

Indiana Election Commission
Minutes
October 27, 2021

Members Present: Paul Okeson, Chairman of the Indiana Election Commission (“Commission”); Suzannah Wilson Overholt, Vice Chairman of the Commission; Karen Celestino-Horseman, member; Litany A. Pyle, Member; Stephanie Beckley, proxy for Chairman Paul Okeson.

Members Absent: None.

Staff Attending: J. Bradley King, Co-Director, Indiana Election Division of the Office of the Secretary of State (Election Division); Angela M. Nussmeyer, Co-Director of the Election Division; Matthew Kochevar, Co-General Counsel of the Election Division; Valerie Warycha, Co-General Counsel of the Election Division; Abbey Taylor, Campaign Finance staff, Election Division; Michelle Thompson, Campaign Finance staff, Election Division.

Others Attending: Ms. Tabitha Arnett; Dr. Jay Bagga; Mr. Michael Bienz; Ms. Regan Bonderman; Dr. Bryan Byers; Mr. Ed Cooper; Ms. Denise Hall Hatch; Ms. Kristin Jones; Mr. Dan Leonard; Mr. Ryan Neumeister; Mr. Mathew Norris; Ms. Elizabeth Rowray; Mr. Kevin Warren; Ms. Samantha Waterman; Ms. Cynthia Wirth; Mr. Matt Zapfe.

1. Call to Order:

The Chair called the October 27, 2021 meeting of the Commission to order at 1:30 p.m. EDT in State House Room 404, 200 West Washington Street, Indianapolis.

2. Transaction of Commission Business:

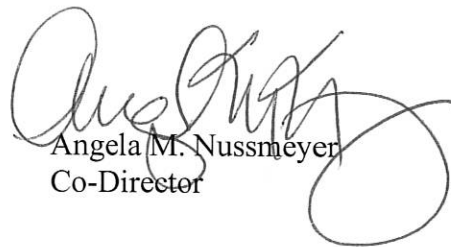
The Commission proceeded to transact the business set forth in the Transcript of Proceedings for this meeting prepared by Maria A. Collier, RPR, CRR, of Stewart Richardson and Associates, which is incorporated by reference into these minutes.

The Commission adjourned its meeting at 3:58 p.m. EDT.

Respectfully submitted,



J. Bradley King
Co-Director



Angela M. Nussmeyer
Co-Director

APPROVED:

Paul Okeson, Chairman

In the Matter Of:
INDIANA ELECTION COMMISSION PUBLIC SESSION

Transcript of Proceedings

October 27, 2021

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2 INDIANA ELECTION COMMISSION
3 PUBLIC SESSION
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7 Conducted on: October 27, 2021
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11 Conducted at: State House Room 404
12 200 West Washington Street
13 Indianapolis, Indiana
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17 A Stenographic Record by:
18 Maria W. Collier, RPR, CRR
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APPEARANCES

INDIANA ELECTION COMMISSION:

Paul Okeson - Chairman

Stephanie Beckley - Proxy for Chairman Okeson

Suzannah Wilson Overholt - Vice Chairman

Litany Pyle - Member

Karen Celestino-Horseman - Member

INDIANA ELECTION DIVISION STAFF:

Angela M. Nussmeyer - Co-Director

J. Bradley King - Co-Director

Matthew Kochevar - Co-Counsel

Valerie Warycha - Co-Counsel

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1 CHAIRMAN OKESON: So with that, I call this
2 meeting of the Indiana Election Commission to order
3 for Wednesday, October 27, 2021, roughly 1:30 p.m.
4 The following members are present: Chairman Paul
5 Okeson, Vice Chairman Suzannah Wilson Overholt,
6 member Karen Celestino-Horseman, and our newest
7 member, Litany Pyle; our Election Division
8 co-directors, Brad King and Angie Nussmeyer;
9 co-general counsels, Matthew Kochevar and Valerie
10 Warycha; our court reporter, Maria Collier, from
11 Stewart Richardson Deposition Services over here.

12 I'd like to recognize too, as I said, our
13 newest member, Litany Pyle. Welcome to the
14 Commission. Our good friend Zach Klutz has chosen
15 to step aside after how many years?

16 MR. KING: Seven.

17 CHAIRMAN OKESON: After seven years with the
18 Commission. So we thank him for his service and
19 really appreciate the dedication and volunteer
20 commitment that he brought to the Commission and
21 wish him well in his future endeavors.

22 If anyone else would like to comment on Zach.

23 VICE CHAIRMAN OVERHOLT: Well, sure, yes. We
24 appreciated working with Zach, and we are looking
25 forward to working with Litany.

1 CHAIRMAN OKESON: Thank you.

2 Litany, would you like to make an opening?

3 MS. PYLE: I don't think so, no.

4 VICE CHAIRMAN OVERHOLT: Wise woman.

5 CHAIRMAN OKESON: As I said, before we go on,
6 if you're going to provide any testimony or speak
7 or address the Commission in any way, press the
8 speaker button so that the microphone is red at the
9 top, and then please state your name and spell it
10 for the court reporter so that we can get that on
11 the record.

12 At this time, I'll move on to seek that we
13 have complied with the Open Door Law. I'd seek
14 input from the co-directors.

15 MR. KING: Mr. Chairman, members of the
16 Commission, on behalf of myself and Co-Director
17 Nussmeyer, I certify that proper notice was given
18 in compliance with the Indiana Open Door Law for
19 this meeting.

20 CHAIRMAN OKESON: Thank you.

21 Moving on, approval of the August 18, 2021,
22 and September 30, 2021, Commission meeting minutes.

23 MR. KING: Mr. Chairman.

24 CHAIRMAN OKESON: Go ahead.

25 MR. KING: On behalf of myself and Co-Director

1 Nussmeyer, we have reviewed the August 18, 2021,
2 and September 30, 2021, Commission meeting minutes
3 and recommend them to you for approval.

4 CHAIRMAN OKESON: Is there a motion to approve
5 the meeting minutes as presented?

6 VICE CHAIRMAN OVERHOLT: So moved.

7 CHAIRMAN OKESON: Thank you.

8 Is there a second?

9 MS. PYLE: Second.

10 CHAIRMAN OKESON: Hearing a second, any
11 discussion?

12 Hearing none, all those in favor signify by
13 saying "Aye."

14 VICE CHAIRMAN OVERHOLT: Aye.

15 MS. CELESTINO-HORSEMAN: Aye.

16 MS. PYLE: Aye.

17 CHAIRMAN OKESON: Aye.

18 The "ayes" have it. The motion carries.

19 With that, we move on to the administration of
20 the oath. Any person who does want to provide any
21 testimony at today's meeting on any campaign
22 finance matters please respond with "I do" upon the
23 reading of the oath. I recognize Matthew Kochevar,
24 co-counsel, to administer the oath.

25 MR. KOCHEVAR: Thank you, Mr. Chairman.

1 All those who plan to testify before the
2 Indiana Election Commission, please rise, raise
3 your right hand, and say "I do" after
4 administration of the oath.

5 Do you solemnly swear or affirm under the
6 penalties of perjury the testimony you are about to
7 give is the truth, the whole truth and nothing but
8 the truth? Please say "I do."

9 ALL: I do.

10 CHAIRMAN OKESON: Thank you, Matthew.

11 MR. KOCHEVAR: Thank you.

12 CHAIRMAN OKESON: Ratification of campaign
13 finance settlement agreements, I recognize the
14 Election Division's finance staff, Ms. Taylor and
15 Ms. Thompson, to present the information concerning
16 several campaign finance agreements that were
17 settled and entered into on behalf of the
18 Commission.

19 MS. THOMPSON: Mr. Chairman, members of the
20 Commission, behind your Campaign Finance tab,
21 there's a list of committees that are ready to be
22 ratified and have agreed to pay the settlement
23 agreement and waive a hearing.

24 CHAIRMAN OKESON: Do we need to read those off
25 in the record for any reason?

1 MR. KING: No.

2 CHAIRMAN OKESON: Is there a motion to ratify
3 the campaign finance settlements?

4 VICE CHAIRMAN OVERHOLT: So moved.

5 CHAIRMAN OKESON: Second?

6 MS. PYLE: Second.

7 CHAIRMAN OKESON: Any discussion?

8 MS. CELESTINO-HORSEMAN: If you can hear me,
9 the settlement agreements, these were where they
10 could come in and agree to a lesser amount?

11 VICE CHAIRMAN OVERHOLT: Hold on. There we
12 go.

13 MS. CELESTINO-HORSEMAN: So these folks are
14 paying the full amount?

15 MS. THOMPSON: Correct.

16 MS. CELESTINO-HORSEMAN: And to qualify for
17 the lesser amount, how -- that's what they're
18 offered today?

19 MS. THOMPSON: Right.

20 MS. CELESTINO-HORSEMAN: And that will be
21 explained to all these folks out here, then?

22 MS. THOMPSON: Yes.

23 MS. CELESTINO-HORSEMAN: Okay. Thank you.

24 CHAIRMAN OKESON: Any further questions,
25 comments, discussion?

1 Hearing none, all those in favor signify by
2 saying "Aye."

3 VICE CHAIRMAN OVERHOLT: Aye.

4 MS. CELESTINO-HORSEMAN: Aye.

5 MS. PYLE: Aye.

6 CHAIRMAN OKESON: The "ayes" have it. The
7 motion is adopted.

8 Approval of campaign finance enforcement
9 orders is next on the agenda. I recognize the
10 Election Division staff once again, Ms. Taylor and
11 Ms. Thompson, to present the information concerning
12 Commission Orders 2021-5 through 2021-221, which
13 documents the finding of the penalties assessed in
14 the enforcement proceedings from the August 18,
15 2021, meeting.

16 MS. THOMPSON: Yes. Mr. Chairman, members of
17 the Commission, Orders 2021-5 through 2021-221 have
18 been prepared from the actions taken at the
19 June 23rd meeting, and these orders are ready for
20 adoption.

21 CHAIRMAN OKESON: Thank you. Is there a
22 motion to adopt Orders 2021-5 through 2021-221 as
23 presented?

24 VICE CHAIRMAN OVERHOLT: I have a question.
25 This isn't -- well, I'll say it now before a

1 motion.

2 CHAIRMAN OKESON: Sure.

3 VICE CHAIRMAN OVERHOLT: Are those in our book
4 somewhere?

5 MS. THOMPSON: No.

6 MS. TAYLOR: It's (indicating).

7 VICE CHAIRMAN OVERHOLT: All right. But it's
8 from the last meeting. Yes, I remember that
9 meeting.

10 CHAIRMAN OKESON: It's the Atlanta phone book.

11 VICE CHAIRMAN OVERHOLT: Yes. So moved.

12 CHAIRMAN OKESON: Thank you.

13 Is there a second?

14 MS. PYLE: Second.

15 CHAIRMAN OKESON: Any other discussion?

16 Hearing none, all those in favor signify by
17 saying "Aye."

18 VICE CHAIRMAN OVERHOLT: Aye.

19 MS. CELESTINO-HORSEMAN: Aye.

20 MS. PYLE: Aye.

21 CHAIRMAN OKESON: Aye.

22 The "ayes" have it. The orders are adopted.

23 Okay. Moving on, opportunity for committees
24 with representatives -- oh, can I get consent to
25 use signature stamps?

1 VICE CHAIRMAN OVERHOLT: Yes.

2 MS. CELESTINO-HORSEMAN: Yes.

3 MS. PYLE: Yes.

4 CHAIRMAN OKESON: Yes. Thank you. Let the
5 record reflect that Co-Director Nussmeyer caught
6 that one.

7 Before proceeding with campaign finance
8 enforcement actions, we have customarily given any
9 committee present a final opportunity to pay a
10 reduced civil penalty by waiving the right to
11 present evidence and any arguments to the
12 Commission. Of course, any committee is welcome to
13 present evidence and arguments for the proposed
14 penalty to be waived or reduced, but this has been
15 an opportunity for those who want to waive any
16 presentation and accept the reduced penalty without
17 making any argument or presentation. You can just
18 accept it and move on.

19 And I would want to go ahead and roll through
20 this unless you want to.

21 MS. CELESTINO-HORSEMAN: Can I just say
22 something?

23 CHAIRMAN OKESON: Sure.

24 MS. CELESTINO-HORSEMAN: All right. So the
25 offer that's being made right now, as I understand

1 it, will not be offered to you again. If you step
2 up and testify, you will not receive that offer.

3 And he referred -- our chairman referred to
4 arguments. Let me just say that I didn't know what
5 I was doing, I hit the wrong button, I didn't know
6 the law, the dog ate my computer, none of that is
7 an acceptable argument. And then you now face
8 going up for the full amount of the penalty. So I
9 just want to make sure that everyone understands
10 that.

11 And you should also know that in the past,
12 doesn't matter whether you're Democratic, doesn't
13 matter whether you're Republican, doesn't matter
14 whether you're an officeholder or not, we have
15 consistently treated everyone the same, just to let
16 you know. So there is not going to be any special
17 treatment for anybody. So I've said my two cents.

18 CHAIRMAN OKESON: Thank you. I think it's
19 well said. It should be well considered.

20 So with that in mind, I'm going to move to
21 adopt the following arrangements.

22 If this is the committee's first violation,
23 the arrangement is for the committee to agree to
24 pay 25 percent of the proposed fine plus any
25 mailing costs.

1 If this is the committee's second violation,
2 it is the arrangement for the committee to pay
3 50 percent of the proposed fine plus any mailing
4 costs.

5 And if this is the committee's third
6 violation, the committee would agree to pay
7 75 percent of the proposed violation plus any
8 mailing costs.

9 For purposes of this arrangement, a previous
10 settlement agreement entered into by the committee
11 will be counted as one violation. Likewise, if
12 more than one alleged violation occurred on the
13 same calendar day, that group of violations shall
14 be counted as one violation.

15 With those arrangements in mind, can I have a
16 second to this motion?

17 MS. PYLE: Second.

18 CHAIRMAN OKESON: Any discussion?

19 Hearing none, all those in favor signify by
20 saying "Aye."

21 VICE CHAIRMAN OVERHOLT: Aye.

22 MS. CELESTINO-HORSEMAN: Aye.

23 MS. PYLE: Aye.

24 CHAIRMAN OKESON: The "ayes" have it, and
25 those are the rules of the game.

1 Okay. With that, before I proceed any
2 further, I will note that I will need to recuse
3 myself from consideration of the enforcement
4 actions concerning one committee -- that would be
5 the Todd Rokita Election Committee -- and have
6 designated Stephanie Beckley to act as my proxy in
7 serving as chair and member regarding this matter.

8 I will now ask Stephanie to step forward and
9 assume the chair and conduct the hearing on that
10 matter. I will leave the room and then return when
11 she is done.

12 (Chairman Okeson exits.)

13 MS. BECKLEY: All right. Thank you. First
14 note, I would like to welcome Litany as well.

15 And then I would like to ask the Todd Rokita
16 Committee to step forward. Please state your name
17 and cause number for the record.

18 MS. BONDERMAN: Hi. My name is Regan
19 Bonderman.

20 MS. CELESTINO-HORSEMAN: Point of order?

21 MS. BECKLEY: You may.

22 MS. CELESTINO-HORSEMAN: Mr. Rokita's
23 campaign, are they taking a plea or are they
24 presenting their evidence?

25 MS. BONDERMAN: Oh, no. I would like to take

1 the plea. But I have a question. I have three
2 forms here. Do those all count as first time?

3 MS. THOMPSON: Yes.

4 MS. BONDERMAN: And I would like to take the
5 plea, so do I need to read you the cause numbers?

6 MS. BECKLEY: No, you will not need to read
7 the cause numbers. And you would like to take the
8 plea?

9 MS. BONDERMAN: Yes, please.

10 MS. BECKLEY: And to confirm, that's the
11 first-time violation so 25 percent?

12 MS. THOMPSON: That's correct.

13 VICE CHAIRMAN OVERHOLT: I'm sorry, but for
14 our sakes, could we have the cause numbers so we
15 can look it up?

16 MS. THOMPSON: I can give you that. This is
17 the Todd Rokita Election Committee. This is found
18 on pages 25 and 26. It's Cause Nos. 2021-4676-275,
19 -276, and -277. And this committee has not been
20 before the Commission before.

21 MS. BECKLEY: Cause No. -270 --

22 MS. THOMPSON: -275 on page 25.

23 MS. BECKLEY: All right. So if I am to
24 understand, there are three cause numbers. And
25 then to the committee over here, normally they

1 would all be treated as one?

2 MS. THOMPSON: Yes.

3 MS. BECKLEY: All right. So then to the
4 Commission, are you all comfortable with that being
5 the first offense?

6 VICE CHAIRMAN OVERHOLT: Yes.

7 MS. CELESTINO-HORSEMAN: Yes.

8 MS. PYLE: Yes.

9 MS. BECKLEY: In that case, we will accept
10 your plea.

11 VICE CHAIRMAN OVERHOLT: We have to --

12 MS. BECKLEY: Oh, I'm sorry. We have to vote
13 on it.

14 VICE CHAIRMAN OVERHOLT: Yeah. I think
15 normally what we have done is we have actually made
16 a motion to approve acceptance of the plea, and I
17 think the other thing is to have a clear statement
18 of what the -- so there will be -- it's 25 percent
19 plus mailing costs, but I think we generally read
20 into the record that it's 25 percent of X. Right?
21 And if I'm looking at this as 25 percent of \$1,150
22 plus mailing costs, and my handy-dandy friend with
23 the calculator tells me that will be \$312.50 plus
24 mailing costs, which I think are 55 cents. So the
25 motion would be to approve that.

1 MS. BECKLEY: So a motion to approve \$312.50.
2 Do I have a motion?

3 VICE CHAIRMAN OVERHOLT: I thought I just made
4 the motion.

5 MS. BECKLEY: Then do I have a second?

6 MS. PYLE: Second.

7 MS. BECKLEY: All in favor say "Aye."

8 VICE CHAIRMAN OVERHOLT: Aye.

9 MS. CELESTINO-HORSEMAN: Aye.

10 MS. PYLE: Aye.

11 MS. BECKLEY: The "ayes" have it.

12 MS. BONDERMAN: How do I settle up?

13 MS. TAYLOR: We will mail you an order
14 whenever they meet again. It could be a month; it
15 could be six; it could be eight.

16 MS. BONDERMAN: So I'm all good?

17 MS. TAYLOR: You're good.

18 MS. BECKLEY: And with that, I will turn over
19 the chair and shift back to Paul.

20 (Chairman Okeson re-enters.)

21 CHAIRMAN OKESON: I thanked Stephanie on her
22 way out.

23 The Commission will begin with committees
24 whose representatives are seated in the front row
25 of the room and ask those who wish to accept these

1 arrangements that were stated earlier to please
2 step forward and be recognized to confirm the
3 committee's acceptance of the arrangement.

4 Remember, this is not a time at this point for
5 anyone to make their case or ask for reduction or
6 waiver of a proposed penalty. This is simply to
7 take the penalty that we have outlined and passed
8 as a motion to the rules of the game.

9 Simply state your name, your committee, your
10 own name as its representative, your enforcement
11 action cause number -- if you could read that off
12 for the record, we'd appreciate that -- and confirm
13 that you are accepting the proposed arrangement.
14 If you do wish to make any other statement
15 explaining regarding your case, please wait. So if
16 you want to make a case, we'll get to that in a
17 minute. This is just for those folks who want to
18 accept the proposed arrangements for settlements
19 and violations.

20 So anyone? Come on up.

21 MR. LEONARD: Thank you, Mr. Chairman. My
22 name is Dan Leonard. I am here for the Committee
23 to Elect Dan Leonard. I failed to file a
24 supplemental report on one contribution that was
25 given to me. Didn't actually find out about it

1 until I tried to report it after the deadline.
2 I've been in the General Assembly for 20 years.
3 This is my first violation. I have no excuse. It
4 was a screwup.

5 CHAIRMAN OKESON: Those things happen, which
6 is why we have the proposed arrangement. So you
7 will accept?

8 MR. LEONARD: A question. Is this 25 percent
9 of the proposed settlement?

10 MS. THOMPSON: Yes.

11 CHAIRMAN OKESON: Proposed fine, yes.

12 MR. LEONARD: I'm fine with that. And can I
13 ask, is this me personally? Do I write the check
14 or does it come from my committee or where does it
15 come from?

16 MS. TAYLOR: You can write the check. Your
17 committee can write the check. If you can get the
18 guy you find on the street to write the check for
19 you, that's fine with us too.

20 MR. LEONARD: Thank you.

21 CHAIRMAN OKESON: There you go. You might
22 want to stay out of his way as he's leaving the
23 room.

24 MS. TAYLOR: This is on page 27. This is
25 Committee to Elect Dan Leonard, Cause

1 No. 2021-4753-279, a proposed civil penalty of
2 \$1,000 and mail costs of 55 cents.

3 CHAIRMAN OKESON: Thank you. Can I get a
4 motion to accept?

5 VICE CHAIRMAN OVERHOLT: So moved. So do the
6 25 percent of the proposed finding of \$1,000 plus
7 mailing costs of 55 cents.

8 CHAIRMAN OKESON: Yeah. Is there a second?

9 MS. PYLE: Second.

10 CHAIRMAN OKESON: Any further discussion?

11 Hearing none, all those in favor signify by
12 saying "Aye."

13 VICE CHAIRMAN OVERHOLT: Aye.

14 MS. CELESTINO-HORSEMAN: Aye.

15 MS. PYLE: Aye.

16 CHAIRMAN OKESON: Aye.

17 The "ayes" have it. Thank you. You're all
18 set.

19 Anyone else who wants to take the proposed
20 arrangement? First come, first served.

21 MR. WARREN: Hi. My name is Kevin Warren.
22 I'm with Pence Must Go.

23 CHAIRMAN OKESON: Could you spell your last
24 name.

25 MR. WARREN: I'm sorry. My name is Kevin

1 Warren. I'm with Pence Must Go. What do you need,
2 my last name? W-a-r-r-e-n.

3 MS. TAYLOR: This is on page 9, Pence Must Go,
4 Cause No. 2021-6696-236. It's their third time
5 before the Commission with a proposed civil penalty
6 of \$700 and mailing costs of 55 cents.

7 VICE CHAIRMAN OVERHOLT: So you understand
8 that the deal is 75 percent?

9 MR. WARREN: Yes.

10 CHAIRMAN OKESON: Is there a motion to accept?

11 MS. CELESTINO-HORSEMAN: So moved.

12 CHAIRMAN OKESON: Is there a second?

13 MS. PYLE: Second.

14 CHAIRMAN OKESON: Any discussion, any
15 questions?

16 Hearing none, all those in favor signify by
17 saying "Aye."

18 VICE CHAIRMAN OVERHOLT: Aye.

19 MS. CELESTINO-HORSEMAN: Aye.

20 MS. PYLE: Aye.

21 CHAIRMAN OKESON: Aye.

22 The "ayes" have it. The motion carries.

23 MR. WARREN: Thank you.

24 MS. HATCH: Denise Hall Hatch, Denise for Indy
25 is the committee.

1 CHAIRMAN OKESON: And state your name.

2 MS. HATCH: Denise Hall Hatch, H-a-t-c-h.

3 CHAIRMAN OKESON: It should be the last page,
4 right?

5 MS. TAYLOR: Page 20 at the bottom, top of 21,
6 it's Cause No. 2021-7383-264. It has a proposed
7 civil penalty of \$1,000, and this is their first
8 violation.

9 CHAIRMAN OKESON: And you'd like to take the
10 proposed arrangement?

11 MS. HATCH: Yes.

12 CHAIRMAN OKESON: Is there a motion to accept?

13 MS. CELESTINO-HORSEMAN: So moved.

14 CHAIRMAN OKESON: Second?

15 MS. PYLE: Second.

16 CHAIRMAN OKESON: Any further discussion,
17 questions?

18 Hearing none, all those in favor signify by
19 saying "Aye."

20 VICE CHAIRMAN OVERHOLT: Aye.

21 MS. CELESTINO-HORSEMAN: Aye.

22 MS. PYLE: Aye.

23 CHAIRMAN OKESON: The "ayes" have it. The
24 motion carries.

25 MS. HATCH: Thank you.

1 MR. NEUMEISTER: Ryan Neumeister, Liberty
2 Developing.

3 MS. THOMPSON: Mr. Chairman, do you have a tab
4 that's a yellow tab in the back of your binder
5 there? It's at the bottom of the page here,
6 Liberty Developing, Inc., Cause No. 2021-313. They
7 have a proposed civil penalty of \$1,500, and they
8 have not been before the Commission before.

9 CHAIRMAN OKESON: You want to take the
10 proposed arrangement?

11 MR. NEUMEISTER: Yes, sir.

12 CHAIRMAN OKESON: Can I get a motion?

13 VICE CHAIRMAN OVERHOLT: So moved.

14 CHAIRMAN OKESON: Second?

15 MS. PYLE: Second.

16 CHAIRMAN OKESON: Any discussion, questions?
17 Hearing none, all those in favor signify by
18 saying "Aye."

19 VICE CHAIRMAN OVERHOLT: Aye.

20 MS. CELESTINO-HORSEMAN: Aye.

21 MS. PYLE: Aye.

22 CHAIRMAN OKESON: The "ayes" have it. The
23 motion carries. Thank you.

24 MR. NEUMEISTER: Thank you.

25 MS. JONES: Hello. Kristin Jones as a proxy

1 for David Niezgodski.

2 MS. THOMPSON: Mr. Chairman, on page 23 and
3 the top of 24 there, David Niezgodski for State
4 Senate Committee. It has two, 2021-6815-271 and
5 -272. It has a proposed civil penalty on the first
6 one of \$550.55, the second one for \$550.55, and
7 this committee has not been before the Commission
8 before.

9 CHAIRMAN OKESON: So both of those would be
10 wrapped up as one, first violation?

11 MS. THOMPSON: One, yes.

12 CHAIRMAN OKESON: You want to accept the
13 proposed arrangement?

14 MS. JONES: I would, please. Thank you.

15 CHAIRMAN OKESON: Is there a motion to
16 approve?

17 MS. CELESTINO-HORSEMAN: So moved.

18 CHAIRMAN OKESON: Second?

19 MS. PYLE: Second.

20 CHAIRMAN OKESON: Any discussion?

21 Hearing none, all those in favor signify by
22 saying "Aye."

23 VICE CHAIRMAN OVERHOLT: Aye.

24 MS. CELESTINO-HORSEMAN: Aye.

25 MS. PYLE: Aye.

1 CHAIRMAN OKESON: The "ayes" have it. The
2 motion carries. Thank you.

3 MS. JONES: Thank you very much.

4 MR. ZAPFE: I'm Matt Zapfe, Z-a-p-f-e, here on
5 behalf of Senator Ryan Mishler and Mishler for
6 State Senate. I've got a few cause numbers. I
7 don't know if you want me to read them all.

8 MS. TAYLOR: There are 21.

9 MS. THOMPSON: So I'm just going to read this.
10 This is Mishler for State Senate, and I'm just
11 going to read the cause numbers here:

12 2021-5034-287, -288, -289, -290, -291, -292, -293,
13 -294, -295, -296, -297, -298, -299, -300, -301,
14 -302, -303, -304, -305, -306, -307. Okay. This

15 committee has -- this will be the third time before
16 the Commission for Mishler for State Senate.

17 MS. PYLE: Which pages are those on?

18 MS. THOMPSON: I'm sorry. Page 30.

19 MS. PYLE: Thank you.

20 CHAIRMAN OKESON: And so this first one's for
21 Mishler?

22 MS. THOMPSON: Yes. This is for Mishler.
23 They've been before the Commission before. This
24 will be their third offense.

25 VICE CHAIRMAN OVERHOLT: Sorry. So 21?

1 MS. THOMPSON: 21.

2 VICE CHAIRMAN OVERHOLT: So this is years of
3 violations? Or I guess I'm --

4 MS. THOMPSON: I'm sorry. These were large
5 supplemental reports that weren't filed in a timely
6 manner.

7 VICE CHAIRMAN OVERHOLT: Oh, okay. I was
8 trying to figure out how there could be so many.

9 MS. CELESTINO-HORSEMAN: So what's the amount
10 of the total fines?

11 MS. THOMPSON: We didn't add that up.

12 MS. TAYLOR: I think they're all -- they're
13 850 each, I believe.

14 VICE CHAIRMAN OVERHOLT: No. I see some for
15 150 too toward the end.

16 MS. CELESTINO-HORSEMAN: So they would agree
17 to pay 75 percent --

18 MS. THOMPSON: Of each one of these.

19 MS. CELESTINO-HORSEMAN: -- of each one. Just
20 so you understand.

21 MR. ZAPFE: Yeah.

22 VICE CHAIRMAN OVERHOLT: Plus mailing costs.
23 Sorry. For some reason we always have to emphasize
24 that.

25 CHAIRMAN OKESON: And you want to accept the

1 proposed arrangement?

2 MR. ZAPFE: Yeah.

3 CHAIRMAN OKESON: Is there a motion to
4 approve?

5 VICE CHAIRMAN OVERHOLT: So moved.

6 CHAIRMAN OKESON: Second?

7 MS. PYLE: Second.

8 CHAIRMAN OKESON: Any further discussion or
9 any other questions?

10 Hearing none, all those in favor signify by
11 saying "Aye."

12 VICE CHAIRMAN OVERHOLT: Aye.

13 MS. CELESTINO-HORSEMAN: Aye.

14 MS. PYLE: Aye.

15 CHAIRMAN OKESON: The "ayes" have it, and the
16 motion carries.

17 There's a second one? Was that it?

18 MS. TAYLOR: There were 21.

19 CHAIRMAN OKESON: No. I thought you said two
20 committees.

21 MS. THOMPSON: Just Mishler.

22 CHAIRMAN OKESON: Thanks.

23 MS. ROWRAY: I'm Elizabeth Rowray, and I'm
24 here for Elizabeth Rowray for Indiana, R-o-w-r-a-y.
25 That was a good act to follow.

1 MS. THOMPSON: Mr. Chairman, that's on
2 page 30. Elizabeth Rowray for Indiana has a
3 proposed civil penalty of \$1,000.55, and she's not
4 been before the Commission before.

5 CHAIRMAN OKESON: Okay. Do you want to accept
6 the proposed arrangement?

7 MS. ROWRAY: Yes, please.

8 CHAIRMAN OKESON: Is there a motion to
9 approve?

10 MS. CELESTINO-HORSEMAN: So moved.

11 CHAIRMAN OKESON: Second?

12 MS. PYLE: Second.

13 CHAIRMAN OKESON: Any discussion, questions?
14 Hearing none, all those in favor signify by
15 saying "Aye."

16 VICE CHAIRMAN OVERHOLT: Aye.

17 MS. CELESTINO-HORSEMAN: Aye.

18 MS. PYLE: Aye.

19 CHAIRMAN OKESON: The "ayes" have it. The
20 motion carries. Thank you.

21 MS. ROWRAY: Thank you.

22 MS. WIRTH: I am Cynthia Wirth for Committee
23 to Elect Cinde, and the cause number is --

24 CHAIRMAN OKESON: Could you spell your last
25 name.

1 MS. WIRTH: W-i-r-t-h.

2 CHAIRMAN OKESON: Thank you.

3 MS. WIRTH: Cause No. 2021-7268-284.

4 MS. THOMPSON: Mr. Chairman, this is top of
5 page 29. This is Committee to Elect Cinde, Cause
6 No. 2021-7268-284, has a proposed civil penalty of
7 \$150.55, and she's not been before the Commission
8 before.

9 CHAIRMAN OKESON: And you want to take the
10 proposed arrangement?

11 MS. WIRTH: Yes, please.

12 CHAIRMAN OKESON: Thank you. Can I have a
13 motion to accept?

14 VICE CHAIRMAN OVERHOLT: So moved.

15 MS. PYLE: Second.

16 CHAIRMAN OKESON: Hearing a second, any
17 discussion or questions?

18 Hearing none, all those in favor signify by
19 saying "Aye."

20 VICE CHAIRMAN OVERHOLT: Aye.

21 MS. CELESTINO-HORSEMAN: Aye.

22 MS. PYLE: Aye.

23 CHAIRMAN OKESON: The "ayes" have it. The
24 motion carries. Thank you.

25 MS. WATERMAN: Hi. Samantha Waterman,

1 W-a-t-e-r-m-a-n, with College Democrats at Indiana
2 University.

3 MS. TAYLOR: It's at the bottom of page 21,
4 top of 22, Cause No. 2021-7409-267. It's the first
5 time they've been before the Commission and a
6 proposed civil penalty of \$1,000.

7 CHAIRMAN OKESON: And you want to accept the
8 proposed arrangement?

9 MS. WATERMAN: Yes, please.

10 CHAIRMAN OKESON: Can I get a motion to
11 approve?

12 MS. CELESTINO-HORSEMAN: So moved.

13 CHAIRMAN OKESON: Second?

14 MS. PYLE: Second.

15 CHAIRMAN OKESON: Any discussion or questions?
16 Hearing none, all those in favor signify by
17 saying "Aye."

18 VICE CHAIRMAN OVERHOLT: Aye.

19 MS. CELESTINO-HORSEMAN: Aye.

20 MS. PYLE: Aye.

21 CHAIRMAN OKESON: The "ayes" have it. The
22 motion carries. Thank you.

23 MS. WATERMAN: Thank you.

24 MR. BIENZ: Hi. My name is Michael Bienz,
25 last name spelled B-i-e-n-z. My cause number is

1 2021-7352-282, and I'm here on behalf of committee
2 Friends of Michael Bienz.

3 MS. THOMPSON: Mr. Chairman, this is on
4 page 27, Friends of Michael Bienz, Cause
5 No. 2021-7352-282. It has a proposed civil penalty
6 of \$1,000.55, and he's not been before the
7 Commission before.

8 CHAIRMAN OKESON: You'd like to take the
9 proposed arrangement?

10 MR. BIENZ: Yes.

11 CHAIRMAN OKESON: Can I get a motion to
12 approve?

13 MS. CELESTINO-HORSEMAN: So moved.

14 CHAIRMAN OKESON: Second?

15 MS. PYLE: Second.

16 CHAIRMAN OKESON: Any discussion or questions?
17 Hearing none, all those in favor signify by
18 saying "Aye."

19 VICE CHAIRMAN OVERHOLT: Aye.

20 MS. CELESTINO-HORSEMAN: Aye.

21 MS. PYLE: Aye.

22 CHAIRMAN OKESON: The "ayes" have it. The
23 motion carries. Thank you.

24 No other takers?

25 Okay. So we'll move on to the adoption of the

1 procedures for campaign finance hearings next. The
2 remaining committees will be called to permit the
3 presentation of evidence in these matters. Before
4 doing so, I want to note that in the past we have
5 adopted the following procedures for conducting
6 these hearings, and I move the Commission use the
7 following procedures for today as well.

8 When each campaign finance matter is called,
9 the hearing will begin with recognizing campaign
10 finance staff to provide information about the
11 documents in this matter provided to the Commission
12 members, including letters from committees and
13 notice given to the campaign committee. Unless
14 there is objection, the documents provided to the
15 Commission by the Election Division will be entered
16 into the record of this meeting.

17 After campaign finance staff completes
18 presentation, a representative of the committee
19 will be recognized first and may present their case
20 for no more than five minutes.

21 And we have a timer?

22 MR. KING: Yes.

23 CHAIRMAN OKESON: Commission members may ask
24 questions during the presentation, and if they do
25 so, that time spent answering the questions will

1 not be counted against your five minutes. The
2 Election Division may signal the chair when the
3 presenter's time is up.

4 If the presenter offers additional documents
5 or other physical evidence not previously received
6 by the Commission, then the original must be
7 provided to the Election Division, and I would ask
8 it be handed to Valerie Warycha over here to
9 preserve for the record.

10 If the Commission finds that a committee has
11 violated the campaign finance statute, state law
12 requires the unanimous vote of all four
13 commissioners to waive or reduce the amount of
14 penalty set by state law.

15 If the Commission makes a decision at this
16 meeting to either fine a committee or dismiss the
17 case against the committee, then the Election
18 Division will prepare a final order for the
19 Commission to approve at a later meeting.

20 If the committee is fined today, the committee
21 will receive a notice from the Election Division to
22 pay the fine after the Commission adopts the final
23 order, so keep in mind it may be some time after
24 today before the committee will be required to pay
25 its said fine.

1 The Commission will recognize committees to
2 make presentation beginning with the committees
3 seated in the front of the room. It's very
4 helpful, again, if you can speak up, state your
5 name, spell it for the court reporter, state any
6 cause numbers would be helpful, and we can quickly
7 look you up and get you underway.

8 You've taken an oath. Everyone has been in
9 the room for the oath issued by Mr. Kochevar,
10 correct? So I'll remind you that you are under
11 oath.

12 Is there a second to this motion?

13 MS. PYLE: Second.

14 CHAIRMAN OKESON: Thank you.

15 Any other questions or objections from any of
16 the Commission members to these procedures?

17 Hearing none, to adopt these procedures,
18 signify by saying "Aye."

19 VICE CHAIRMAN OVERHOLT: Aye.

20 MS. CELESTINO-HORSEMAN: Aye.

21 MS. PYLE: Aye.

22 CHAIRMAN OKESON: The "ayes" have it and those
23 are the rules.

24 Okay. Who is up first?

25 VICE CHAIRMAN OVERHOLT: Front row.

1 CHAIRMAN OKESON: Anyone? No other campaign
2 finance?

3 MR. NORRIS: Thank you, Mr. Chairman, members
4 of the Commission. Mathew Norris, M-a-t-h-e-w,
5 N-o-r-r-i-s. I'm here on behalf of Retail Services
6 & Systems, Inc. That's Cause No. 2021-311.

7 MS. THOMPSON: Mr. Chairman, that is on your
8 yellow tab, and it's the first two, Retail Sales &
9 Services, Cause No. 2021-311 and Cause 2021-312.
10 And, again, this -- the corporation self-reported
11 this to us.

12 CHAIRMAN OKESON: Okay.

13 MS. CELESTINO-HORSEMAN: And if I understand
14 this correctly, so they had two separate incidents.

15 MS. THOMPSON: Two separate violations,
16 correct.

17 CHAIRMAN OKESON: Would you like to go ahead
18 and present any --

19 MR. NORRIS: Yes, please. Thank you. We
20 submitted a memorandum to the Commission earlier
21 this year. Hopefully you have that in your packet.

22 CHAIRMAN OKESON: Hold on just a second. Is
23 that after the yellow tab?

24 MS. THOMPSON: It's behind the yellow tab.

25 CHAIRMAN OKESON: Sorry. Go ahead.

1 MR. NORRIS: Sure. That's fine. I certainly
2 don't want to re-present everything in that memo
3 but just to hit some of the high points, if you
4 would, please.

5 On or about October 7, 2020, RSSI issued two
6 checks that exceeded the corporate contribution
7 limitations outlined under IC 3-9-2-4. One was for
8 the House Republican Campaign Committee in the
9 amount of \$3,500. The other was for the Todd
10 Huston for State Representative campaign in the
11 amount of \$2,500.

12 RSSI discovered the error on October 9th, two
13 days after those checks were issued, at which time
14 we immediately contacted the HRCC and were told the
15 checks in question had already been deposited. We
16 asked each campaign to issue a refund, and both
17 those refunds were received.

18 We also notified the Election Division on
19 October 9th, the day that we realized the campaign
20 checks being cut. These two checks, issued
21 simultaneously, constitute the only violations
22 committed by RSSI prior to or heretofore.

23 Since these checks were issued, RSSI has
24 implemented a new internal review process to ensure
25 that no future violations occur. RSSI has

1 developed an internal document that outlines
2 limitations on contributions for each state in
3 which it operates. Further, the person responsible
4 for issuing campaign contributions will coordinate
5 with RSSI's comptroller and general counsel to
6 ensure compliance with all appropriate contribution
7 laws and limitations.

8 With me here today is Ed Cooper, vice
9 president of public affairs and community relations
10 for Retail Services & Systems, Inc. He'd be happy
11 to answer any questions about those internally
12 compliant procedures. But we're here today to ask
13 the commission's consideration for waiving those
14 penalties given the facts that we presented to you.
15 We highlight in our memorandum certain other
16 instances where, with similar fact patterns and
17 self-reporting, those penalties were waived as
18 well.

19 With that, we are happy to answer any
20 questions that you might have.

21 CHAIRMAN OKESON: I know you're digesting
22 information, but any questions?

23 VICE CHAIRMAN OVERHOLT: I'm reading.

24 CHAIRMAN OKESON: Yeah. Just give us a
25 moment.

1 MR. NORRIS: Absolutely.

2 CHAIRMAN OKESON: I have a quick question.
3 What was the catalyst for identifying that you had
4 overpaid? How did you stumble across the fact
5 that, oops, we made a mistake? It's not really
6 noted in the -- what process --

7 MR. NORRIS: We realized that they were issued
8 from a corporate account. The checks were supposed
9 to be cut from an LLC, which there are no campaign
10 contribution limitations. We noticed that they
11 were cut from a corporate account.

12 CHAIRMAN OKESON: But was that through some
13 routine audit that identified that or just a level
14 of awareness by someone who appreciated the nuance
15 of the corporation versus the LLC?

16 MR. COOPER: I'm Edward Cooper. I'm the vice
17 president of public affairs.

18 CHAIRMAN OKESON: Would you spell your last
19 name.

20 MR. COOPER: C-o-o-p-e-r, Edward. I realized
21 shortly after sending the checks to our consultants
22 that they had been cut on the wrong -- on the RSSI
23 check stock.

24 CHAIRMAN OKESON: Thank you.

25 MS. CELESTINO-HORSEMAN: I just want to make

1 sure I'm understanding your argument. Your
2 argument is that you made an error, and you seek
3 relief on the basis that, in 2017, there were two
4 cases where that happened, some cases in 2004 and
5 in 2015. I feel for you. I really do. It's a
6 stiff amount of money, no question about it.

7 But quite honestly, we stated at the beginning
8 of this that failure to know the law is not an
9 excuse. We appreciate the fact that you
10 self-reported, which is why we offer the deals, so
11 that you can -- you know, by recognizing that, you
12 can take that and get some kind of relief from it.

13 It puts us in kind of a bind, quite honestly,
14 confronting this. You know, I'm sorry it happened,
15 but I just don't know that we can -- I don't know
16 that I can vote to give you the relief that you
17 need.

18 MR. NORRIS: I certainly -- if I may.

19 CHAIRMAN OKESON: Sure.

20 MR. NORRIS: I certainly respect that, and you
21 highlighted the facts that we would ask you to
22 consider, past precedence being probably chief
23 among them. But there was a self-reporting. There
24 was the fact that we did receive the refunds of
25 those checks and that we have instituted internal

1 compliance procedures to ensure that it will not
2 happen again.

3 But we wanted to provide you with those
4 precedents that this Commission might recognize,
5 different members of this Commission at that time,
6 but there is a fairly significant history of this
7 Commission waiving penalties altogether and, again,
8 respectfully request that you consider that in this
9 case as well.

10 VICE CHAIRMAN OVERHOLT: I guess I would note
11 that I've been on the Commission for some of those
12 votes and participated in some of those votes, and
13 I think the distinction in this type of
14 circumstance is the key criteria that we have
15 looked at -- or the key factors, I should say, that
16 we have looked at, the self-disclosure, the fact
17 that these instances, situations where we have
18 voted to waive the penalty altogether have been
19 where the entity that made the violation or made
20 the error, they discover it, disclose it to the
21 division before the division has even had a chance
22 to figure it out.

23 I think the other key factor has been timing
24 too, you know, how much time has elapsed. And this
25 is, like, it's a two-day turn around, which is

1 pretty fast. So, I mean, it's an oopsy, and the
2 thing is obviously once you put a check in the
3 mail, you know, to someone, the Postal Service
4 would come after you if you tried to grab that
5 check back out of the mailbox. And this looks like
6 kind of the equivalent of having tried to do that.
7 But the way our system is, you have to come here
8 and talk to us about it instead of grabbing that
9 check out of the mailbox.

10 So I guess I see it a little different. I do
11 see this differently from other entities where
12 they've violated the law and had to have been told
13 that they violated the law and are all then here to
14 explain themselves. It's a little bit different in
15 my mind.

16 CHAIRMAN OKESON: Yeah. And maybe --

17 MS. CELESTINO-HORSEMAN: Can I ask a question?

18 CHAIRMAN OKESON: Sure.

19 MS. CELESTINO-HORSEMAN: So if we had a
20 candidate who self-reported their error and then
21 but was still late, would we still hold them to the
22 same standard like we have been holding everyone?
23 I'm trying to figure out what the distinction here
24 is in backing the rule. I mean, maybe the reward
25 is to go ahead and offer them again the opportunity

1 to pay a reduced fine after this or whatever. But
2 like Suzanne said, the turnaround time, which I had
3 not caught, was very quick.

4 VICE CHAIRMAN OVERHOLT: I think with campaign
5 committees we have taken some more action. It was
6 dependent on -- it is somewhat fact specific, but I
7 think we have consistently paid attention to the
8 fact where it is the committee, the corporation,
9 whatever, who has identified -- they're the ones
10 identifying the error, contacting the division, and
11 trying to figure out -- or contacting the campaign
12 in this case, contacting the campaign committee to
13 get the money back, but anyway, notifying the
14 division about the error and trying to correct it.
15 And we hear things like that from campaign
16 committees.

17 CHAIRMAN OKESON: Yeah. I mean, I tend to
18 echo those sentiments. I'd be curious and looking
19 to the staff. Of all the campaign finance cases
20 we've heard today, how many have self-reported with
21 this amount of diligence?

22 MS. TAYLOR: None. This is the only one that
23 self-reported.

24 CHAIRMAN OKESON: I mean, while I respect,
25 Karen, your comments and they're valid, I think

1 stepping into the bright light willingly should be
2 noted.

3 MS. CELESTINO-HORSEMAN: You know, I would
4 agree with that. Like I said, I didn't realize
5 that they had turned around so quickly, and that
6 does -- my concern is always the precedent that we
7 set.

8 CHAIRMAN OKESON: Sure.

9 MS. CELESTINO-HORSEMAN: So if the precedent
10 that we're setting is that if you very quickly, as
11 soon as practicable, turn yourself in, then you can
12 catch a break. And with that distinction, I can
13 see it.

14 CHAIRMAN OKESON: Yeah. What do lawyers say,
15 what did you know and when did you know it? I
16 think they acted fairly urgently and really did all
17 the right things to cure their error. I'm not sure
18 that it makes much sense in imposing a penalty.
19 That's my opinion. I believe I offer that before I
20 put it out for a motion or a vote.

21 But do you have any questions, Litany?

22 MS. PYLE: Yes. So just because I'm new
23 obviously, is there a way to waive the penalty and
24 still say that this counts as a violation in front
25 of the board so that next time, if it happens

1 again, it will be at the 50 percent level instead
2 of the 25?

3 MS. THOMPSON: Yes. If they would ever come
4 back before the Commission, it would be noted that
5 they've been here once.

6 MS. PYLE: All right. Perfect. Thank you.

7 CHAIRMAN OKESON: Is there any other -- do you
8 have any other commentary or any other evidence?

9 MR. NORRIS: No. We're fine. Thank you very
10 much.

11 CHAIRMAN OKESON: Is there any further
12 discussion or would anyone like to offer a motion?

13 MS. CELESTINO-HORSEMAN: I move that we go
14 ahead and waive the fee and mark this down as their
15 first violation, which means that if it happens
16 again you will have to pay something.

17 CHAIRMAN OKESON: Do you understand that?

18 MR. NORRIS: Absolutely. Certainly.

19 CHAIRMAN OKESON: Is there a second?

20 MS. PYLE: Second.

21 CHAIRMAN OKESON: Any discussion on the
22 motion?

23 Hearing none, all those in favor signify by
24 saying "Aye."

25 VICE CHAIRMAN OVERHOLT: Aye.

1 MS. CELESTINO-HORSEMAN: Aye.

2 MS. PYLE: Aye.

3 CHAIRMAN OKESON: The "ayes" have it. The
4 motion carries.

5 MR. NORRIS: Thank you very much. We
6 appreciate your consideration.

7 CHAIRMAN OKESON: Anyone else that wants to
8 come before the committee? Sorry. For campaign
9 finance.

10 MS. ARNETT: Thank you, Chairman and members
11 of the Commission. My name is Tabitha Arnett,
12 T-a-b-i-t-h-a, Arnett, A-r-n-e-t-t. And this is
13 for Cause No. 2021-4431-16, the Indiana Association
14 of Osteopathic Physicians and Surgeons Political
15 Action Committee, 4431-16.

16 MS. THOMPSON: Mr. Chairman, it's on the first
17 page of your spreadsheet.

18 MS. ARNETT: Thank you.

19 CHAIRMAN OKESON: Okay.

20 MS. THOMPSON: Again, Mr. Chairman, this is
21 the Indiana Osteopathic Association Political
22 Action Committee, Cause No. 2021-4431-16. It has a
23 proposed civil penalty of \$350.55, and this is
24 their ninth time before the Commission.

25 MS. ARNETT: So I would have loved to have

1 asked for -- I'm sorry, a -- I'm forgetting the
2 terminology, waiver.

3 CHAIRMAN OKESON: The prearranged penalty?

4 MS. ARNETT: Thank you, prearrangement. But I
5 knew coming into it that we would not have that
6 opportunity.

7 So I am the executive director of the
8 association as well. I am the treasurer of the PAC
9 for the last almost four years. This is my first
10 time before the Commission, but certainly with my
11 predecessor's previous history, it doesn't help me
12 much. So I will make this brief and keep within
13 your time limit.

14 Again, you give the opportunity to ask for a
15 waiver or exception or a decrease in penalty, which
16 I filed January of 2020. It was seven days late,
17 as I understand it. On Monday, January 20th, I
18 emailed the PAC report. Of course, you were closed
19 on Monday, the 20th. It was MLK Day, so it
20 technically was an additional day late.

21 What happened is, I was in Florida with my
22 mom, who had a heart procedure, heart surgery that
23 day. I had every intention of reviewing my report
24 and submitting it the next day. While she was
25 recovering after surgery, I had another family

1 member hospitalized there in Florida, and that
2 family member had a service dog. And believe it or
3 not, I talked to the ER physician, who told me on
4 the phone that I needed to come and get the service
5 dog from the hospital, from the ER room, that the
6 EMTs apparently brought with my family member in
7 the ambulance with a service dog to the ER, and
8 they needed to admit that family member, who I
9 don't have permission to share who. But anyway, I
10 had to make arrangements to pick up the dog. I
11 also had to continue to get my mom home and then
12 continue to take care of the dog and my family
13 member's home for that week.

14 So long story short, my entire week was spent
15 helping another family member in Florida, taking
16 care of the service dog. I've never been late with
17 a state report in my almost four years. I had
18 every intention of filing it on or before
19 January 15th. Maybe I should have just submitted
20 it the day that I got to Florida a couple days
21 early and just worried about amendments later, but
22 I wanted it to be correct.

23 When I did email the report on Monday,
24 January 20th, I explained the circumstance and was
25 told it would be a month before I could get a

1 settlement agreement and pay a fine or schedule a
2 hearing, and then COVID hit and devastated our
3 state. I did continue to check in with the
4 campaign finance staff as to when the hearing would
5 be. And just one other point. I know there was a
6 hearing in June. That was scheduled -- in terms of
7 why I'm here now, that was scheduled during our
8 family's two-week vacation visiting national parks,
9 which I knew I could not join virtually, as my
10 Internet would have been very spotty.

11 So, again, I'm asking, begging, perhaps
12 pleading for a waiver in this extenuating family
13 medical circumstance twice in one week, both out of
14 state. And I can assure you that, although we have
15 had a history in my prior executives and treasurers
16 that handle the reports, this is not something that
17 I would ever expect to happen again unless I myself
18 am hospitalized because this is just not
19 acceptable, and I do apologize for that.

20 Thank you for your time. I'm happy to answer
21 questions. I understand you'll do what you need to
22 do, and I'll respect that, but I do hope you will
23 consider my testimony. And perhaps staff can
24 confirm if I've ever been before you myself, but
25 this is obviously our tenth time now?

1 MS. THOMPSON: Ninth.

2 MS. ARNETT: Ninth. Okay. Well, still
3 embarrassing. So thank you.

4 CHAIRMAN OKESON: I saw you nodding earlier
5 that she had been in contact with you.

6 MS. TAYLOR: Yes.

7 CHAIRMAN OKESON: Okay. Any questions?
8 It's Ms. Arnett; correct?

9 MS. ARNETT: Correct, Arnett, A-r-n-e-t-t.
10 And I would have asked my family member, the other
11 one, for an affidavit, but it's kind of a sensitive
12 situation, what happened with the emergency room,
13 so I could not get that, not that that would be
14 useful. But nevertheless, I just found it really
15 interesting that I talked to the ER physician
16 myself because I didn't believe this family member,
17 what's going on, and they actually said, "Yes, we
18 have a black service dog, the lab is sitting on the
19 gurney with your family member, and we can't admit
20 him or move him or do anything with him until you
21 come and get this dog." So the rest of that week
22 he was in the hospital. He actually was discharged
23 the day I flew back home and which I filed the
24 report.

25 CHAIRMAN OKESON: We take you at your word.

1 Thank you.

2 Any questions?

3 VICE CHAIRMAN OVERHOLT: I guess I would -- I
4 mean, I don't question what you've told us. I
5 think, though, it is difficult when we're
6 confronted with an entity, even if you weren't at
7 the helm, that has had this many violations. I
8 feel for the -- I mean, I understand what you were
9 going through, but we also need to get people to
10 follow the rules. So those are my thoughts and
11 comments.

12 CHAIRMAN OKESON: Yeah. I tend to agree.
13 It's not a reflection on you and your situation,
14 and certainly I empathize deeply with those types
15 of challenges. But unfortunately the sort of
16 batting average that precedes you is not a good
17 one, and this then becomes more about the political
18 action committee and less about your situation
19 personally. Those tend to be my thoughts.

20 Any other comments?

21 MS. ARNETT: Well, I appreciate that, and, you
22 know, advice to future PAC treasurers is to look at
23 the history, and if they've been late more than
24 once, maybe get a new PAC, start fresh.

25 CHAIRMAN OKESON: Yeah.

1 MS. ARNETT: I probably would have done that
2 had I realized. When I emailed the staff, I was
3 like, we've been how many late how many times? And
4 I realized that there were no files in my files in
5 my office that indicated that, so I guess I should
6 have...

7 MS. CELESTINO-HORSEMAN: Mr. Chair, I would
8 like to make a motion, in light of the personal
9 disaster she was dealing with and the fact that
10 there was a service dog, a black lab involved --

11 CHAIRMAN OKESON: I used to have a black lab
12 too.

13 MS. CELESTINO-HORSEMAN: -- that we understand
14 her situation but we also recognize the
15 organization needs to be fully cognizant, and
16 instead of imposing the full fine, give her a
17 25 percent discount, or pay 75 percent.

18 CHAIRMAN OKESON: You propose that as a
19 motion?

20 MS. CELESTINO-HORSEMAN: Yes.

21 CHAIRMAN OKESON: Is there a second?

22 I'll second that.

23 Is there any discussion?

24 Hearing none, all those in favor signify by
25 saying "Aye."

1 VICE CHAIRMAN OVERHOLT: Aye.

2 MS. CELESTINO-HORSEMAN: Aye.

3 MS. PYLE: Aye.

4 CHAIRMAN OKESON: The "ayes" have it. The
5 motion carries. Thank you.

6 MS. ARNETT: Thank you so much. I really
7 appreciate the grace you've extended, and we'll be
8 on time next time.

9 CHAIRMAN OKESON: Any others that wish to be
10 heard on campaign finance?

11 Recognizing none, we'll move on to
12 continuances. Would the campaign finance staff
13 identify any matters for which a motion for
14 continuance was received for today's meeting.

15 MS. TAYLOR: I'm going to read the cause
16 numbers and the names of the committee. Do you
17 want to know what pages they're on or do you just
18 want the list? I can give you whatever you want.

19 CHAIRMAN OKESON: I mean, I don't know that I
20 need to look them up if they've asked for a
21 continuance. Right?

22 MS. TAYLOR: Yes.

23 CHAIRMAN OKESON: Go ahead.

24 MS. TAYLOR: The first is Indiana Black
25 Legislative Caucus PAC, No. 2021-3908-233; Citizens

1 for Better Roads, 2021-42-230; Friends for J.R.
2 Gaylor, 2021-7357-274; Elect Corinne Westerfield,
3 2021-7188-82 and -157; CHA Consulting PAC
4 2021-6475-255; Justus Corporation, Cause
5 No. 2021-229; and Elect Ethan, 2021-7058-273.

6 These committees have all asked for a continuance.

7 CHAIRMAN OKESON: Is this their second time
8 asking for a continuance? Have they asked for one
9 before this?

10 MS. TAYLOR: Elect Corinne Westerfield has
11 asked for a continuance before. Her son is
12 undergoing chemo, and it was scheduled for the
13 hearing in June and again today.

14 CHAIRMAN OKESON: Which one was that?

15 MS. TAYLOR: Elect Corinne Westerfield.

16 CHAIRMAN OKESON: And outside of that
17 particular one, this is the first request of
18 continuance for all the others?

19 MS. TAYLOR: I believe so, but maybe Justus
20 Corporation asked for a continuance before. We're
21 double checking.

22 MS. THOMPSON: Yeah. I believe this is their
23 second. Let me make sure. Yes, this is Justus's
24 second.

25 CHAIRMAN OKESON: So before we go on, I have a

1 question. If the Commission votes to deny
2 continuance, what happens then?

3 (Discussion held off the record.)

4 CHAIRMAN OKESON: Okay. So the total of how
5 many? There was eight of them?

6 MS. TAYLOR: Eight, yes.

7 CHAIRMAN OKESON: Two of them are second-time
8 requests for continuance, and that was Elect
9 Westerfield and Justus?

10 MS. TAYLOR: Yes.

11 VICE CHAIRMAN OVERHOLT: May I ask, Justus,
12 what was the basis for their request for a
13 continuance?

14 MS. THOMPSON: I believe he was out of town
15 this week.

16 MS. CELESTINO-HORSEMAN: I am fairly new to
17 this committee too, but did the committee establish
18 a maximum number of times that a continuance can be
19 requested?

20 CHAIRMAN OKESON: No.

21 MS. NUSSMEYER: Mr. Chairman, I thought we had
22 maybe a year or two ago. We had a conversation
23 where someone had continued a matter three or four
24 or five times, and the Commission set a threshold
25 amount for continuances. Does that ring a bell?

1 CHAIRMAN OKESON: Can we look into that?

2 MS. TAYLOR: It was Wabash County Democrats,
3 and I think we let them -- it was years. I don't
4 remember what the limit was, but we gave them a
5 final, like, you will appear at the next hearing or
6 else.

7 VICE CHAIRMAN OVERHOLT: I think my
8 recollection is that we talked about it, but then I
9 think we decided that creating a hard and fast rule
10 was not something we wanted to do because there
11 could be circumstances in which -- you know,
12 because you never know. Even the courts don't
13 limit the number of continuances.

14 MS. CELESTINO-HORSEMAN: So this is not a
15 request for ongoing continuance?

16 CHAIRMAN OKESON: No. The two in question are
17 just seconds. The rest are all firsts. Right?

18 MS. TAYLOR: Yes.

19 CHAIRMAN OKESON: So six of the eight are
20 first-time askers.

21 MS. CELESTINO-HORSEMAN: So if you want, we
22 could say the six, grant their continuance, and
23 then those two we could say we direct you to
24 appear; no further continuance will be granted
25 unless good cause is shown.

1 CHAIRMAN OKESON: That's certainly available
2 for a motion.

3 MS. CELESTINO-HORSEMAN: Okay. All right. I
4 move that we grant continuances to the six that
5 have -- this is their first time in asking for a
6 continuance, and then for the two, Justus and --
7 what was the second one?

8 MS. TAYLOR: Elect Corinne Westerfield.

9 MS. CELESTINO-HORSEMAN: -- Elect Corinne
10 Westerfield, that we go ahead and grant their
11 continuance for today with the stipulation that
12 this is the final continuance -- or no further
13 continuances will be granted unless good cause is
14 shown.

15 CHAIRMAN OKESON: I have a motion. Do I have
16 a second?

17 MS. PYLE: I would second.

18 CHAIRMAN OKESON: I have a second. Any
19 further discussion or comments on the motion?

20 Hearing none, all those in favor signify by
21 saying "Aye."

22 VICE CHAIRMAN OVERHOLT: Aye.

23 MS. CELESTINO-HORSEMAN: Aye.

24 MS. PYLE: Aye.

25 CHAIRMAN OKESON: Aye.

1 The "ayes" have it and the motion carries.

2 Defaults?

3 MS. TAYLOR: We had some other cleanup first
4 before you do the defaults if you wanted to do that
5 now. There were three committees that we, in June,
6 gave them the opportunity to continue and close
7 their case to waive their fine. The first was Vote
8 Roxanna Hanford, Cause 2021-6598-44 and
9 2021-6598-126. She was continued to close. She
10 had two \$1,000 penalties she did close.

11 CHAIRMAN OKESON: Where are these in the
12 binder?

13 MS. TAYLOR: Page 1 and 4. Sorry.

14 VICE CHAIRMAN OVERHOLT: You said she did
15 close?

16 MS. TAYLOR: She did close, yes.

17 VICE CHAIRMAN OVERHOLT: So she did what we
18 told her to do in order to waive the fine?

19 MS. TAYLOR: Yes, yes.

20 VICE CHAIRMAN OVERHOLT: Okay. That's what I
21 like to hear.

22 CHAIRMAN OKESON: Wasn't that already a
23 motion, though? We have to vote on it again?

24 VICE CHAIRMAN OVERHOLT: I would move that
25 we -- so we're now waiving the fines?

1 CHAIRMAN OKESON: Well, wasn't that the
2 original motion, that if she --

3 MS. TAYLOR: Yes.

4 MS. CELESTINO-HORSEMAN: You could just waive
5 her fines, right?

6 CHAIRMAN OKESON: Well, yeah, but I guess we
7 have to --

8 VICE CHAIRMAN OVERHOLT: She satisfied the
9 condition precedent. So I would move that we waive
10 the fines and penalties for the Vote Roxanna
11 Hanford matters because she did what we asked her
12 to do.

13 CHAIRMAN OKESON: Is there a second?

14 MS. PYLE: Second.

15 CHAIRMAN OKESON: Any further discussion or
16 questions?

17 Hearing none, all those in favor signify by
18 saying "Aye."

19 VICE CHAIRMAN OVERHOLT: Aye.

20 MS. CELESTINO-HORSEMAN: Aye.

21 MS. PYLE: Aye.

22 CHAIRMAN OKESON: The "ayes" have it.

23 MS. TAYLOR: The next one is on page 2,
24 Citizens for Dave Ring, Cause No. 2021-7082-66. He
25 was told that if he closed his committee, it would

1 be waived at the June 2021 hearing. He did close
2 his committee.

3 CHAIRMAN OKESON: Same?

4 VICE CHAIRMAN OVERHOLT: Yes. I would move
5 that we waive the penalties because he followed our
6 directions.

7 CHAIRMAN OKESON: Having a motion, do I have a
8 second?

9 MS. PYLE: Second.

10 CHAIRMAN OKESON: Any further discussion?

11 Hearing none, all those in favor signify by
12 saying "Aye."

13 VICE CHAIRMAN OVERHOLT: Aye.

14 MS. CELESTINO-HORSEMAN: Aye.

15 MS. PYLE: Aye.

16 CHAIRMAN OKESON: The "ayes" have it.

17 MS. TAYLOR: And then the third and final of
18 these troublemakers is Friends of Sarah Stivers.
19 She's on page 2 and 3, Cause No. 2021-7124-72. She
20 was told in June that if she closed her committee,
21 we would waive the fine; if she did not close her
22 committee, we would reduce it to 25 percent. She
23 has not closed her committee. I think she plans
24 to. She just can't find the amendments to file.

25 CHAIRMAN OKESON: So before we go to a motion,

1 I would just offer, I think if we -- was there any
2 information given as to why? Was there any
3 outreach made from her to staff?

4 MS. THOMPSON: Yes. I actually talked to
5 Sarah Stivers, and before COVID she was in an
6 automobile accident. I don't even know if she
7 finished the election process when she ran, and
8 then COVID hit. And we were trying to talk to get
9 her to close her committee. She said she didn't
10 know mentally she had to sit down and do the
11 reports. And we kind of explained to her I would
12 help her, walk her through them. She was going to
13 try to get her bank statements and get back to me,
14 and I have not heard from her. I think I actually
15 talked to her maybe last week.

16 VICE CHAIRMAN OVERHOLT: She was at the June
17 hearing, right?

18 MS. THOMPSON: Yes.

19 MS. TAYLOR: I think she was. I know Roxanna
20 Hanford was.

21 MS. THOMPSON: Yeah. I don't remember if it
22 was by letter or she attended.

23 VICE CHAIRMAN OVERHOLT: I thought I remember
24 a conversation with someone who was having
25 difficulty with the process.

1 MS. TAYLOR: That was Roxanna Hanford -- I
2 don't know -- who has brain cancer.

3 VICE CHAIRMAN OVERHOLT: So for this one had
4 we said that if she -- we continued it to close it,
5 but then if she --

6 MS. TAYLOR: If she did not close it --

7 VICE CHAIRMAN OVERHOLT: We were going to
8 reduce it.

9 MS. TAYLOR: Reduce, yeah.

10 MS. CELESTINO-HORSEMAN: So I would move that
11 we impose the fine of 25 percent, and if she gets
12 her act together, she can come in and ask us to
13 reconsider.

14 CHAIRMAN OKESON: So state your motion again,
15 please.

16 MS. CELESTINO-HORSEMAN: I move that we go
17 ahead and impose the fine of 25 percent since she
18 failed to close the committee.

19 CHAIRMAN OKESON: Reduce the fine by
20 25 percent or --

21 MS. CELESTINO-HORSEMAN: No. Reduce it to
22 25 percent.

23 CHAIRMAN OKESON: So it would be 250. Is that
24 what you -- 250. Okay. So there's a motion. Is
25 there a second?

1 MS. PYLE: Second.

2 CHAIRMAN OKESON: Any other discussion,
3 questions?

4 All those in favor signify by saying "Aye."

5 VICE CHAIRMAN OVERHOLT: Aye.

6 MS. CELESTINO-HORSEMAN: Aye.

7 MS. PYLE: Aye.

8 CHAIRMAN OKESON: The "ayes" have it. The
9 motion carries.

10 That was it, right?

11 MS. TAYLOR: Yes.

12 CHAIRMAN OKESON: Okay. Are we on defaults?
13 Is there anyone present to testify on any of the
14 remaining campaign finance hearing matters
15 scheduled for today?

16 Seeing none, I declare the hearings on all
17 remaining campaign finance matters scheduled for
18 today closed. Is there now a motion to impose the
19 entire amount of the proposed penalty plus mailing
20 costs on all remaining campaign finance enforcement
21 actions? Anyone want to offer a motion?

22 VICE CHAIRMAN OVERHOLT: So moved.

23 MS. PYLE: Second.

24 CHAIRMAN OKESON: Second. Thank you.
25 Any further discussion on the matter?

1 Hearing none, all those in favor signify by
2 saying "Aye."

3 VICE CHAIRMAN OVERHOLT: Aye.

4 MS. CELESTINO-HORSEMAN: Aye.

5 MS. PYLE: Aye.

6 CHAIRMAN OKESON: Aye.

7 The "ayes" have it. The motion carries.

8 Do we want to take a brief recess and kind of
9 reset ourselves before we head to VSTOP? So
10 10 minutes. Let's try to be back here by 5 till.

11 (Recess taken from 2:47 p.m. to 2:57 p.m.)

12 CHAIRMAN OKESON: Moving on in the agenda, we
13 have the Voting System Technical Oversight Program
14 presentation of revised voting system testing
15 protocols. The chair recognizes our
16 representatives from VSTOP to present revised
17 voting system testing protocols for consideration
18 by the Commission.

19 I do not plan on entertaining a motion to
20 approve these protocols at today's meeting, but
21 instead provide an opportunity for VSTOP staff to
22 explain the history of the current voting system
23 testing protocols and provide an overview of the
24 proposed changes and the role of both co-directors
25 in previously reviewing these proposed changes.

1 Welcome. Remember to state your names for the
2 court reporter.

3 DR. BAGGA: Hello. My name is Jay Bagga,
4 J-a-y, B-a-g-g-a. I'm the co-director of the VSTOP
5 program at Ball State University.

6 DR. BYERS: My name is Bryan Byers, B-r-y-a-n,
7 B-y-e-r-s. I'm also co-director of the VSTOP
8 program at Ball State University.

9 VICE CHAIRMAN OVERHOLT: Before we get going,
10 so why are we not approving today?

11 CHAIRMAN OKESON: Why are we not voting on it?

12 VICE CHAIRMAN OVERHOLT: Yeah.

13 CHAIRMAN OKESON: Brad, do you want to comment
14 on that?

15 MR. KING: Mr. Chairman, members of the
16 Commission, in discussions with the chair, there
17 was an opportunity to be provided for written
18 comments to be submitted by members of the public
19 and for members of the Commission who may not have
20 had a chance to review the very lengthy document
21 that's in the binders. Ms. Nussmeyer and myself
22 have reviewed the material, but since the matter
23 requires a vote of the Commission, the chair
24 directed that there be a provision for written
25 comment for a two-week period from today to gather

1 input from interested parties before voting on the
2 final version of the protocols.

3 CHAIRMAN OKESON: Thanks, Brad. We had
4 discussed this, and I know there's interest in
5 public input, so we wanted to provide an
6 opportunity for folks to hear the protocols being
7 proposed and then offer some public testimony or
8 written comment before we then proceeded to vote on
9 it.

10 MS. CELESTINO-HORSEMAN: So wouldn't the
11 Commission, though, as a whole have to take a vote
12 on whether to allow written comment and testimony
13 and such like that?

14 CHAIRMAN OKESON: Yeah, I believe we would.

15 MS. CELESTINO-HORSEMAN: Okay. So is there a
16 motion then for us to do that?

17 CHAIRMAN OKESON: Well, not yet. We can make
18 one. I was going to have them present the
19 information, but if we want to do it that way, I
20 think that's perfectly fine.

21 So to be clear, there would be testimony
22 provided by the Voting System Technical Oversight
23 Program staff before you. I know there has been
24 voiced some interest to the Election Division staff
25 for some public comment and commentary. My thought

1 was that we would hear the protocols being offered
2 today so that any comments or inquiries can be
3 informed and then we would bring that back for a
4 vote at a later time. I suppose I would make that
5 into a motion.

6 MS. CELESTINO-HORSEMAN: Okay. I can't ask my
7 question unless someone seconded it.

8 CHAIRMAN OKESON: Do you want to second it?

9 MS. CELESTINO-HORSEMAN: I'm not sure.

10 CHAIRMAN OKESON: That doesn't mean the vote
11 will carry.

12 MS. CELESTINO-HORSEMAN: Litany, do you want
13 to make a second?

14 MS. PYLE: Second.

15 VICE CHAIRMAN OVERHOLT: Who made the motion?

16 CHAIRMAN OKESON: The chair did.

17 MS. CELESTINO-HORSEMAN: So what's the
18 deadline of getting everything certified? When do
19 we have to have all this done?

20 CHAIRMAN OKESON: What is the date for that?
21 It would have to be before -- I'm going to seek
22 input from Brad and Val.

23 MR. KING: Mr. Chairman, the Indiana statutes
24 that govern the certification and subsequent
25 marketing and use of voting systems provide two

1 basic things. One is that, once a voting system is
2 certified, it is for a four-year term that expires
3 October 1 in the year following a presidential
4 election year, meaning October 1, 2021. A new
5 voting system is certified -- or would be certified
6 for a four-year term that would end October 1,
7 2025. Any revision to a previously certified
8 system would be certified again from the date of
9 the commission's vote to that October 1, 2025,
10 date.

11 However, that being said, the other component
12 is, for a voting system to be used in an Indiana
13 election, it may be grandfathered under the law.
14 If it was certified prior to October 1, 2021, it's
15 allowed to be used so long as it complies with
16 federal and state law. And so therefore, if there
17 are grandfathered voting systems out there -- and I
18 believe that there are in many counties -- those
19 may continue to be used indefinitely so long as
20 they meet those standards. But for a voting system
21 to be used in an election in 2022 that has not been
22 previously certified, that would have to occur
23 before the May 2022 primary and the events
24 preceding that next year.

25 MS. CELESTINO-HORSEMAN: So is this going to

1 be new stuff -- I mean, they have to be certified
2 before a county can invest more money, update
3 anything with the system, right? Am I
4 understanding that correctly?

5 MR. KING: Yes, Commissioner, that would be
6 correct.

7 MS. CELESTINO-HORSEMAN: So they need to get
8 that as soon as they can, don't they, because this
9 isn't like it's going to be quick turnarounds,
10 right?

11 MR. KING: Well, Commissioner, I can't speak
12 to the individual counties. There may be different
13 situations where counties do not need additional
14 equipment or an upgrade to equipment, but there may
15 be other counties who are seriously considering a
16 purchase and want to make it as soon as possible.
17 So I think both can be true.

18 VICE CHAIRMAN OVERHOLT: I think the concern
19 is that by -- so I -- in my years on the
20 Commission, I don't remember us ever kind of
21 looking at something and saying, oh, now we're
22 going to allow a certain period of time for public
23 comment. I don't remember that happening before.

24 I guess my concern is that -- and I don't mind
25 the public comment. My concern is we're at a

1 hearing where this has been noticed, so I would
2 have thought the public comment could be now. If
3 you're proposing a rule that suddenly seeks written
4 comment, we don't even have a process that I'm
5 aware of for how the Commission addresses that, so
6 we need to create that process.

7 And my concern is that if we haven't done that
8 before and people would see this on the agenda
9 should be here today to discuss this, I'm not sure
10 what the expectation is that there would be some
11 other opportunity. And I'm concerned that we're
12 thwarting -- if there are systems that need to be
13 out there, need to be certified, if counties --
14 just because they've got a system doesn't mean they
15 need to keep using the system, so we're almost like
16 locking in place existing systems that may not be
17 the best. The others, they may want to shop
18 around, but, I mean, what other system is even
19 going to get certified at this point? Because it
20 seems like we're creating a lengthy process.

21 CHAIRMAN OKESON: So let me back up a step.
22 It would be my intent to call another meeting to do
23 so. I think while maybe not on Voting System
24 Technical Oversight protocol reviews, we have done
25 written testimony last year, I believe, as it

1 related to the absentee ballot by mail. We
2 afforded, what, two weeks?

3 MS. WARYCHA: Something like that.

4 CHAIRMAN OKESON: And I believe we asked then
5 the Secretary of State to publish any responses --

6 MS. WARYCHA: We put them in the record.

7 CHAIRMAN OKESON: -- for purposes of being in
8 the record, so we do have some precedent there for
9 taking written testimony.

10 My thinking was we would have the opportunity
11 afforded the VSTOP staff to outline the proposed
12 changes or updates or modifications in protocols,
13 give the public and the Commission some opportunity
14 to digest that, schedule a meeting before we
15 adjourn today to consider that testimony along with
16 the protocols, and vote on it then, so to the point
17 of not delaying this unnecessarily but affording
18 people the opportunity to provide written comment
19 or testimony.

20 VICE CHAIRMAN OVERHOLT: If I could just say,
21 I think we could have avoided this discussion if
22 your side of the table had talked to our side, I
23 mean, the staff, because our staff apparently had
24 no idea that this process was going to be proposed
25 today, which seems counterproductive to me. I

1 mean, I understand that we're from different
2 political parties, but I think we try to work with
3 the combined effort of making sure our elections
4 and the process in Indiana run smoothly.

5 And this lack of communication, I mean, it's a
6 logjam that doesn't have to exist. This could have
7 all been worked out and we could have had a
8 proposal in place. We could have had a meeting
9 with staff. And don't worry, we don't talk behind
10 closed doors because we aren't allowed to do that.
11 But the staff is supposed to be working together
12 and they're not, and, I mean, this is a problem, I
13 think.

14 MS. CELESTINO-HORSEMAN: Mr. Chairman?

15 CHAIRMAN OKESON: Yes.

16 MS. CELESTINO-HORSEMAN: I agree totally with
17 what Suzannah just said, and also, we did not
18 announce, did we, at any time that people could
19 come, listen to this testimony, go back, prepare
20 written comments. We didn't announce this period
21 or anything; correct? I mean, that was well-known
22 in the absentee ballot thing. That was made known
23 to everyone that you had this deadline by which to
24 get your stuff in. Here, the people that are going
25 to be responding to it probably aren't even here

1 because they don't even realize that they're going
2 to have that opportunity, which seems kind of self
3 defeating.

4 I also am concerned because of the stuff
5 that's already out in the field being tested and
6 all of that for the certification process. How is
7 that going to affect that for the certification,
8 other things? I mean, I think it's a wonderful
9 idea. I do love public comment. But I think this
10 needed to be thought out maybe a little bit more
11 about the mechanics and such because I have grave
12 concerns about the time line.

13 CHAIRMAN OKESON: So I believe you're correct
14 that we announced in advance public testimony,
15 which is what my intention was today, to afford
16 folks a few weeks, schedule the meeting, and move
17 forward.

18 I note your comment about communication. I'll
19 take responsibility for that. Certainly not
20 intentional. We were just trying to accommodate
21 the time line, the desire for public input, and to
22 maintain the highest standards possible. The VSTOP
23 folks can get the protocols out in the public
24 record. It can be considered. It can be responded
25 to by the public. There can be an opportunity to

1 afford them input. We'll take that into
2 consideration. We'll make it part of the record
3 moving forward. That's the intention.

4 So to the earlier comment, I believe we'll
5 have to have a motion to accept any written or
6 public input or testimony.

7 MS. CELESTINO-HORSEMAN: Before that, can I
8 ask Mr. King a question?

9 Mr. King, so sitting here today, can you
10 absolutely reassure us that by extending out the
11 voting on this and the deadlines and everything
12 else, it is in no way going to impact the
13 certification of voting systems in such a way that
14 clerks and staff cannot be able to timely make
15 their plans, vendors may not be able to get
16 supplies to people, all that? Because as I
17 understand it, there are voting companies right now
18 that want to be out there marketing and doing
19 things but they're waiting for this certification.

20 MR. KING: Mr. Chairman, Commissioners, I
21 cannot provide an absolute guarantee with regard to
22 the effects of any number of aspects of the
23 certification process on the supply chain, for one,
24 of getting voting equipment to counties who choose
25 to acquire it or the time line for making decisions

1 about purchasing in advance of the May 2022
2 primary. As I indicated earlier, I am certain the
3 answer will vary considerably from county to county
4 and from vendor to vendor. And so, no, I can't
5 offer an ironclad, universal guarantee on that.

6 CHAIRMAN OKESON: I guess so what I'm hearing
7 is, in the essence of time, you'd rather vote on it
8 today.

9 MS. CELESTINO-HORSEMAN: Well, that's what
10 we're trying to figure out. Can we ask Angie to
11 address this, please?

12 CHAIRMAN OKESON: But I just want to clarify.
13 I think that's -- I hear a couple of things there,
14 but what I hear is the desire for the Commission to
15 vote on these protocol changes today.

16 MS. CELESTINO-HORSEMAN: If it's necessary.
17 That's what we're trying to figure out. Nobody
18 seems to be able to say.

19 CHAIRMAN OKESON: And not afford adequate
20 public input?

21 MS. CELESTINO-HORSEMAN: Well, no, that's not
22 the question. That's not the issue.

23 CHAIRMAN OKESON: Well, if we vote on it,
24 there won't be any.

25 MS. CELESTINO-HORSEMAN: That's why we should

1 have thought of this before. I mean, when you're
2 going to do -- there's a whole process for doing
3 public input and such.

4 CHAIRMAN OKESON: Sure.

5 MS. CELESTINO-HORSEMAN: And so you announce
6 to people that here on this date will be the
7 presentation, subsequent to that time your deadline
8 will be two weeks after that so that you can then
9 put forward any written comments.

10 CHAIRMAN OKESON: That's the intention of
11 making this motion at this meeting is to do just
12 that.

13 VICE CHAIRMAN OVERHOLT: I would like to hear
14 from Angie.

15 CHAIRMAN OKESON: Sure. Go right ahead.

16 MS. NUSSMEYER: Thank you, Mr. Chairman. I
17 guess my concern is that, even today, ES&S is at
18 Ball State University having their voting systems
19 tested against the draft protocol, and we've had
20 other voting system vendors also -- and I think
21 Dr. Byers and Dr. Bagga could affirm that -- who
22 have had their systems tested against the draft
23 protocol.

24 So what happens if there is an instance where
25 the Commission decides to make changes to the

1 protocol? Would we be asking them, the voting
2 systems vendors, to come back and be
3 re-field-tested under the revised procedures?

4 Because I know Matthew looked back at past
5 Commission meeting minutes, and I don't recall the
6 last time the Commission adopting a protocol for
7 voting systems where there was an opportunity for
8 public testimony. I think it's great that that is
9 something that you want to do. As the commissioner
10 has explained, it would have been nice to have been
11 apprised of that ahead of this meeting today
12 because the draft protocol has been in place now
13 for four to six weeks in anticipation of a
14 Commission meeting that has not yet been scheduled.

15 So I have several concerns about the counties
16 and the vendors being responsive to the counties.
17 But what happens ultimately if we make a correction
18 to the protocol? What happens to those vendors
19 that have already been tested against the draft
20 protocol? Should we ask them to come back and be
21 retested? And that's fine if the Commission thinks
22 that they should be. You have the ability to ask
23 them to come back. It's just those are additional
24 questions I think we need to think through as we're
25 moving through this process and discussing it here

1 today.

2 MS. CELESTINO-HORSEMAN: Mr. Chair, I would
3 guess that this has arisen out of some of the past
4 meetings we have had where the public has been here
5 wanted to speak. And I think their issues relating
6 to voting machines dealt a lot with processes and
7 security and that type of thing, and they want to
8 be heard on that. And I do think we have an
9 obligation to address those things, but I don't
10 think it necessarily falls in under this.

11 So why couldn't we do something where we
12 address that, have it addressed, and then ask for
13 public input on their areas of concern so the
14 people at least can get that, and we'd then know,
15 going into the future, what their concerns are when
16 we're dealing with these things.

17 MS. PYLE: I guess is this something that
18 VSTOP can be recognized to speak on? Would you
19 guys have that answer to the commissioner's
20 question about whether this is going to hurt
21 certain counties or not?

22 CHAIRMAN OKESON: I'm not sure that that's in
23 their ability to answer other than what the -- go
24 ahead.

25 DR. BYERS: If I may, Bryan Byers, co-director

1 of VSTOP. Commission members, I don't think we can
2 speak to that either. We propose a protocol.

3 CHAIRMAN OKESON: Outside your parameter?

4 DR. BYERS: Yes, it's outside of our work.

5 Thank you.

6 CHAIRMAN OKESON: I understand.

7 MS. PYLE: I guess just changes to the
8 protocol is not going to be something that vendors
9 have to come back and do?

10 DR. BYERS: We would defer to the Commission
11 with regard to that decision.

12 CHAIRMAN OKESON: So to recognize your comment
13 and, I guess, in an effort to be efficient, right,
14 to get this out into the record, have the protocols
15 be heard by the Commission, allow for -- and, yes,
16 it has, I think, arisen out of some outreach to the
17 staff from both sides, the request for public
18 comment. Not knowing whether that commentary would
19 pertain to or impact these potential protocols, it
20 seemed to me appropriate to allow for some public
21 input, written testimony, concerns, questions,
22 comments to be gathered and another meeting to be
23 scheduled before adjourning today to protect the
24 time line to make sure that these protocols are
25 implemented and it doesn't disrupt the process for

1 the voting systems in the counties. Because we can
2 vote on it, but then any public testimony or
3 concern that might be relative or impact these
4 protocols is after the fact.

5 MS. CELESTINO-HORSEMAN: Well, as I understand
6 it, October 1st was the deadline, so it's already
7 been impacted. If we can agree today that no more
8 than two weeks, then --

9 CHAIRMAN OKESON: I'm perfectly fine with --
10 in fact, I think working around the schedule, work
11 around a couple of significant dates relative to
12 holidays and others, but, no, I think that was the
13 game plan. And I'll admit it's not perfectly laid
14 out but wanted to try to achieve multiple goals in
15 one setting, knowing that our meetings can be
16 infrequent.

17 MS. CELESTINO-HORSEMAN: Right. And I would
18 also say that, when we come back in two weeks, the
19 public comment, as I say, my sense, listening to
20 the comments made and such, were that the concerns
21 were about processes and security and not
22 necessarily about what these gentlemen are prepared
23 to address.

24 So that concerns me because, if they're not
25 going to be addressing the things like, you know,

1 magnets affecting or whatever, then we've allowed
2 this testimony, but then we have to say we don't
3 have anybody to talk about that with you, so --

4 CHAIRMAN OKESON: But those are the comments
5 that we know about, right, and this is to capture
6 what we don't know, to truly afford the public to
7 weigh in and comment.

8 VICE CHAIRMAN OVERHOLT: I was going to say it
9 sounds like what we ought to -- I think that if
10 there are people who want to talk about this, yes,
11 we should let them talk about it. I would say
12 that -- so I think we, yes, hopefully will be able
13 to establish a very tight time line.

14 I hope the lesson we learn from this is that
15 if these protocols have been out there for four to
16 six weeks and vendors are relying on them for four
17 to six weeks, it seems like we're doing this
18 backwards. It seems like if the protocol --
19 because actually I'm sitting here thinking, well,
20 wait, if vendors are already relying on the
21 protocol, what is -- because I don't view myself as
22 a rubber stamp, so I'm wondering why it is that
23 vendors have been relying on protocols that haven't
24 even been presented, haven't been acted upon by the
25 Commission yet.

1 So I think we've got to fix that type of
2 process. We've got to fix the process where we
3 want public comment. The public comment needs to
4 come before people start acting on whatever they're
5 commenting on, right? So I think that just for
6 future reference --

7 CHAIRMAN OKESON: Agreed.

8 VICE CHAIRMAN OVERHOLT: -- I think we need to
9 reverse the way we're doing things because it seems
10 like we're doing things backwards.

11 CHAIRMAN OKESON: Well, I agree with the first
12 part of your comment. That, again, was the
13 intention of today, right, was not to vote on this
14 and then allow for public comment that couldn't
15 change the course of action, rendering it moot as
16 it were.

17 Okay. Where are we going from here? It is
18 not my intention to vote on this today.

19 VICE CHAIRMAN OVERHOLT: Well, but we're
20 hearing the presentation from VSTOP about it;
21 right?

22 CHAIRMAN OKESON: I think they were wanting to
23 get --

24 VICE CHAIRMAN OVERHOLT: Yeah. So we'll do
25 that.

1 DR. BYERS: If you want us to present.

2 CHAIRMAN OKESON: Well, I think in the essence
3 of time that's been noted here, it would be good to
4 get it out in the record, so I would like to hear
5 you present the information.

6 VICE CHAIRMAN OVERHOLT: Actually is there a
7 motion pending or no?

8 CHAIRMAN OKESON: I don't even remember. Was
9 there a motion?

10 VICE CHAIRMAN OVERHOLT: So if there's no
11 motion, then it doesn't matter.

12 CHAIRMAN OKESON: Well, so I guess I would --
13 I think I made a motion --

14 MS. WARYCHA: You're right.

15 CHAIRMAN OKESON: -- to allow for a two-week
16 period of time to allow for public written
17 testimony based on, in part, the presentation by
18 the staff from VSTOP with -- and I'll propose any
19 public comment to be provided no later than
20 November 10, 2021.

21 VICE CHAIRMAN OVERHOLT: So then does that
22 mean we're having a meeting on November 10th?

23 CHAIRMAN OKESON: Well, we need to schedule a
24 meeting. That doesn't mean it has to be on the
25 10th.

1 MS. CELESTINO-HORSEMAN: Wouldn't we have to
2 have time to read that public comment since we
3 won't be taking a vote?

4 CHAIRMAN OKESON: That seems like it would be
5 nice. Like I said, it doesn't have to be on the
6 10th. So taking that into consideration, we'll
7 look at calendars. What day is the 10th on?

8 VICE CHAIRMAN OVERHOLT: It's a Wednesday, so
9 that means the 17th is the Wednesday after that.

10 CHAIRMAN OKESON: Monday's the 15th?

11 MS. WARYCHA: The 12th, you have a conference
12 that day.

13 DR. BYERS: Yes. On the 12th we have -- in
14 the afternoon we have an electronic poll book
15 vendor conference.

16 CHAIRMAN OKESON: Okay. So the 12th is a
17 no-go for you.

18 DR. BYERS: Yeah.

19 CHAIRMAN OKESON: The 15th?

20 DR. BYERS: One moment. Yes, the 15th is a
21 go.

22 CHAIRMAN OKESON: I can make it work.

23 VICE CHAIRMAN OVERHOLT: The 15th works for
24 us.

25 CHAIRMAN OKESON: Okay. So let's back up a

1 step. I'll offer a motion based upon, in part, the
2 testimony provided by VSTOP, a two-week period of
3 time to allow for any public commentary or input to
4 be submitted no later than November 10, 2021, with
5 a meeting to be set for Monday, November 15th, at
6 1:30 p.m. at a place to be determined, based on
7 availability, to vote on the protocols with public
8 commentary under consideration.

9 MS. CELESTINO-HORSEMAN: Mr. Chair, how are --
10 the requests for written comments, are they going
11 to be received by email, by fax, do you want them
12 by mail, where are we going to post that
13 information, all of that?

14 CHAIRMAN OKESON: Send them to the Election
15 Division, Secretary of State's office, both?

16 MR. KING: Mr. Chairman, speaking for myself,
17 the Election Division routinely receives
18 communications directed to the Commission, and so
19 we could certainly do as we have with campaign
20 finance matters and compile the documents, whether
21 they're in email form or letter form, and provide
22 those to the Commission members.

23 CHAIRMAN OKESON: So refer to the Commission
24 website for mailing instructions, email addresses,
25 and the like for communication?

1 MR. KING: Yes, Mr. Chairman.

2 MS. PYLE: I'd like to second the motion.

3 CHAIRMAN OKESON: Do you want me to restate
4 the motion again?

5 VICE CHAIRMAN OVERHOLT: I think we've got
6 the -- yeah, I'll second that.

7 CHAIRMAN OKESON: Okay. So we have a motion
8 and a second. Any further conversation, questions?

9 All those in favor signify by saying "Aye."

10 VICE CHAIRMAN OVERHOLT: Aye.

11 MS. CELESTINO-HORSEMAN: Aye.

12 MS. PYLE: Aye.

13 CHAIRMAN OKESON: The "ayes" have it. The
14 motion carries. That's how we'll proceed.

15 With that, I will turn it over to our friends
16 from VSTOP.

17 DR. BYERS: May we make a request before we
18 give our formal presentation --

19 CHAIRMAN OKESON: Sure.

20 DR. BYERS: -- about the changes to the
21 protocol? That is, in addition to public comment,
22 we would like to see vendor comment as well, and we
23 would very much like to do that during the same
24 period of time.

25 CHAIRMAN OKESON: Absolutely. Do we need to

1 make a motion on that? I mean, it's considered
2 public comment; correct? Brad, go ahead.

3 MR. KING: Excuse me. Mr. Chairman, as I
4 understand the motion, it would be open to any
5 entity, be they an individual, a vendor, anyone of
6 any capacity who wished to provide comment.

7 DR. BYERS: Thank you.

8 MS. CELESTINO-HORSEMAN: Mr. Chair, it's my
9 understanding -- how would this be different,
10 because didn't the vendors already comment on the
11 protocols that are now in place?

12 DR. BYERS: They've seen --

13 MS. CELESTINO-HORSEMAN: Yeah, and they were
14 allowed the opportunity to comment as well.

15 CHAIRMAN OKESON: But to Brad's point about
16 how the motion is created, if they want to offer
17 comment, they certainly can. Thank you, though.

18 Please proceed with your presentation. Thank
19 you.

20 DR. BAGGA: Mr. Chairman, members of the
21 Commission, we are pleased to present the updated
22 Indiana voting system certification protocol for
23 approval by the Commission. This protocol contains
24 updates with the various legislative changes,
25 recent Indiana election code changes, and also

1 recommendations and review by Indiana Election
2 Division.

3 This protocol has been a work which is really
4 a collaboration between VSTOP and Indiana Election
5 Division. They have reviewed the entire protocol,
6 and they have reviewed the changes we made. And
7 the protocol is a list of guidelines that guide
8 VSTOP in the certification process from the time a
9 vendor submits an application, provides
10 certification of a new system or renewal of a
11 certified system which is expiring or has expired
12 or an application for changes to a system. So
13 those are the three categories in which an
14 application can come in.

15 So then VSTOP reviews the application
16 according to the protocol, looks at compliance with
17 all of the Indiana election code mandates,
18 including any federal mandates provided by the
19 Voluntary Voting System Guidelines, which are
20 included in Indiana Code. And VSTOP reviews the
21 test reports from partner testing labs and reviews
22 the technical data package submitted by the vendor.
23 And then VSTOP conducts its own review and its own
24 tests which test the various functionalities to
25 ensure compliance with Indiana election code and

1 also conducts a mock election.

2 And after all these tests have been concluded
3 and the review has been concluded and all of the
4 documentation has been received, VSTOP then
5 prepares a report, which it submits to IEC/IED.

6 Dr. Byers, would you like to add to that?

7 DR. BYERS: Yeah. Thank you, Dr. Bagga.

8 The only thing I would add is that during the
9 testing process -- and this has always been the
10 case -- there is also an ADA testing protocol that
11 we follow in order to -- and we bring in folks to
12 do that for us and report on the results of that,
13 and that's included in the reports that we've
14 provided.

15 VICE CHAIRMAN OVERHOLT: Can you highlight
16 what the major changes or additions have been to
17 the testing protocol versus what has been included
18 in the past.

19 DR. BAGGA: Certainly. A few of the
20 highlights, one new Indiana requirement is that the
21 hash code verification of the system be made. A
22 hash code verification is a system identification
23 which shows that the software and the hardware that
24 has been approved at the testing lab is exactly the
25 same or is identical to the hardware and software

1 that would be marketed to counties. And the way to
2 do that is to generate a hash verification code,
3 and the code has to be identical. So that shows
4 that the two versions are identical and there have
5 been no changes in the approved system versus the
6 test system.

7 Then some other highlights include we have
8 added compliance requirements for different kinds
9 of ballots that are tested. We also have the state
10 party system mock election where all of the state
11 party, the Indiana requirements are tested. That
12 was changed in the last few years. So those are
13 some of the highlights.

14 DR. BYERS: I would add to that list there's
15 also some additional definitions that have been
16 added to the protocol for clarity and organization
17 of the protocol in terms of how it's laid out so
18 it's easier to understand by those who may not be
19 as familiar as we are with the protocol. So those
20 are also included in this revision.

21 VICE CHAIRMAN OVERHOLT: I know that staff
22 were pretty involved in this, to my understanding.
23 Did staff want to make any comments about the
24 protocol?

25 MS. NUSSMEYER: If I might, Mr. Chairman.

1 CHAIRMAN OKESON: Please go ahead.

2 MS. NUSSMEYER: One area that we really
3 focused on in revising the protocols was to
4 actually create elections and providing names of
5 candidates and requiring vendors to follow our
6 ballot layout standards that comport with statute.
7 So every vendor now is tested against the same
8 candidate, candidate names, variations, testing all
9 the specific tabulating statutes within state law.
10 The protocol now is very specific in that regard so
11 that vendors are expected to have a ballot layout
12 that comports with statute that VSTOP then can
13 check against when the vendors file those ballots
14 with them.

15 So Appendix D was heavily revised by myself
16 and Matthew, of course, with Brad and Valerie's
17 help as part of their review. So that's just an
18 area that I'm particularly proud of, to hold
19 vendors more accountable to create a ballot that is
20 meant to look like what a voter sees on Election
21 Day and, again, testing those variations of
22 tabulation.

23 And we also included an Excel spreadsheet
24 where VSTOP had started with specific information
25 about Indiana law, but we expanded upon it so that

1 it would be an easy reference to the commissioners
2 to see whether or not the voting system vendors
3 pass or fail, not just on the electrical, the
4 hardware side, but also on the way that they lay
5 out their ballot and that the tabulation comports
6 with what we expect out of state law.

7 So that's all I wanted to add. It was a
8 really terrific collaborative process between VSTOP
9 and our office. We really improved upon what was
10 already here and available for vendors to follow,
11 but now there's more specificity with the
12 expectations laid forth in a much more direct way
13 than maybe it had been previously.

14 MR. KING: Mr. Chairman, if I can add, I
15 concur entirely with Angie's description with
16 regard to the improvements made to Appendix D.
17 This was certainly a collaborative effort where the
18 co-directors might not initially agree with regard
19 to particular components in an appendix and worked
20 through those to come up with a solution that's
21 being presented for consideration today.

22 I would also take the opportunity to address
23 one point with regard to the protocols and the
24 implementation. I had confirmed that my
25 recollection was correct that in the past, when the

1 voting system vendors visited Ball State to undergo
2 testing and there was some issue that was left
3 unresolved, either because the vendor could not
4 respond or because the issue did not arise when
5 they were there, that Ball State and the vendor
6 agreed to a virtual testing so that the compliance
7 of the system with the standard could be documented
8 without having the requirement for the physical
9 presence of the vendor at the Ball State campus.

10 So I think everybody involved has been working
11 very hard, including VSTOP, to bring the best
12 possible version of this document to you.

13 MS. NUSSMEYER: And, Mr. Chairman, if I could
14 just piggyback on Brad's comments. To be clear
15 about one part, even though the vendor may be
16 participating virtually, the equipment itself is on
17 the campus of Ball State University, and VSTOP
18 staff are the ones going through and testing every
19 ballot in a way that the system's tabulating it at
20 the expected route. So I didn't want anyone to get
21 the impression that VSTOP was sitting in a room
22 watching a vendor doing something elsewhere.
23 That's not, in fact, true. It is, in fact,
24 delivered and their team does a hands-on field
25 test.

1 MR. KING: And, Mr. Chairman, that is exactly
2 correct.

3 CHAIRMAN OKESON: That's a great point. Thank
4 you.

5 MS. CELESTINO-HORSEMAN: Mr. Chairman?

6 CHAIRMAN OKESON: Yes.

7 MS. CELESTINO-HORSEMAN: In the invitation for
8 public comment, will this document be posted right
9 there with it so they can access it since this is
10 what we're asking them to comment on?

11 CHAIRMAN OKESON: Yes.

12 MS. CELESTINO-HORSEMAN: Thank you.

13 CHAIRMAN OKESON: Anything else for Mr. Byers
14 and Mr. Bagga?

15 Thank you, gentlemen.

16 DR. BYERS: Thank you.

17 DR. BAGGA: Thank you.

18 CHAIRMAN OKESON: We'll see you on the 15th.
19 You sat through all the campaign finance too?

20 DR. BYERS: It's okay. Thank you.

21 CHAIRMAN OKESON: Thank you.

22 MS. NUSSMEYER: And out before rush-hour
23 traffic.

24 CHAIRMAN OKESON: One more matter to discuss
25 before adjournment. It has been brought to the

1 commission's attention by our Election Division
2 staff of the gap that currently exists in state
3 law, Indiana Code 3-11-4-3, specifying the deadline
4 for a voter with print disabilities to file an
5 application for absentee ballot requesting the
6 ballot be sent to the voter by mail or fax
7 transmission.

8 I've expressed my concern that the Indiana
9 Election Commission may not have the authority to
10 fill this gap by setting a deadline in this case.
11 As a result, in my capacity as chair, I requested
12 an informal advisory opinion from the Office of the
13 Attorney General and received such a response,
14 which I would now ask our co-counsel, Valerie
15 Warycha, to read into the record. Valerie.

16 MS. WARYCHA: This opinion is from Attorney
17 General Todd Rokita's office to Chairman Okeson.

18 "You requested an opinion regarding whether
19 the Indiana Election Commission has the ability to
20 set an election law deadline when applicable state
21 law does not provide for one.

22 "Question: Where the Indiana General Assembly
23 enacts legislation to provide for a combined voter
24 registration and absentee ballot application
25 process for voters with print disabilities but does

1 not provide for a deadline to request such form,
2 may the Indiana Election Commission set a deadline
3 for emergency rule or other order?

4 "Brief answer: No; the Indiana Election
5 Commission does not have the authority by statute
6 to implement such a policy by rule or other order.
7 Any such provision may come from the Indiana
8 General Assembly through the legislative process."

9 And then there's "Background: During the
10 First Session of the 122nd General Assembly (2021),
11 the Indiana General Assembly passed Senate Enrolled
12 Act No. 398, which made comprehensive updates to
13 Indiana's election laws. As part of those updates,
14 Indiana Code 3-11-4-5.8 was added to provide a new
15 process for voters with print disabilities to
16 request a voter registration application and an
17 absentee ballot application. However, the Indiana
18 General Assembly appears to have failed to set a
19 deadline for a timely application for an absentee
20 ballot by email or fax of a voter with print
21 disabilities under either Indiana Code 3-11-4-3 or
22 Indiana Code 3-11-4-6. Certain members of the
23 Indiana Election Commission have requested the
24 Commission to act to account for this void and
25 issue an edict to inform county election boards of

1 the Commission's view as to what the deadline would
2 be for a voter with print disabilities to submit an
3 absentee ballot application to receive a ballot via
4 fax or email. Effectively, the request is for the
5 Commission to establish an election deadline where
6 none exists by statute. This request, in turn,
7 forms the basis of this memorandum.

8 "Analysis: Powers and Duties of the Indiana
9 Election Commission. The Commission was
10 established pursuant to Indiana Code 3-6-4.1-1.
11 The Commission is comprised of four members
12 appointed by the governor and each member must be a
13 registered voter of Indiana and a member of a major
14 political party of the state, with not more than
15 two of the members from the same political party.
16 Indiana Code 3-6-4.1-2. The Commission is
17 delegated authority to administer Indiana election
18 laws and to advise and exercise supervision over
19 local election and registration officers. Indiana
20 Code 3-6-4.1-14. Additionally, the Commission has
21 authority to adopt rules, including emergency
22 rules, to govern the fair, legal, and orderly
23 conduct of elections, rules governing campaign
24 finance, rules governing the establishment of
25 precincts, and rules specifying the procedures and

1 fees for the processing of an application from a
2 vendor for voting system approval and testing. The
3 Commission may also hold hearings in accordance
4 with the Administrative Orders and Procedures Act
5 as well as issue advisory opinions.

6 "The Commission Lacks the Authority to Set
7 Deadlines Absent Legislative Delegation.

8 Generally, the Indiana General Assembly is vested
9 with responsibility and authority for providing
10 state election laws designed to efficiently and
11 fairly govern voting procedures. *Horseman v.*
12 *Keller*. While such authority is vested with the
13 legislature, some of the authority may be
14 delegated: The Legislature may set up machinery
15 for the conduct of elections, and delegate to
16 ministerial or executive agencies the duty of
17 conducting elections, and may prescribe the
18 procedures by which elections may be contested, so
19 long as they stay within their constitutional
20 powers, and such procedure conforms to the law,
21 such steps and procedures will be governed by the
22 legislative rules prescribed.

23 "(Citing *Nicely v. Wildey*). Indeed, the
24 Constitution provides that state legislatures have
25 primary responsibility for setting election rules.

1 Article 1, Section 4, clause 1. Accordingly,
2 unless the Indiana General Assembly specifically
3 delegates its authority to the Commission to set
4 election-related deadlines, then such power is
5 non-existent. *Tyus v. Indianapolis Power & Light*
6 *Co.* Here, no such delegation exists. The
7 Commission possesses the general duties and powers
8 to administer election laws. It cannot, however,
9 create laws. There are many instances throughout
10 Indiana election law where the legislature has
11 clearly spoken on election-related deadlines.
12 Indiana Codes 3-11-4-3, 3-7-13-10, and 3-11.5-4-10.
13 From those examples, it is apparent the General
14 Assembly did not mean to set standards and delegate
15 such authority to the Commission. See *Gunderson v.*
16 *State, Indiana Department of Natural Resources.*
17 ('The legislature may only delegate rule-making
18 powers to an administrative agency if that
19 delegation is accompanied by sufficient standards
20 to guide the agency in the exercise of its
21 statutory authority.')

22 "While it is true the Commission is granted
23 the authority to supervise local election and
24 registration offices as well as issue advisory
25 opinions, such actions certainly do not entail the

1 ability to make or prescribe law. This would be
2 unconstitutional. See Tyus, ('legislature cannot
3 delegate the power to make a law.' [citing
4 Gunderson]). The Commission has previously
5 utilized its authority to extend deadlines pursuant
6 to orders issued under Indiana Code 3-6-4.1-17,
7 which are powers derived by public health crisis or
8 natural disaster declared by the governor, not by
9 exercising the grant of a unilateral power.
10 Likewise, the Commission has previously issued
11 advisory opinions interpreting election laws under
12 Indiana Code 3-6-4.1-25. However, such opinions
13 only apply to enacted laws, not prescribing its own
14 set of laws.

15 "Here, the legislature has not spoken or set
16 deadlines for application submission, and any
17 guidance or advisory opinion issued to set a
18 deadline for application submission would be
19 de facto lawmaking. That, the Commission clearly
20 cannot do as a branch of the executive. While it
21 is an unfortunate oversight by the Indiana General
22 Assembly to not include proper application
23 deadlines for voters with print disabilities to
24 request absentee ballots, such errors may only be
25 corrected through the legislative process, not by a

1 body of unelected officials. To provide otherwise
2 would run contrary to the separation of powers and
3 general constitutional principles.

4 "Conclusion: Where the General Assembly does
5 not provide for a deadline under existing Indiana
6 laws, the Commission is prohibited from doing so
7 under its existing powers and duties. To do
8 otherwise would be engaging in the prescription of
9 election laws, a uniquely legislative function, in
10 contravention of constitutional principles. Any
11 such change must come as a result of the
12 legislative process.

13 "Sincerely, Todd Rokita."

14 CHAIRMAN OKESON: Thank you. I would open it
15 up for any discussion amongst the Commission
16 members.

17 VICE CHAIRMAN OVERHOLT: I guess in response
18 to that and, I think, for clarification of the
19 whole record, I would like to -- there's a letter
20 that Commissioner Celestino-Horseman and I sent to
21 Chairman Okeson that, I think, looks like maybe
22 precipitated the request to the Attorney General's
23 Office. So I guess I would read that in. Sorry to
24 bore everyone with these lessons in reading aloud,
25 but if I might, Mr. Chairman.

1 CHAIRMAN OKESON: Sure. Go ahead.

2 VICE CHAIRMAN OVERHOLT: And then we'll offer
3 it, I guess, too. This is September 1, 2021.

4 "Dear Chairman Okeson: It has been brought to our
5 attention by the Democratic staff of the Indiana
6 Election Division that there is an issue regarding
7 the deadline for a county to receive an application
8 from a voter with print disabilities for an
9 absentee ballot to be sent by fax or email. Given
10 that there are special elections scheduled in two
11 counties this November, we believe the Indiana
12 Election Commission should address this matter.

13 "This year the Indiana General Assembly
14 enacted Senate Enrolled Act 398 (P.L.109-2021)
15 which, among other things, allows a voter with
16 print disabilities to apply to receive an absentee
17 ballot by fax or email, similar to the method that
18 military and overseas voters can use to receive an
19 absentee ballot. The legislature has defined
20 'voters with print disabilities' to mean an
21 'individual who is unable to independently mark a
22 paper ballot or ballot card due do blindness, low
23 vision, or a physical disability that impairs
24 manual dexterity.' (IC 3-5-2-50.3).

25 "After SEA 398 was signed into law, the

1 Democratic staff realized that the General Assembly
2 did not amend IC 3-11-4-3, which is the absentee
3 ballot application deadline statute, to include a
4 deadline for when a voter with print disabilities
5 must submit an application to receive an absentee
6 ballot by fax or email as allowed under
7 IC 3-11-4-6. Our review of the statute confirms
8 this omission.

9 "Section 3(a)(2)(B) only provides that an
10 absent uniformed services voter (military) or
11 overseas voter who requests an absentee ballot be
12 transmitted by fax or email must submit the
13 application by the end of the day before the
14 election. There is no reference to voters with
15 print disabilities. No other subsection in
16 Section 3, especially subsection (a)(4), would
17 apply as those deadlines pertain to requesting an
18 absentee ballot to be provided by other methods,
19 such as by mail or travel board.

20 "While in the end it will be left to the
21 General Assembly to amend the law to provide a
22 definitive deadline for voters with print
23 disabilities to apply for absentee ballot to be
24 sent by fax or email, this change would not take
25 place until 2022. However, there are special

1 elections scheduled in precincts in Elkhart and
2 Porter County for November of this year where this
3 could become an issue. Because of this we believe
4 the Election Commission should use its powers and
5 responsibility to administer Indiana election law
6 to advise these counties what the deadline is for
7 these applications.

8 "According to IC 3-6-4.1-14(a)(1), the Indiana
9 Election Commission shall administer Indiana
10 election laws. Subsections (a)(3) and (b) of the
11 same statute provide the Commission shall advise
12 and exercise supervision over local election and
13 registration officers, while not divesting a county
14 election board of any powers and duties imposed on
15 the board under IC 3-6-5, except when the board is
16 deadlocked on a question that is later submitted to
17 the Commission for final determination.

18 Additionally, IC 3-6-4.1-25(2) provides the
19 Commission may, to administer Indiana election law,
20 issue advisory opinions. In this case, as the
21 Indiana Code fails to expressly provide a deadline
22 by which print disabled voters must submit a
23 request by fax or email to vote by fax or email,
24 the Commission's taking action will not divest the
25 local election boards of any authority delegated by

1 statute.

2 "The Commission has used its powers under
3 Sections 14 and 25 in the past. Most recently, in
4 2020, the Commission adopted Orders 2020-37 and
5 2020-40, through which, in part, the Commission
6 advised county election boards and circuit court
7 clerks on how to execute certain election duties
8 and responsibilities during the COVID-19 pandemic
9 when local and state public health mandates were in
10 effect.

11 "Additionally, the Commission used the same
12 power in 2015 to issue Advisory Opinion 2015-1 to
13 opine that IC 3-9-3-5, which prohibits candidates
14 for elected office from stating in political
15 communications that they are the incumbent in an
16 office when they do not hold the office, is not
17 violated when certain words or phrases are not used
18 in the communication.

19 "Consistent with the procedure the Commission
20 followed in 2015, we request that you call a
21 meeting of the Commission to discuss this matter
22 and work toward issuing an advisory opinion that
23 would inform county election boards of the
24 Commission's view of when the deadline would be for
25 a voter with print disabilities to submit an

1 application to receive an absentee ballot by fax or
2 email. We also suggest that the Commission
3 recommend to the General Assembly that what is
4 advised in the opinion be codified through
5 legislation.

6 "We hope that we can work together to resolve
7 this issue so that the law is applied in a uniform
8 fashion by the counties holding special elections
9 in 2021.

10 "Sincerely, Suzannah Overholt and Karen
11 Celestino-Horseman."

12 MS. CELESTINO-HORSEMAN: Mr. Chairman?

13 CHAIRMAN OKESON: Thank you.

14 Yes. Go ahead.

15 MS. CELESTINO-HORSEMAN: First of all, I want
16 to clarify, Valerie did not write this letter. The
17 primary signatory on this letter that she read was
18 Todd Rokita. And, quite honestly, I find his
19 letter so disingenuous because he's trying to cast
20 this Commission as if it were trying to issue
21 rules, he calls it, making legislation, enacting
22 laws. That is not what's happening. We are
23 talking about an advisory opinion, that the
24 counties can or cannot choose to follow. It's up
25 to them. All it is is a piece of advice.

1 And so for him to sit there and say we're
2 doing all those things, after saying on page 2 of
3 his letter that we have the authority to do
4 advisory opinions, I find rather disingenuous. And
5 I don't think it's a well-reasoned legal opinion,
6 and, quite honestly, I would not have signed it.

7 So having said that, I think by issuing
8 advisory opinion, what we do do is provide these
9 two counties that are going through the special
10 election without a law in place some cover.
11 Because we already know we have print disability
12 litigation going on, so if we advise them and say
13 you can take this up to the absolute last day and
14 we know that there's nothing in place, they are now
15 protected because, if they can be sued, what are
16 they going to sue them for, that you failed, you
17 cut it off too soon, you should have gone and done
18 it the same way as they do in the military or
19 whatever? But, again, it's advice. If they don't
20 want to do it, they don't have to do it.

21 So I am rather puzzled as to why Mr. Rokita
22 would not want to provide assistance to these
23 counties and not want to make it so they don't want
24 to be sued, and the only reason I can think that he
25 might want to do that is because of our letter from

1 the two Democratic members. I am totally stymied
2 on this, in case you couldn't tell.

3 CHAIRMAN OKESON: No. Thank you. Correct me
4 if I'm wrong. There are county election boards;
5 right? Each county has an election board; right?
6 So --

7 MR. KING: Mr. Chairman, if I could just
8 respond --

9 CHAIRMAN OKESON: Sure.

10 MR. KING: -- just with a nuanced answer.
11 Porter County has a combined board of elections and
12 registration that is essentially the same as the
13 Elkhart County Election Board, but yes in both
14 cases.

15 CHAIRMAN OKESON: Of course, you would know
16 that little detail.

17 I guess I appreciate your comments. I don't
18 find any fault with Attorney General Rokita's
19 letter obviously because I asked him to write one
20 and give his opinion and he has done that. And I
21 am not in a position to question what I've asked
22 for. Whether I agree with it or not is irrelevant.

23 I think that I can understand your comments
24 and take them as you stated them, but I think if
25 the counties are at all ambiguous about this, they

1 have their own governance structure in the form of
2 a county election board to deal with it until the
3 General Assembly takes action to provide further
4 clarification in the statute.

5 VICE CHAIRMAN OVERHOLT: I guess I think that
6 you -- I mean, we submitted a proposed advisory
7 opinion, which I think you have, and I think the --

8 CHAIRMAN OKESON: Yes.

9 VICE CHAIRMAN OVERHOLT: So the proposed --
10 our proposed advisory opinion, I think, makes
11 pretty clear in the language that we are simply --
12 we're not creating something new; we are pointing
13 out what exists in statute, which I think would be
14 helpful to the counties that have the misfortune, I
15 guess, of having to conduct special elections this
16 year when everyone else gets to take a bye here. I
17 can remember working elections, and it was always
18 nice to have those off years.

19 Anyway, and I think my concern is that to
20 suggest that each county election board or
21 whatever, board of elections or whatever, that they
22 do their own thing is problematic. I think part of
23 what we try to do is make sure that there is some
24 consistency across the state, so by leaving it to
25 the election boards -- I mean, I'm sure that if

1 these special elections were involving a matter of
2 what we considered to be more statewide
3 significance, we maybe wouldn't take that approach.
4 And if we wouldn't take that approach for what we
5 consider to be a more significant election, we
6 certainly shouldn't take it for what isn't
7 necessarily going to impact the rest of the state.

8 So I think it's important to offer guidance.
9 As the attorney general did recognize in his
10 opinion, we actually have the authority to issue
11 advisory opinions, and I think this is advising the
12 counties as to what state law indicates with
13 respect to these guidelines.

14 CHAIRMAN OKESON: To me, that's where you
15 cross the line. To me, that's where you start
16 acting as if, right? What should it be? And we're
17 not elected officials on this Commission; we're
18 appointed. None of these people voted for us. I'm
19 not -- I don't disagree with the fact that there
20 might be some ambiguity there. There clearly is.
21 I'm just stating this is not -- we don't make that
22 call in this room with 12 people. That's not how
23 this should be done, in my opinion, and I think the
24 attorney general's opinion reflects that same
25 sentiment.

1 MS. CELESTINO-HORSEMAN: Attorney general says
2 we have the authority to issue advisory opinions.
3 I agree with him on that one point. This advisory
4 opinion states in Section 1 "shall serve as
5 guidance" and that, in Section 2, it states that
6 there's nothing that establishes the deadline.
7 Section 3, it simply states "the absentee ballot
8 return deadline is 6:00 p.m., local prevailing
9 time" for people other than absentee voters and
10 such. Section 4 says that we ask the legislature
11 to take action on this. Section 5 directs the
12 Election Division to forward a copy of this
13 advisory opinion to each county election board.

14 That's all it says is that you've got a
15 problem here and you need to address it; if we were
16 addressing it, we would do this, but it's up to
17 you. Now --

18 CHAIRMAN OKESON: So I would say, in the
19 essence of time and with real respect -- I mean
20 that -- I've read it and I appreciate it. I would
21 say offer a motion.

22 VICE CHAIRMAN OVERHOLT: I would move that the
23 Commission issue the advisory opinion that has been
24 tendered today that is in re concerning the
25 deadline for a voter with print disabilities to

1 request an absentee ballot by fax or email under
2 Indiana Code 3-11-4, which looks like it was
3 formally filed and received by the Election
4 Division today at 11:49 a.m.

5 MS. CELESTINO-HORSEMAN: I'll second.

6 CHAIRMAN OKESON: So having a motion and a
7 second, is there any further discussion on the
8 matter?

9 Let's do an individual vote, then, please, on
10 the motion.

11 Karen?

12 MS. CELESTINO-HORSEMAN: Aye.

13 VICE CHAIRMAN OVERHOLT: Aye.

14 CHAIRMAN OKESON: Nay.

15 MS. PYLE: Nay.

16 CHAIRMAN OKESON: There is not unanimity, so
17 the motion does not carry.

18 MS. CELESTINO-HORSEMAN: Your Honor --

19 CHAIRMAN OKESON: I wish.

20 MS. CELESTINO-HORSEMAN: You are an honorable
21 man, but...

22 I would like to ask that a copy of this
23 advisory opinion be posted on the website. I don't
24 know -- being new, I don't know what the protocols
25 are, but I would assume that we do make this stuff

1 available on there, on the website, so that
2 people -- I mean, we want public interest, so that
3 they can see what we've considered and what we've
4 discussed and all.

5 CHAIRMAN OKESON: Well, I think both have been
6 entered into the record today, correct, and that
7 will be made public as a matter of meeting minutes
8 and the court reporter's report, so your request
9 will be granted.

10 MS. CELESTINO-HORSEMAN: Thank you.

11 VICE CHAIRMAN OVERHOLT: And, sorry, I would
12 offer our letter as part of the record too since I
13 read it so we can post the letter, not just the
14 transcription.

15 CHAIRMAN OKESON: Done. Well, thank you.
16 This was, believe it or not, one of our more brief
17 meetings. I'm just kidding. But we got through a
18 lot today and I appreciate it.

19 MS. CELESTINO-HORSEMAN: Litany talked too
20 much.

21 CHAIRMAN OKESON: With that, I believe we've
22 finished our business for the day. Is there a
23 motion to adjourn?

24 MS. CELESTINO-HORSEMAN: So moved.

25 CHAIRMAN OKESON: Second?

1 VICE CHAIRMAN OVERHOLT: Second.

2 CHAIRMAN OKESON: All those in favor signify
3 by saying "Aye."

4 VICE CHAIRMAN OVERHOLT: Aye.

5 MS. CELESTINO-HORSEMAN: Aye.

6 MS. PYLE: Aye.

7 CHAIRMAN OKESON: The meeting is adjourned.

8 Thank you.

9 (The Indiana Election Commission Public
10 Session was adjourned at 3:58 p.m.)

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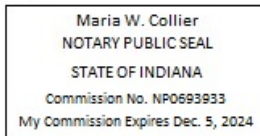
1 STATE OF INDIANA
2 COUNTY OF HAMILTON

3 I, Maria W. Collier, a Notary Public in and
4 for said county and state, do hereby certify that the
5 foregoing public session was taken at the time and
6 place heretofore mentioned between 1:35 p.m. and
7 3:58 p.m.;

8 That said public session was taken down in
9 stenograph notes and afterwards reduced to typewriting
10 under my direction; and that the typewritten
11 transcript is a true record of the public session.

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my notarial seal this 9th day of
14 November, 2021.

15
16 *Maria W. Collier*



21 My Commission expires:
22 December 5, 2024

23 Job No. 166821
24
25

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STATE OF INDIANA

INDIANA ELECTION DIVISION

Indiana Election Commission

2021 OCT 27 PM 4:30

Indiana Election Commission
West Washington Street, Room E204
Indianapolis, Indiana 46204-2767
Phone: (317) 232-3939
Fax: (317) 233-6793

September 1, 2021

VIA EMAIL ONLY

Hon. Paul Okeson
Chair, Indiana Election Commission

Dear Chairman Okeson:

It has been brought to our attention by the Democratic staff of the Indiana Election Division that there is an issue regarding the deadline for a county to receive an application from a voter with print disabilities for an absentee ballot to be sent by fax or email. Given that there are special elections scheduled in two (2) counties this November, we believe the Indiana Election Commission should address this matter.

This year the Indiana General Assembly enacted Senate Enrolled Act 398 (P.L.109-2021) which, among other things, allows a voter with print disabilities to apply to receive an absentee ballot by fax or email, similar to the method that military and overseas voters can use to receive an absentee ballot. The legislature has defined "voters with print disabilities" to mean an "individual who is unable to independently mark a paper ballot or ballot card due to blindness, low vision, or a physical disability that impairs manual dexterity." (IC 3-5-2-50.3)

After SEA 398 was signed into law, the Democratic staff realized that the General Assembly did not amend IC 3-11-4-3, which is the absentee ballot application deadline statute, to include a deadline for when a voter with print disabilities must submit an application to receive an absentee ballot by fax or email as allowed under IC 3-11-4-6. Our review of the statute confirms this omission.

Section 3(a)(2)(B) only provides that an absent uniformed services voter (military) or overseas voter who requests an absentee ballot be transmitted by fax or email must submit the application by noon the day before the election. There is no reference to voters with print disabilities. No other subsection in Section 3, especially subsection (a)(4), would apply as those deadlines pertain to requesting an absentee ballot to be provided by other methods, such as by mail or travel board.

While in the end it will be left to the General Assembly to amend the law to provide a definitive deadline for voters with print disabilities to apply for absentee ballot to be sent by fax or email, this change would not take place until 2022. However, there are special elections scheduled in precincts in Elkhart and Porter County for November of this year where this could become an issue. Because of this we believe the Election Commission should use its powers and

responsibility to administer Indiana election law to advise these counties what the deadline is for these applications.

According to IC 3-6-4.1-14(a)(1), the Indiana Election Commission shall administer Indiana election laws. Subsections (a)(3) and (b) of the same statute provide the Commission shall advise and exercise supervision over local election and registration officers, while not divesting a county election board of any powers and duties imposed on the board under IC 3-6-5, except when the board is deadlocked on a question that is later submitted to the Commission for final determination. Additionally, IC 3-6-4.1-25(2) provides the commission may, to administer Indiana election law, issue advisory opinions. In this case, as the Indiana Code fails to expressly provide a deadline by which print disabled voters must submit a request by fax or email to vote by fax or email, the Commission's taking action will not divest the local election boards of any authority delegated by statute.

The Commission has used its powers under Sections 14 and 25 in the past. Most recently, in 2020, the Commission adopted Orders 2020-37 and 2020-40, through which, in part, the Commission advised county election boards and circuit court clerks on how to execute certain election duties and responsibilities during the COVID-19 pandemic when local and state public health mandates were in effect.

Additionally, the Commission used the same power in 2015 to issue Advisory Opinion 2015-1 to opine that IC 3-9-3-5, which prohibits candidates for elected office from stating in political communications that they are the incumbent in an office when they do not hold the office, is not violated when certain words or phrases are not used in the communication.

Consistent with the procedure the Commission followed in 2015, we request that you call a meeting of the Commission to discuss this matter and work toward issuing an advisory opinion that would inform county election boards of the Commission's view of when the deadline would be for a voter with print disabilities to submit an application to receive an absentee ballot by fax or email. We also suggest that the Commission recommend to the General Assembly that what is advised in the opinion be codified through legislation.

We hope that we can work together to resolve this issue so that the law is applied in a uniform fashion by the counties holding special elections in 2021.

Sincerely,



Suzannah Wilson Overholt
Vice Chair



Karen Celestino-Horseman
Commission Member

cc: Zachary Klutz, Member, Indiana Election Commission



STATE OF INDIANA

OFFICE OF THE ATTORNEY GENERAL

TODD ROKITA
INDIANA ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 WEST WASHINGTON STREET, INDIANAPOLIS, IN 46204-2770
www.AttorneyGeneral.IN.gov

TELEPHONE: 317.232.6201
FAX: 317.232.7979

**MEMORANDUM OF LEGAL GUIDANCE
PRIVILEGED ATTORNEY-CLIENT COMMUNICATION**

October 15, 2021

The Honorable Paul Okeson
Chair, Indiana Election Commission
200 W. Washington Street, Room E204
Indianapolis, Indiana 46204

INDIANA ELECTION DIVISION
2021 OCT 26 PM 2:17

RE: Ability of the Indiana Election Commission to Establish Deadline

OUR FILE: 21-MLG-13

Dear Chairman Okeson:

You requested an opinion regarding whether the Indiana Election Commission has the ability to set an election law deadline when applicable state law does not provide for one.

QUESTION

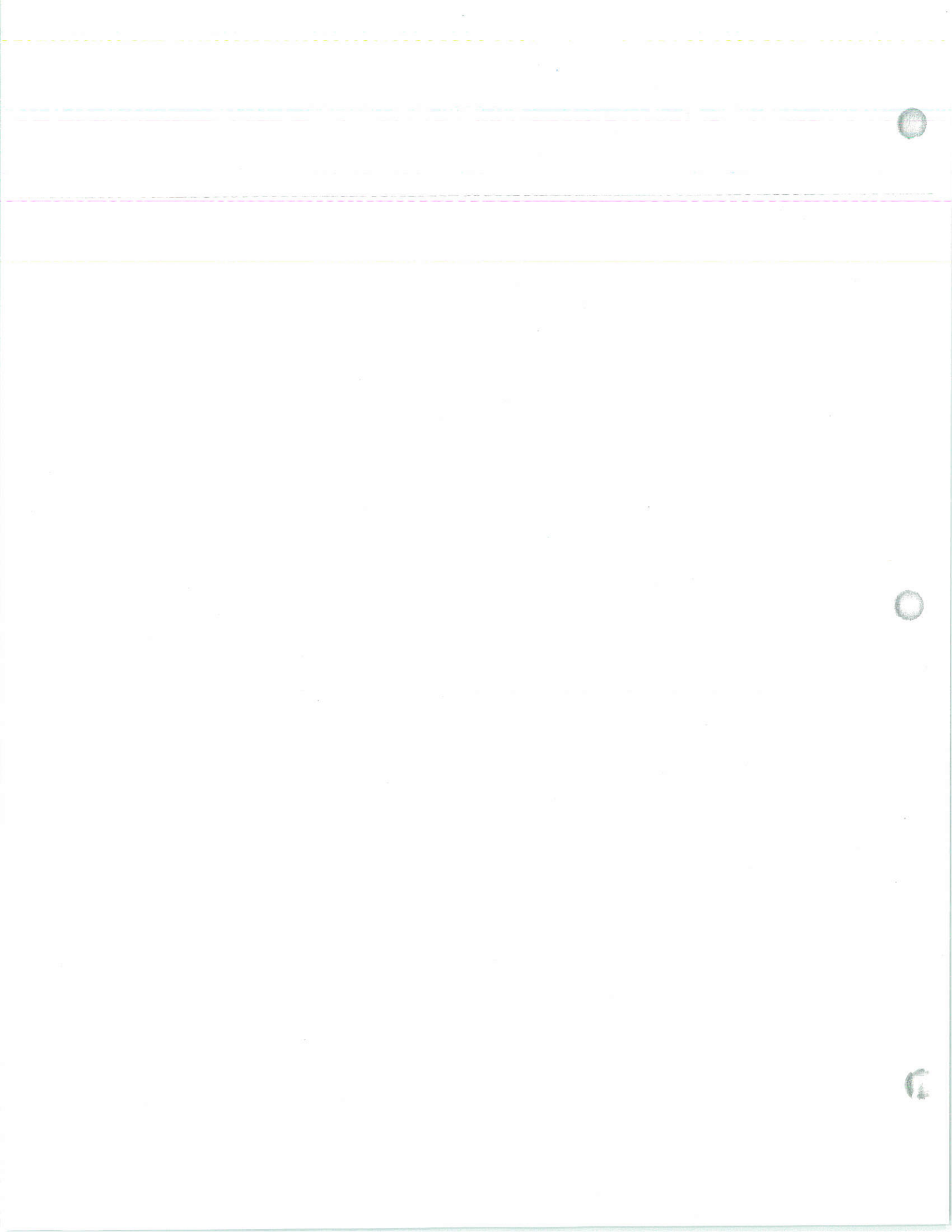
Where the Indiana General Assembly enacts legislation to provide for a combined voter registration and absentee ballot application process for voters with print disabilities, but does not provide for a deadline to request such form, may the Indiana Election Commission set a deadline by emergency rule or other order?

BRIEF ANSWER

No; the Indiana Election Commission does not have the authority by statute to implement such a policy by rule or other order. Any such provision must come from the Indiana General Assembly through the legislative process.

BACKGROUND

During the First Regular Session of the 122nd General Assembly (2021), the Indiana General Assembly passed Senate Enrolled Act No. 398, which made comprehensive updates to Indiana's election laws. As part of those updates, Ind. Code § 3-11-4-5.8 was added to provide a



new process for voters with print disabilities¹ to request a voter registration application and an absentee ballot application. However, the General Assembly appears to have failed to set a deadline for a timely application for an absentee ballot by email or fax of a voter with print disabilities under either Ind. Code § 3-11-4-3 or Ind. Code § 3-11-4-6. Certain members of the Indiana Election Commission (the “Commission”) have requested the Commission to act to account for this void and issue an edict to inform county election boards of the Commission’s view as to what the deadline would be for a voter with print disabilities to submit an absentee ballot application to receive a ballot via fax or email.² Effectively, the request is for the Commission to establish an election deadline where none exists by statute. This request, in turn, forms the basis of this memorandum.

ANALYSIS

Powers and Duties of the Indiana Election Commission

The Commission was established pursuant to Ind. Code § 3-6-4.1-1. The Commission is comprised of four (4) members appointed by the governor and each member must be a registered voter of Indiana and a member of a major political party of the state, with not more than two (2) of the members from the same political party. Ind. Code § 3-6-4.1-2. The Commission is delegated authority to administer Indiana election laws and to advise and exercise supervision over local election and registration officers. Ind. Code § 3-6-4.1-14. Additionally, the Commission has authority to adopt rules, including emergency rules, to govern the fair, legal, and orderly conduct of elections, rules governing campaign finance, rules governing the establishment of precincts, and rules specifying the procedures and fees for the processing of an application from a vendor for voting systems approval and testing. *Id.* The Commission may also hold hearings in accordance with the Administrative Orders and Procedures Act as well as issue advisory opinions. Ind. Code § 3-6-4.1-25.

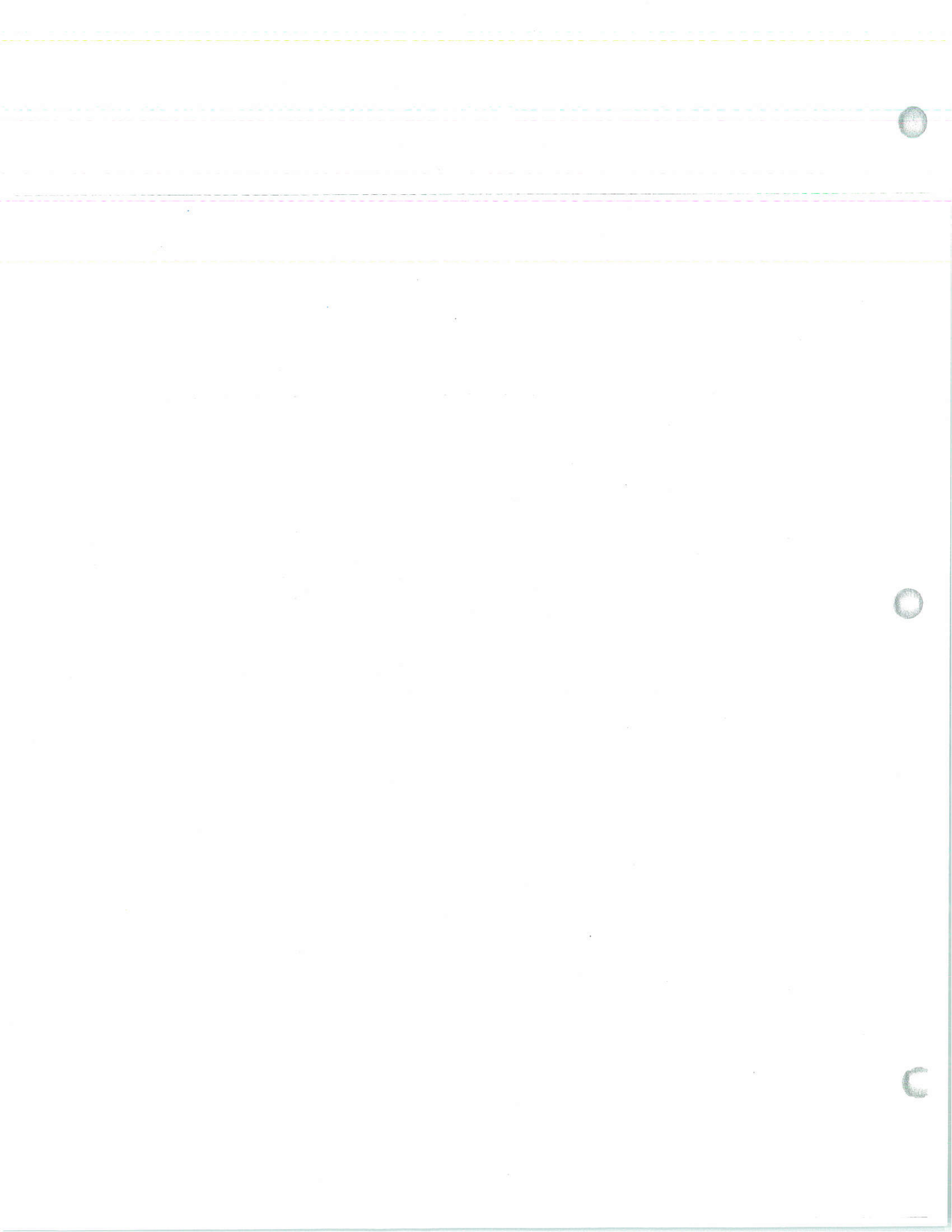
The Commission Lacks the Authority to Set Deadlines Absent Legislative Delegation

Generally, the Indiana General Assembly is vested with the responsibility and authority for providing state election laws designed to efficiently and fairly govern voting procedures. *Horseman v. Keller*, 841 N.E.2d 164, 170 (Ind. 2006). While such authority is vested with the legislature, some of the authority may be delegated:

The Legislature may set up machinery for the conduct of elections, and delegate to ministerial or executive agencies the duty of conducting elections, and may prescribe the procedure by which elections may be contested, so long as they stay

¹ A “voter with print disabilities” is “... an individual who is unable to independently mark a paper ballot or ballot card due to blindness, low vision, or a physical disability that impairs manual dexterity.” Ind. Code § 3-5-2-50.3.

² The Commission has issued advisory opinions (e.g., Advisory Opinion 2015-1, available at: https://www.in.gov/sos/elections/files/CFA_Advisory_Opinion_2015-1_Officeholder_Impersonation.pdf) and other orders (e.g., Order No. 2020-40, available at: <https://bloximages.chicago2.vip.townnews.com/nwitimes.com/content/tncms/assets/v3/editorial/7/22/722f97d9-0e59-588d-8704-2d8bd349cb5b/5e9a21be3f7d1.pdf.pdf>).



within their constitutional powers, and such procedure conforms to the law, such steps and procedure will be governed by the legislative rules prescribed.

Id. (citing *State ex rel. Nicely v. Wildey*, 197 N.E. 844, 847 (Ind. 1935)). Indeed, the Constitution provides that state legislatures have primary responsibility for setting election rules. Art. 1, § 4. cl. 1. Accordingly, unless the Indiana General Assembly specifically delegates its authority to the Commission to set election-related deadlines, then such power is non-existent. *See Tyus v. Indianapolis Power & Light Co.*, 134 N.E.3d 389 (Ind. Ct. App. 2019). Here, no such delegation exists. The Commission possesses the general duties and powers to administer election laws. It cannot, however, create laws. There are many instances throughout Indiana election law where the legislature has clearly spoken on election-related deadlines. *See, e.g.*, Ind. Code §§ 3-11-4-3, 3-7-13-10, and 3-11.5-4-10. From those examples, it is apparent the General Assembly did not mean to set standards and delegate such authority to the Commission. *See Gunderson v. State, Indiana Department of Natural Resources*, 90 N.E.3d 1171, 1186 (Ind. 2018) (“The legislature may only delegate rule-making powers to an administrative agency if that delegation is accompanied by sufficient standards to guide the agency in the exercise of its statutory authority.”).

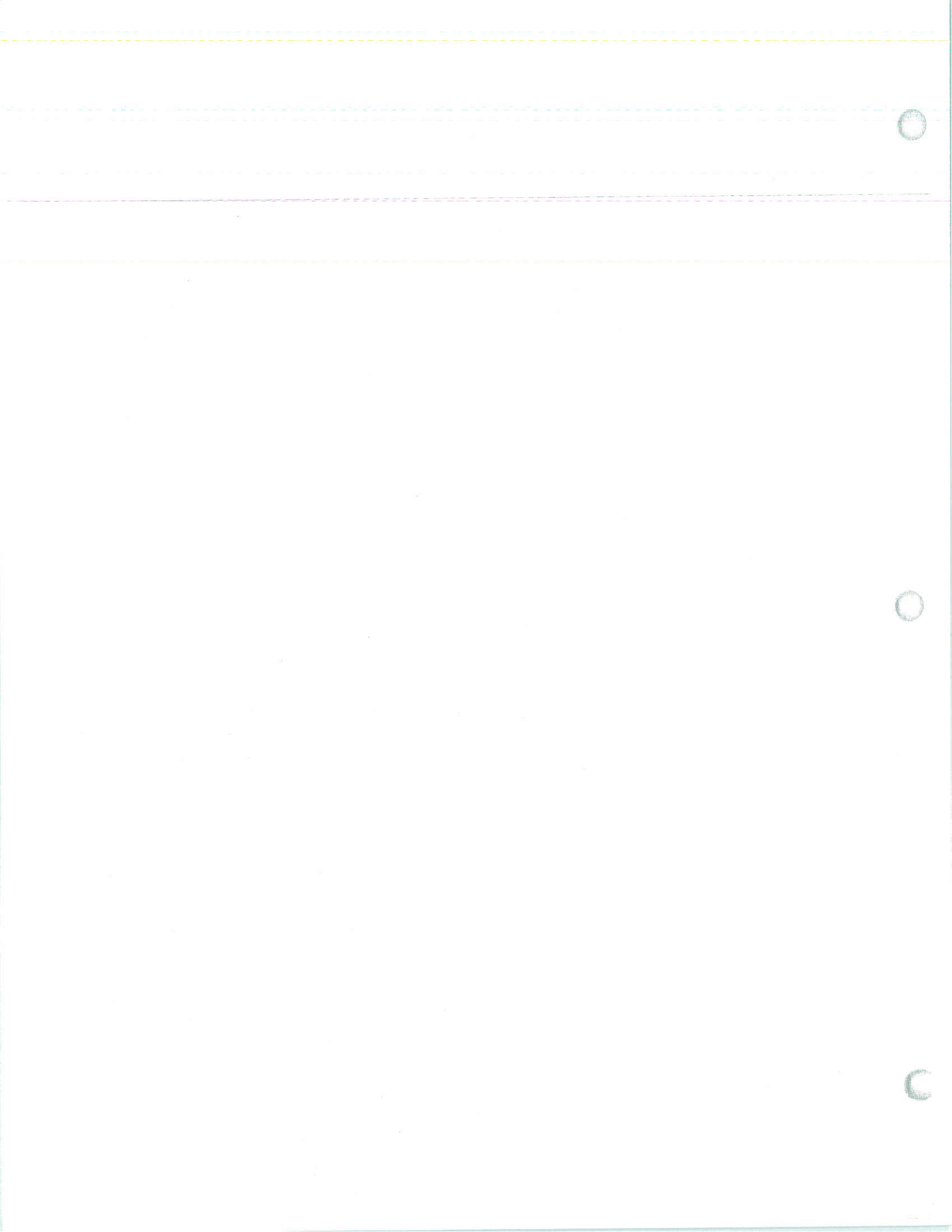
While it is true the Commission is granted the authority to supervise local election and registration offices as well as issue advisory opinions, such actions certainly do not entail the ability to make or prescribe law. This would be unconstitutional. *See Tyus*, 134 N.E.3d at 405 (“[The] ‘legislature cannot delegate the power to make a law.’” [citing *Gunderson*, 90 N.E.3d at 1186]). The Commission has previously utilized its authority to extend deadlines pursuant to orders issued under Ind. Code § 3-6-4.1-17, which are powers derived by public health crisis or natural disaster declared by the governor, not by exercising the grant of a unilateral power. Likewise, the Commission has previously issued advisory opinions interpreting election laws under Ind. Code § 3-6-4.1-25. However, such opinions only apply to enacted laws, not prescribing its own set of laws.

Here, the legislature has not spoken or set deadlines for application submission, and any guidance or advisory opinion issued to set a deadline for application submission would be *de facto* lawmaking. That, the Commission clearly cannot do as a branch of the executive. While it is an unfortunate oversight by the Indiana General Assembly to not include proper application deadlines for voters with print disabilities to request absentee ballots, such error may only be corrected through the legislative process, not by a body of unelected officials.³ To provide otherwise would run contrary to separation of powers and general constitutional principles.

CONCLUSION

Where the General Assembly does not provide for a deadline under existing Indiana election laws, the Commission is prohibited from doing so under its existing powers and duties.

³ The Indiana General Assembly is technically still in session until November 15, 2021. Given that special elections may be scheduled in counties before the legislature reconvenes and can correct this oversight, the Commission may want to consider engaging with legislative leadership to have these corrections implemented.



To do otherwise would be engaging in the prescription of election laws, a uniquely legislative function, in contravention of constitutional principles. Any such change must come as a result of the legislative process.

Sincerely,

A handwritten signature in black ink that reads "Todd Rokita". The signature is written in a cursive style with a large, looping initial "T".

Todd Rokita
Attorney General of Indiana

John Walls, Chief Counsel, Advisory
William H. Anthony, Asst. Chief Counsel, Advisory
Philip Gordon, Section Chief, Advisory
Hilari A. Sautbine, Senior Deputy Attorney General



COUNTY OF MARION) IN RE: INQUIRY CONCERNING THE DEADLINE
) FOR A VOTER WITH PRINT DISABILITIES TO
) REQUEST AN ABSENTEE BALLOT BY FAX OR
STATE OF INDIANA) EMAIL UNDER INDIANA CODE 3-11-4

WHEREAS, pursuant to Indiana Code 3-6-4.1-14, the Indiana Election Commission is required to administer the election laws of the State of Indiana;

WHEREAS, pursuant to Indiana Code 3-6-4.1-25, the Commission is authorized to issue advisory opinions;

WHEREAS, the Indiana General Assembly enacted Senate Enrolled Act 398-2021 (P.L. 109-2021) which authorized a voter with print disabilities to request from their county election board an absentee ballot to be sent by fax or email;

WHEREAS, Indiana Code 3-11-4-3 establishes deadlines for when a voter must submit an absentee ballot application to the voter's county circuit court clerk to receive an absentee ballot to cast at an election;

WHEREAS, neither Senate Enrolled Act 398-2021 nor any other act of the Indiana General Assembly amended Indiana Code 3-11-4-3 to provide a deadline for when a voter with print disabilities must submit an application to receive an absentee ballot by fax or email before an election;

WHEREAS, Indiana Code 3-11.5-4-10 provides that the deadline for a voter, other than a military or overseas voter who votes an absentee ballot by mail, to return an absentee ballot so that it may be counted is 6:00 pm, local prevailing time, on election day;

WHEREAS, a special election has been called in various precincts in Elkhart and Porter County where a voter with print disabilities may request an absentee ballot by fax or email;

WHEREAS, the Commission, upon duly considering the matter, has determined that the adoption of an advisory opinion by the Commission will benefit the administration of Indiana election laws;

NOW, THEREFORE, THE INDIANA ELECTION COMMISSION ISSUES THE FOLLOWING ADVISORY OPINION:

Section 1: This Advisory Opinion shall serve as guidance to each county election board and the voters of each county regarding the Commission's view of Indiana Code 3-11-4-3 with respect to the deadline for a voter with print disabilities to request an absentee ballot by fax or email for an election and may not be construed as the Commission establishing a deadline or otherwise committing a legislative act.

Section 2: There is nothing in Indiana Code 3-11-4-3 can be read as establishing a deadline for when a voter with print disabilities must submit an application to the voter's circuit court clerk to receive an absentee ballot by fax or email before an election.

Section 3: Pursuant to Indiana Code 3-11.5-4-10, the absentee ballot return deadline is 6:00 pm, local prevailing time, on election day for all voters other than military and overseas voters who vote an absentee ballot by mail. A voter with print disabilities may not apply to receive an absentee ballot by fax or email for an election at anytime after the deadline established in Indiana Code 3-11.5-4-10 has passed for the election.

Section 4: The Commission respectfully recommends to the Indiana General Assembly that Indiana Code 3-11-4-3 be amended to establish a deadline for when a voter with print disabilities must submit an application to receive an absentee ballot by fax or email to the circuit court clerk by enacting appropriate legislation.

Section 5: The Commission directs that the Election Division promptly forward a copy of this Advisory Opinion to each county election board.

Section 6:

Issued the _____ of _____, 2021,

By the Indiana Election Commission:

Paul Okeson, Chairman

Suzannah Wilson Overholt, Vice Chairman

_____, Member

Karen Celestino Horseman, Member