue. She explained that the statute simply said that campaign finance funds cannot be used for “primarily personal purposes.” She stated that the Federal Election Commission (“FEC”) had considered the same issue but had not issued a definitive opinion except to advise committees that such arrangements should be memorialized in a contract between the committee and the candidate so that the basis of the compensation is specified.

Ms. Robertson stated that, since 1999, Senator Connie Lawson has proposed bills in the 2000 and 2001 sessions of the Indiana legislature but that her bill has failed to pass. She stated also that the FEC has issued no further opinions on the issue that further clarify their initial advice. She stated that the Commission’s previous advisory opinion expired December 31, 2000. She stated that the reason this has come to the attention of the Election Division is because the division is redoing campaign finance forms and the campaign finance manual and the forms and manual reference the Commission’s 1999 Advisory Opinion that has now expired. She explained that because it has expired she has brought the advisory opinion to the Commission to determine whether they wished at this time to readopt it. She

added that she assumed that the legislature would continue to consider legislation on the issue in upcoming sessions.

Mr. Long asked if it was fair to say that the General Assembly was aware of the 1999 advisory opinion and the Commission's enforcement position on this issue. Ms. Robertson responded that the opinion has been brought to the legislature's attention the last two sessions and legislation addressing the issue had been considered in the election committees of both houses. Ms. Robertson stated that they have not been able to agree on language that would avoid what some legislators feel would be "unintended consequences" of the proposed legislation. She stated that some legislators have expressed a desire to prohibit the practice of paying a candidate from campaign funds absolutely. She said re-adoption of the advisory opinion would allow staff to provide some guidance to candidates through the forms and its manual.

Mr. Long asked if there has been any additional authority that should cause the Commission to rethink their original advisory opinion. Ms. Robertson responded that staff had found none.

Mr. Morgan asked if there were any candidates who followed the advisory opinion and entered into a contract. Ms. Robertson responded that there have been a few inquiries but no one has actually done it. Mr. Simmons indicated that it was possible that candidates who file campaign finance reports with a county election board only might have entered into such a contract. He explained that the Election Division may not be made aware of such a filing.

Mr. Long asked whether the campaign committee was required to put the contract on file for public inspection. Ms. Robertson responded that the advisory opinion suggests that candidates do so. She added that there are some candidates who file only with a county election board, some candidates who file only with the Election Division, and some candidates, namely, state legislative candidates, who are required to file with the Election Division and with the county election board in the county where they reside.

Mr. Morgan asked whether the key to the opinion was that the candidate have a contract on file explaining the arrangement. Ms. Robertson responded that it was.

Mr. Long indicated that he had no problem in extending the advisory opinion and asked whether a motion was in order. Ms. Robertson states that a motion would be order and that she had prepared Advisory Opinion 2001-01 for signature if it was the pleasure of the Commission to adopt the order.

Mr. Long then moved that the Commission adopt Advisory Opinion 2001-01 as an extension of the previous advisory opinion. The Chair asked counsel whether there would be a time limit on this advisory opinion. Ms. Robertson said that Advisory Opinion 2001-01 has requested legislative action but does not contain an expiration date. She also explained that if the legislature deals with the issue then that would supersede Commission action and that staff would advise the Commission of any legislative action so the Commission could take appropriate action at that time.

Mr. Simmons indicated that both he and Ms. Robertson had discussed the issue and neither believe that an expiration date is a necessary part of an advisory opinion. He stated that the Commission had wanted to place a limit on the effectiveness of its advisory opinion the last time but it was not necessary that they do so.

Mr. Long stated that the expiration date in the last order probably reflected the desire that the legislature take action in anticipation that the legislature would deal with the issue. Mr. Simmons commented that, with respect to the Commissions advisory opinion on candidate challenge dates, the

legislature did promptly enact legislation that paralleled the advisory opinion of the Commission but did not do so in this instance.

The Chair noted that there had been a motion and requested whether there was a second. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting “aye” (Ms. McClellan, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

Mr. Long requested that the advisory opinion be forwarded to the appropriate legislative committees, the speaker, the president pro-tem and the respective chairmen of the state parties. Ms. Robertson indicated that the Commission’s direction to forward the order as described is contained in Advisory Opinion 2001-01.

B. Campaign Finance Complaint

(Cause Number 01-01: In the Matter of the Campaign Finance Complaint Filed Against the U.S. Chamber of Commerce by the Indiana Democratic Party)

The Chair recognized Mr. Simmons who stated that staff was simply giving the Commission a report on the status of the Chamber case at today’s meeting. He stated since the last Commission meeting there were a couple of procedural motions that had been filed relating to deadlines established by the co-directors. He stated that the Democratic Party had a deadline of August 9 to file a response to the motion to dismiss filed by the U.S. Chamber and requested, and received, a continuance to September 12. He stated that the Democratic Party has now timely filed their response to the motion to dismiss.

He stated further that there was a hearing on the motion to dismiss originally set for today, however, the Democratic Party requested that the hearing be continued because today is a religious holiday of their attorney. He stated that the co-directors granted that request to continue the hearing date.

He added that the U.S. Chamber also filed a request to extend their time to file a reply brief. He explained that the way the schedule was originally set up by the co-directors was to allow the motion by the U.S. Chamber, a response by the Democratic Party, and then a reply by the U.S. Chamber. He advised that, under the original scheduling order, the reply was due on September 24. He stated that the U.S. Chamber requested, and received, a continuance up to October 13 to file their reply.

Mr. Long asked whether the case would be fully briefed by October 13. Mr. Simmons indicated that this was the case and stated that the Commission could consider the motion at its next meeting. Mr. Simmons also indicated that staff had discussed the possibility of scheduling the hearing on this case in the morning at the next Commission meeting on October 25 so that the afternoon could be dedicated to the precinct approval cases that staff anticipates.

Mr. Long asked whether setting the hearing for the next meeting would give Commission members and staff time to review the pleadings. Mr. Long asked whether it was anticipated that testimony would be heard at the hearing, that it was his understanding that this was a procedural hearing on the issue of whether the complaint is viable or should be dismissed. Mr. Simmons indicated that a motion to dismiss is addressed to the sufficiency of the pleading and that the hearing would consist of oral argument by the attorneys representing the respective parties.

Mr. Long suggested that the Commission consider setting some type of guideline for the parties for arguments at the next meeting.

Ms. Robertson interjected that she included a letter from Common Cause in the packets that were provided to the Commission members. She indicated that the letter contained the opinion of the governing body of Common Cause on the issues in the case.

The Chair asked whether there were any rules governing how the Commission should establish guidelines for argument on the case. Mr. Simmons indicated that the co-directors have established deadlines for filings but indicated that it was within the Commission's discretion to establish fair guidelines for the argument. He offered that the Commission could take from standard practice in litigation of providing the parties specified times, with the U.S. Chamber as the party with the burden of proof going first, allowing for a response from the Democratic Party with same time limit, and then allowing rebuttal arguments at the discretion of the Commission.

Mr. Long indicated that since the Supreme Court gave parties 30 minutes a side to present their arguments that this should be sufficient for the parties and the Commission. The Chair suggested that each side be given 30 minutes and that the rebuttal be at the discretion of the Commission. Mr. Long added that the discretion should be exercised to allow more time when, for instance, the Commission's questions utilize a portion of the time allotted to one party. He added that the parties should be advised, however, that the hearing should be wrapped up by noon.

The Chair moved that both parties be advised that each side will be allowed 30 minutes to present arguments with opportunity for rebuttal and questions from 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" (Ms. McClellan, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting "nay", the motion was adopted.

5. Report by Co-Directors

The Chair recognized Ms. Christie, co-director of the Election Division, who indicated that after the October 25 meeting the Commission had tentatively scheduled a meeting for November 16 at 1:00 p.m. She added that staff would also request the scheduling of a meeting to correspond with the division's annual administrator's conference scheduled for December 4th and 5th. She asked the Commission members if they had a preference for scheduling a meeting on one or the other of these days. Mr. Long requested that the meeting be scheduled on the 4th. He indicated that he could not attend a meeting on the 5th.

Ms. Christie indicated that the Commission could meet first thing on the morning of the 4th to get the meeting out of the way before the conference started. She stated that then the Commission members would all be present and this would give staff the opportunity to introduce the Commission members to the conference attendees. Mr. Perkins asked where the conference would be held. Ms. Christie stated that it would be at the Westin Hotel and Conference Center.

Ms. Christie indicated that the Commission might want to consider scheduling further meetings as the progress on precinct approvals unfolds. Ms. Christie stated that she went back to 1997 to review some Commission meetings during the precinct approval hearings and it looked like the Commission scheduled meetings a couple of days before Christmas and also scheduled a couple of meetings in January to finish up the precincts. She indicated that staff would try to give Commission members as much notice as possible as to future meeting dates.

Mr. Long asked whether it would be possible to schedule a January hearing now. Ms. Christie indicated that candidate filings being January 23, 2002 and precincts would have to be established by that date. Mr. Long indicated that he relies heavily on his calendar and requested that a tentative date be established subject to the calendars of other Commission members. Mr. Long indicated that his calendar was open the week of January 7. Ms. Christie suggested that it might be prudent to tentatively schedule a meeting for that week. The Chair agreed. Ms. Christie stated that she would check with Chairman Dudley Cruea on that week and set up a tentative meeting for the week of January 7.

The Chair recognized Spencer Valentine, co-director of the Election Division, who indicated that the division sent a memorandum to interested parties in Lake County, including its County Commissioners, setting forth the membership of the Lake County Redistricting Commission. He explained that the memo set forth relevant statutory deadlines and the Commission's schedule and requested proposals. He stated further that the reprecincting would have to be concluded before they can finalize proposals for county commissioner and county council districts. Ms. Robertson added that staff did receive a letter from Speaker of the House, John Gregg, setting forth his appointments to the Redistricting Commission: Ed Mahern and David Frizzell.

Mr. Valentine then suggested that, in the interest of time, and in consideration of those present at the meeting on precinct issues who may have a long return trip home, the Commission move past items 6 and 7 on the agenda and consider the precinct issues in item 8 on the agenda. The Chair indicated that this would be fine.

6. Establishment of Precinct Boundaries

The Chair recognized Mr. Valentine who directed the Commission to the precinct tab in their packets and stated that the packets contain a memo that he and Ms. Christie sent to the county commissioners and circuit court clerks detailing a schedule of when staff expected proposals from the counties so that the Election Division and the Commission could avoid a huge bottleneck in December and January. He stated that the submission deadlines were set up as follows: 1) September 17 to the Election Division for presentation to the Commission at today's meeting; 2) October 12 to the Election Division for presentation at the October 25 Commission meeting; and 3) November 8 to the Election Division for presentation at the November 15 Commission meeting. He stated that he wished to complement the precinct coordinators on staff, Lori Hershberger and Michelle Brzycki, who have done a ton of work traveling to counties, explaining the reprecincting process to the counties, and utilizing newly acquired GIS software to accomplish reprecincting.

He added that staff is in the early stages in determining how to present precinct approval requests to the Commission. He indicated that he expected that today's meeting would contain a great deal of oral discussion. He stated that the co-directors would also present at future meetings a signed recommendation to the Commission. He also explained that, as part of legislation passed last session, the newly created Office of Census Data ("OCD") will have a role in the process and, to further explain that role, he wished to introduce Phil Sachtleben from Legislative Service Agency. Mr. Valentine continued that once staff reviews a county's submission it will be forwarded to the OCD for review with the goal of creating an accurate GIS map of all precincts in Indiana.

The Chair recognized Phil Sachtleben who stated that he was from the Legislative Service Agency. He explained that new legislation created the OCD within the Legislative Services Agency and assigned the office a variety of tasks. He introduced Mark Stratton and Maureen Bard as the people staffing OCD

and stated that their duties with OCD would be a continuation of the work both have been performing over the last 4 or 5 years. He stated that the primary task of OCD will be to coordinate the state's effort with local governments and the federal government in obtaining and maintaining accurate population counts and precinct boundaries and perform other tasks related to preparations for the 2010 census. He stated that OCD would also advise and assist the Census Data Advisory Committee, an interim legislative study committee assigned to study census related issues. He added that the OCD is charged with providing technical assistance to counties to comply with law applicable to precinct establishment. He said that OCD is also charged with establishing and maintaining a GIS system containing all congressional, state legislative and precinct boundaries with an associated database. He explained further that the General Assembly established the OCD to provide assistance to the legislature in redistricting.

He added that the statute creating OCD altered the statute pertaining to precinct establishment in the following ways: 1) all election data that the Election Division receives is now copied to OCD so that it can be put into a database useful to the legislature; and 2) the OCD will review proposed precinct boundary changes and provide technical comments in the precinct approval process.

He further explained that this process would create tough deadlines. He stated that when the Election Division receives the precinct material from the county and calls his office he would send someone over to copy the material. He indicated that OCD has received and issued technical comments on 10 counties so far. He said that of the counties submitted to OCD, OCD has not yet submitted comments on Delaware, Elkhart and Hendricks counties. He explained that Delaware is close and, with regard to Elkhart and Hendricks, OCD has not received all of the official documentation to comment on. He said that he hoped a good process could be established that when the Election Division gets the information from the counties that they notify OCD so they can send someone over to copy the information so that Mark and Maureen have the opportunity to review and provide their technical comments in a timely manner.

Mr. Valentine stated that, at some point, the Election Division may submit what it has to the Commission and ask that the Commission table its final decision until OCD has had an opportunity to review and comment.

Mr. Long asked Mr. Schatlenben if there was anything he could suggest to make the process smoother. Mr. Schatlenben stated that they used software designed for redistricting and the Election Division has taken this software and modified it to perform precincting and this creates some inherent technical issues. He stated that the census created what we refer to as "slivers" which is a swath of ground that shown by the GIS as the result of calibration errors occurring during the translation of aerial photographs to geographic lines. He explained that these errors caused all geographic boundaries to shift and that this creates slivers as shown by the GIS program. He explained that GIS software is designed to account for every square inch of geography, and when it doesn't, the program creates these slivers that must be accounted for.

Mr. Long asked whether OCD works with the counties from the beginning. Mr. Valentine responded that the Election Division works with the counties initially and that these slivers have been loaded into the Election Division's software as something to be addressed. He explained that one of the reasons that the division is asking counties to review all of their precincts is to adjust both for the change in congressional and legislative boundaries and to account for all unassigned slivers of geography. He stated that this effort should make future redistricting with GIS software go a lot smoother.

The Chair invited staff to proceed with precinct approvals and recognized Lori Hershberger who stated that she had met with many counties to provide them technical assistance in preparing precinct maps,

however, she did not have any counties that were ready for approval at today's meeting. She passed out a summary of the counties she had met with. She said that many of the counties she had met with did not understand how to use their census maps. She stated that she has sent Hendricks County to OCD and she hoped that their precincts would be ready for approval at the Commission's next meeting. She indicated that she will probably have several counties ready for the next Commission meeting. She said that some counties need to get additional information back to her. As an example, she stated that if a town had an annexation the county might have to do additional research to determine the exact boundaries of the annexed territory. She indicated that another common problem encountered by the counties is adjusting precincts because of congressional and state legislative district changes.

The Chair then recognized Michelle Brzycki who began by explaining the overall process she performs. She explained that the first thing she does is to make sure that a county is prepared with maps of existing precincts, legal descriptions of any annexations, and a firm idea of where they want their new precinct lines to be. She stated that she loads all relevant county information into her computer and she starts going through each precinct to confirm that what the county shows as existing precinct boundaries match what is entered into her GIS system. She explained that next they go through each precinct that a county wants to change and they change the boundaries. She explained further that the final step she performs is pulling up split census blocks in the GIS and determine whether there is a legal reason justifying the split, and if not, she asks the county to resubmit the proposed boundary so that it does not split a census block. She stated that if the precinct line splits a precinct block for a legal reason she requests that the county provide legal descriptions for the split block. She added that, at this time, the GIS program also identifies slivers and, when it does, she provides the counties options for moving the precinct lines to assign the slivers within precincts.

She further explained that, at this point, she runs a final report for the county that identifies the census blocks in each precinct. She then requests that the county complete an IEC-8, which is a proposed precinct order, for each of their precincts and attach a list of census blocks identified as within each precinct. She then asks them to complete any additional information required where census blocks are split and requests that the additional information be supplied by a certain date. She stated that when she receives the complete information from the county she might work out additional problems over the phone. She stated that she then calls OCD and advises them that a county submission is ready and OCD sends someone over to copy the submission. She continued that she waits for OCD comments and, so far, this review has resulted in additional corrections to each county submission. She stated that she then puts the completed packet together and prepares a recommendation sheet to submit with the packet to the Commission.

She added that, after review of a section of the form IEC 8 with counsel for the Election Division and OCD, it was determined that this section of the IEC 8 did not provide any information that was relevant to a review for compliance with Indiana statute. She indicated that some counties might have nonetheless filled this portion out but that she is advising counties that they do not have to fill this portion out.

She also stated that some counties have GIS systems and do present their maps to the Election Division on a computer disk. She stated, however, that she would submit these counties on paper maps because the GIS system used by that particular county might not be compatible with the GIS system used by the Election Division. She explained that later staff and OCD would enter the maps into the state-maintained GIS system. She added that she trusts what a county tells her about the number of active voters per precinct.

Mr. Morgan asked whether Lori Hershberger and Michelle Brzycki were following the same procedure as far as accepting the county's estimate of voters per precinct. Ms. Hershberger indicated that she

does not question the figures that the county gives her. She said that she only deals with slivers after technical corrections from OCD are completed.

A. Warrick County

The Chair recognized Ms. Brzycki who stated that Warrick County is submitting 59 proposed precinct orders on IEC-8's, all of which are voting precincts. She explained that Warrick County has submitted their precinct maps electronically which she has depicted on the projector. She stated that one of the precinct boundaries crosses a state house, senate and township boundary, however, the portion of the precinct that crosses these boundaries does not contain any population. She stated that OCD has reviewed these proposed precincts and that the republican and democratic county chairmen in Warrick County have been advised of the proposed precincts and have filed no objections to them. She stated that the Warrick County Commissioners have submitted a proposed order for these changes that will be effective upon approval by the Commission.

Mr. Long, as a point of personal privilege, introduced Jack Pike, president of the Warrick County Board of Commissioners, Shannon Weisheit, Warrick County circuit court clerk, Cathy Oser, from the Warrick County voter registration office, and Rita Long, Warrick County Democratic Party chairman. He explained that they have all come a long way for the hearing and that he appreciated that the Commission was hearing their precinct approval request first.

The Chair recognized Shannon Weisheit who thanked Michelle, Spencer, and Dale for their help and stated that when they started this project they had no idea how involved it was. She said that there were several problems that they had to work through.

Mr. Long asked if there were any changes made to the precincts after the County Commissioners approved the proposed order. Ms. Brzycki indicated that there were no changes.

The Chair recognized Jack Pike who indicated that he thought mistakes were made in the way the legislative district boundaries were established that created difficulty in establishing precincts in a way that made sense and also complied with statute. Mr. Pike illustrated what he meant on the map and pointed out three non-contiguous areas that comprised one precinct.

Mr. Long stated that he has difficulty accepting precincts that are not all in one piece. Ms. Robertson stated that one reason that statute does not require precincts to be contiguous is, otherwise, the legislative district lines may require several precincts with 50 people. She stated that counties must still follow statutory requirements regarding precinct location so that voters do not have to travel across county to vote.

Mr. Simmons added that it was not uncommon for a legislative district line to follow the boundary of a city except for a couple of bumps of the city that cross over the legislative district line. He stated that this presents a county with a couple of choices: 1) the county can create individual precincts with 20 or 30 people per precinct; or 2) the county can combine these areas into one precinct. He stated that staff has discussed this problem at length and compared statutes involving local county executive and legislative districts that specify that districts must be contiguous with the precinct statutes that contain no such requirement.

The Chair recognized Maureen Bard who stated that the slivers can be important in OCD's review also because they can illustrate that there is a geographic area in two different house districts so it is important to reunite these slivers to their "parent" census block. She stated that they also look in their

review for breaches of legislative districts that include congressional and Indiana legislative boundaries but they do not review breaches of county commissioner, county council or city council district boundaries. She added that the overlay of the districts, and the requirements in statute, sometimes present conflicting choices, that is, if you choose to follow one boundary that statute requires you to follow, you may breach another boundary that statute requires you to follow. She indicated that Warrick County provides an illustration of this and that this may be a common problem as the Commission considers precinct approvals.

She continued that OCD also generates reports of census blocks that they believe to be in a precinct and compare that with what their database. She said that they would investigate further only if there is a discrepancy between their database and the county submission in that report.

Mr. Long asked Mr. Pike whether he approved the precincts as submitted. He stated that as they originally established their precinct boundaries they had crossed a legislative boundary that they were unaware of. He stated that he was not pleased with how the legislative boundaries required them to establish precincts because it results in people in the same town voting for different legislators. He stated that this would create more ballot variations in the county and would create more of a headache for the clerk. He stated that the town of Chandler has 3 different legislative districts.

The Chair recognized Mr. Valentine who stated that when this was brought to his attention he explored whether these problems were something that could be addressed by the legislature with technical corrections. He stated these do not fall within the definition of what would be a technical correction.

The Chair then recognized Ms. Baird who stated that statute requires that municipal corporate boundaries serve as precinct boundaries; however, precinct boundaries were frozen before corporate boundaries were frozen by about 3 years. She said the precinct boundaries were used for redistricting and, therefore, legislative districts may follow the precinct boundaries of a town prior to an annexation and the overlay of the annexation causes these areas to be outside of corporate limits followed in creating the legislative district.

The Chair asked if the co-directors recommended approval of the proposed precinct order as submitted by Warrick County and both co-directors stated that they recommended approval of the proposed precinct orders for Warrick County. Mr. Valentine added that the co-directors would be making their recommendation in writing at future Commission meetings.

Mr. Long stated that he did not approve of the result but that the problem was created by the way the legislative districts were established and there is nothing that Warrick County can do about that. He stated that this was the best result the county could achieve working within the limitations imposed by statute.

Mr. Long then moved that the Commission approve the proposed precinct establishment order submitted by Warrick County as reflected in the submissions made in the record before the Commission. The Chair seconded the motion and echoed the concerns expressed by Mr. Long and added that, given the limitations imposed upon the county, it looks as a lot of people have contributed a lot of effort to achieve the best result possible under the circumstances. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Ms. McClellan, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting "nay", the motion was adopted.

B. Jasper County

The Chair recognized Ms. Brzycki who stated that Jasper County is submitting 29 proposed precinct orders on the IEC-8's, all of which are voting precincts. She explained that Jasper County has submitted their precinct maps electronically which she has depicted on the projector. She stated that none of the precinct boundaries crosses congressional, state house, senate or township boundaries. She stated that OCD has reviewed these proposed precincts and that the republican and democratic county chairmen in Jasper County have been advised of the proposed changes and have no objections to them. She stated that the Jasper County Commissioners have submitted a proposed order for establishing these precincts that will be effective upon approval by the Commission.

The Chair asked if there were any comments on the proposed precinct changes for Jasper County. The Chair recognized Arlene Castongia, Jasper County Circuit Court Clerk, who stated that the process of establishing their precincts went well thanks to Michelle.

The Chair asked if the co-directors recommended approval of the proposed precinct order as submitted by Jasper County and both co-directors stated that they recommended approval of the proposed precinct order for Jasper County.

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

C. Starke County

The Chair recognized Ms. Brzycki who stated that Starke County is submitting 21 proposed precinct orders on the IEC-8's, all of which are voting precincts. She explained that Starke County has submitted their precinct maps electronically which she has depicted on the projector. She stated that none of the precinct boundaries crosses congressional, state house, senate or township boundaries. She stated that OCD has reviewed these proposed precincts and that the republican and democratic county chairmen in Starke County have been advised of the proposed changes and have filed no objections to them. She stated that the Starke County Commissioners have submitted a proposed order for establishing these precincts that will be effective upon approval by the Commission.

The Chair asked if there were any questions or comments on the proposed precinct changes for Jasper County. The Chair recognized Rhonda Milner, Starke County Circuit Court Clerk, who stated that she would like to thank Michelle for guiding them through the process.

The Chair asked if the co-directors recommended approval of the proposed precinct order as submitted by Starke County and both co-directors stated that they recommended approval of the proposed precinct order for Starke County.

Mr. Long moved that the proposed precinct establishment order submitted by the Starke 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" (Ms. McClellan, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting "nay", the motion was adopted.

D. Marshall County

The Chair recognized Ms. Brzycki who stated that Marshall County is submitting 22 proposed precinct orders on the IEC-8's, with 21 voting precincts and 1 non-voting precincts. She explained that Marshall County has submitted their precinct maps electronically which she has depicted on the projector. She stated that none of the precinct boundaries crosses congressional, state house, senate or township boundaries. She stated that OCD has reviewed these proposed precincts and that the republican and democratic county chairmen in Marshall County have been advised of the proposed changes and have filed no objections. She stated that the Marshall County Commissioners have submitted a proposed order for establishing these precincts that will be effective upon approval by the Commission.

The Chair asked if there were any questions or comments on the proposed precinct changes for Marshall County.

There being no comments, the Chair asked if the co-directors recommended approval of the proposed precinct order as submitted by Marshall County and both co-directors stated that they recommended approval of the proposed precinct orders for Marshall County.

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

Mr. Long asked if there would be written orders for the Commission to sign on these precinct approvals. Ms. Robertson stated that she would check to see what the Commission has done in the past.

E. White County

The Chair recognized Ms. Brzycki who stated that White County is submitting 24 proposed precinct orders on the IEC-8's, with 23 voting precincts and 1 non-voting precinct. She explained that White County has submitted their precinct maps electronically which she has depicted on the projector. She stated that none of the precinct boundaries crosses congressional, state house, senate or township boundaries. She stated that OCD has reviewed these proposed precincts and that the republican and democratic county chairmen in White County have been advised of the proposed changes and have filed no objections to them. She stated that the White County Commissioners have submitted a proposed order for establishing these precincts that will be effective upon approval by the Commission.

The Chair asked if there were any questions or comments on the proposed precinct changes for White County.

There being no questions or comments, the Chair asked if the co-directors recommended approval of the proposed precinct order as submitted by White County and both co-directors stated that they recommended approval of the proposed precinct orders for White County.

Mr. Long moved that the proposed precinct establishment order submitted by the White County Commissioners, as reflected in the submissions made in the record before the Commission, be approved. The Chair seconded the motion. There being no further discussion, the Chair called the

question, and declared that with four members voting “aye” (Ms. McClellan, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

F. Fulton County

The Chair recognized Ms. Brzycki who stated that Fulton County is submitting 17 proposed precinct orders on the IEC-8's, all of which are voting precincts. She stated that none of the precinct boundaries crosses congressional, state house, senate or township boundaries. She stated that OCD has reviewed these proposed precincts and that the republican and democratic county chairmen in Fulton County have been advised of the proposed changes and have not filled any objections. She stated that the Fulton County Commissioners have submitted a proposed order for establishing these precincts that will be effective upon approval by the Commission.

The Chair asked if there were any questions or comments on the proposed precinct changes for Fulton County.

There being no questions or comments, the Chair asked if the co-directors recommended approval of the proposed precinct order as submitted by Fulton County and both co-directors stated that they recommended approval of the proposed precinct orders for Fulton County.

The Chair moved that the proposed precinct establishment order submitted by the Fulton 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” (Ms. McClellan, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting “nay”, the motion was adopted.

F. Vanderburgh County

The Chair recognized Ms. Brzycki who stated that Vanderburgh County prepared their precincts on their own and are submitting 142 proposed precinct orders on the IEC-8's, with 139 voting precincts and 3 non-voting precincts. She stated that the maps of the proposed precincts are being submitted on paper. She stated that none of the precinct boundaries crosses congressional, state house, senate or township boundaries. She stated that OCD has reviewed these proposed precincts and that the republican and democratic county chairmen in Vanderburgh County have been advised of the proposed changes and have not submitted objections to them. She stated that the Vanderburgh County Commissioners have submitted a proposed order for establishing these precincts that will be effective on approval by the Commission.

The Chair asked if there were any questions or comments on the proposed precinct changes for Vanderburgh County. Maureen Bard stated that Vanderburgh uses a GIS system similar to that used by the Election Division and OCD that utilizes ArcView as a platform but that Vanderburgh uses ArcInfo, which is very technical engineering program. She added that when OCD tried to load the Vanderburgh's electronic maps into their system they had a 34% increase in slivers so Vanderburgh chose to submit their maps on paper even though OCD had been reviewing both the paper and the electronic submission. She stated that OCD may have to come back at some later time to make some technical corrections, however, she noted that any problem should not involve a split census block.

The Chair recognized Brad Klopfenstein, executive director of the Libertarian Party, who indicated to Commission members that their party has an active organization in Vanderburgh County and he wanted to know if their county chair should be notified as part of the precinct establishment process.

The Chair requested counsel to address the issue. Ms. Simmons stated that the notification of party chairman is not a statutory requirement, however, it has been the request of the Commission that notification be given to both the republican and democratic chairmen prior to the Commission's consideration of a county's proposed precinct establishment order. Ms. Christie added that when precincts were frozen in 1997, the last time the Commission reviewed precincts, the Libertarian Party was not as strongly organized and now they have a county chairman in many counties. She stated that the Commission might want to consider incorporating the Libertarian Party in the notification process.

The Chair stated that he thought it sounded like a good idea. Mr. Long added that he thanked Mr. Klopfenstein for bringing the issue to the attention of the Commission. Mr. Long stated that the Commission should encourage local county commissioners to expand their notification to the Libertarian Party as well.

Ms. Brzycki commented that if there are subsequent changes to Vanderburgh County's, or any other county, the proposed precincts orders will only involve an additional submission of a few IEC-8 and that the county will not have to recertify all of the precincts in the county.

There being no further comments, the Chair asked if the co-directors recommended approval of the proposed precinct order as submitted by Vanderburgh County and both co-directors stated that they recommended approval of the proposed precinct orders for Vanderburgh County.

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

7. Forms Approval

The Chair recognized Ms. Robertson who stated that she is in the process of revising campaign finance forms. She stated that she does have two forms for approval today: 1) ORDER 2001-79 approves a revised version of the VRG- 5 which is the division's NVRA tracking report that has been changed in response to legislation and to reflect that this will be a quarterly report instead of a monthly report; 2) ORDER 2001-80 approves the IEC 9 which is the division's request for voter registration forms that was changed to reflect legislative changes and to add voter registration forms approved by the Commission at its last meeting.

Mr. Long moved that ORDERS 2001-79 and 2001-80 be approved as submitted. Mr. Morgan seconded the motion. There being no further discussion, the Chair called the question, and declared that with four members voting "aye" (Ms. McClellan, Mr. Long, Mr. Morgan and Mr. Perkins), and no member voting "nay", the motion was adopted.

8. Litigation Update

The Chair recognized Mr. Simmons who stated that there were five cases listed under litigation on the agenda. He explained that there had been no additional court action taken in the *LEAF v. Abell* case which is still pending in federal district court on plaintiff's motion for injunction.

He explained that the *Majors* case is the challenge by Libertarian candidates to the statutory requirement of filing campaign finance reports. He stated that the Libertarian candidates argue that they are not candidates as defined under Indiana's campaign finance laws since they do not meet the threshold of raising or spending more than \$100. He advised that this case is pending in Marion County Superior Court 4 and that there are state law judicial review and injunction claims based on a variety of Indiana statutory and constitutional provisions as well as some federal law claims. He stated that the *Williamson* case, also filed in state court, raises similar issues but also raises a number of civil rights claims and, in a separate count, is being pursued as an appeal of a Commission decision to impose fines on a couple of candidates. He stated that counsel at the Attorney General's office assigned to the case contemplates filing a motion to dismiss a portion of the lawsuit because the deadline for filing the Commission's record with the state court expired. He explained that this might result in dismissal of the appeal portion of the case.

Mr. Simmons stated that the *Hawkins v. Indiana Election Commission* case was filed by some potential candidates in Marion County. He explained that the case challenges a statute that requires that candidates running against each other in a primary from the same party be listed in alphabetical order. He stated that the plaintiffs in this case are seeking to impose a system on the state that would require counties to utilize a lottery system to determine the order of the candidates on the ballot. He stated that, since the last meeting, the federal judge has asked all parties to certify whether or not there was an ambiguity in the statute, which would require an interpretation by the Indiana Supreme Court. He explained that, since the statute is clear, and the challenge being made to the statute is a facial challenge, both parties have certified to the federal court that the statute is not ambiguous and would not need to be transferred to the Indiana Supreme Court for a statutory interpretation.

Mr. Simmons stated that the last case listed on the agenda is the *Toth v. Gilroy* case. He indicated that this lawsuit seeks a declaratory judgment outlawing the use of punch card systems in Indiana. He stated that at the Commission's last meeting the Commission held an executive session to talk about litigation strategy. He advised that, since the last meeting, the court has certified the case as a class action. He stated further that, after talking to our counsel, it appears that the issues in the case may narrow to a determination of whether plaintiffs are a prevailing party for the purpose of being awarded attorneys fees. He said that the basis of their claim is that, after this lawsuit was filed, the legislature enacted Senate Enrolled Act 268 providing a fund for replacing punch card systems. He explained that plaintiffs claim that they were the "moving force" behind that legislative action and, therefore, they are a prevailing party in this case since the legislative action, they claim, gave them what they are requesting in the litigation. He reported that this issue might be the only issue remaining to be litigated in the case.

Mr. Long stated that the clerk in his county got a mailing from the Marion County clerk with a copy of the lawsuit and she was concerned that she would not be able to use their punch card system in the next primary. He indicated that he assured her that this was not the case. Mr. Long indicated that he would relay the progress of this case to her and his understanding that the plaintiffs in the case may not seek further relief beyond their attorney's fees.

Mr. Simmons added that, pursuant to the Commission’s request at the last meeting, he provided copies of the lawsuit to the Association of Indiana Counties and the Association of County Commissioners. He stated that he had not heard that either organization would intervene in any way in the lawsuit.

9. Other Business

The Chair recognized Ms. Robertson who stated that the Commission discussed the escrow agreement on the ES&S iVotronic voting system at the last meeting and since the last meeting ES&S confirmed that they have escrowed their source code. She indicated that the division still needed to obtain a copy of that agreement and would be seeking that.

She also said that the division received a letter from attorney John Price asking for a definition of “efficiency of a voting system” as used in Senate Enrolled Act 268. She stated that the division did respond to that letter and both the letter and response is included in the Commission’s packet. She stated that the letter to the division was copied to a representative of MicroVote Corporation. She added that MicroVote has applied for approval of a new voting system but that she was unsure if there was any connection between the application and the inquiry.

Mr. Simmons added that there were three letters sent by the attorney, one to the Secretary of State, one to the Department of Administration and a third addressed directly to him. He said that he was pleased that the Secretary of State and the Department of Administration forwarded their letters to the division for response.

The Chair asked if Mr. Price was representing anyone. Mr. Simmons stated that he did not indicate that in his correspondence. Ms. Robertson added that the only information the division had was that the letter was copied to a representative of MicroVote.

The Chair stated that it was obvious from today’s meeting that there is a lot going on with the Election Division and he wished to commend the co-directors and staff for all of their hard work.

10. Adjournment

The Chair asked if there was any further business. There being no response, the Chair 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 4:05 p.m.

Respectfully submitted,

Laurie P. Christie
Co-Director

Spencer Valentine
Co-Director

Approved,

Dudley Cruea, Chair